



Mr Andrew Fido
Boralex
16 West Borough
Wimborne
Dorset
BH21 1NG

10 May 2024

Dear Mr Fido,

CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF TOM NA CLACH WIND FARM EXTENSION WITHIN THE PLANNING AUTHORITY AREA OF HIGHLAND COUNCIL

Application

1. I refer to the application (“the Application”) made on 31 March 2022 under section 36 of the Electricity Act 1989 (“the Electricity Act”) made by Infinergy Limited (now Boralex Limited) on behalf of Nan Clach Extension Limited, a company incorporated under the Companies Acts with company number 12642086 (“the Company”) and having its registered office at 16 West Borough, Wimborne, Dorset, BH21 1NG for the construction and operation of Tom Na Clach Wind Farm Extension.

2. The Application proposes 7 turbines with a blade to tip height not exceeding 149.9 metres (“m”), and with a generating capacity of around 31.5 megawatts (“MW”). The Battery Energy Storage System (BESS) would have the approximate maximum storage capacity of 5 MW. The proposed Development’s total generating capacity is 36.5 MW (“the proposed Development”).

3. This letter contains the Scottish Ministers’ decision to grant section 36 consent for the proposed Development as described at Annex 1.

Planning Permission

4. In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 the Scottish Ministers, may on granting consent under section 36 of the Electricity Act for the construction and operation of a generating station direct that planning permission be deemed to be granted in respect of that generating station and any ancillary development.

5. **This letter contains the Scottish Ministers' direction that planning permission is deemed to be granted.**

Background

6. The proposed Development is an extension to the operational Tom Nan Clach Wind Farm which received planning permission from The Highland Council on 28 October 2016 and comprises of 13 wind turbines at 110 m blade tip height.

7. The proposed Development will be located at the Cawdor Estate and Lethen Estate approximately 8km north-east of Tomatin. The site boundary including internal access tracks occupies a total area of approximately 398 hectares, though the proposed Development's infrastructure occupies only a small fraction of this. The proposed Development is located within an area of mainly upland moor and forestry plantation approximately 7km north-east of Tomatin and west of the B9007. Access to the site will be from an existing road off the B9007, utilising the existing 11.5 km access track built for the Operational Scheme, and new track would be developed where required to transport components and materials to site and service the ongoing needs of the proposed Development.

Legislation and Consultation (including Additional Information)

8. Under paragraph 2(1) of Schedule 8 to the Electricity Act, the relevant planning authority, the Highland Council in this case, is required to be notified in respect of a section 36 consent application.

9. In accordance with requirements of both the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the EIA Regulations") and the Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, on 31 March 2022 the Company submitted an Environmental Impact Assessment report ("the EIA report") and supplementary documents, including a non-technical summary, a planning statement and a statement of community consultation, in support of the Application.

10. To comply with the EIA Regulations, the Scottish Ministers are required to consult the relevant planning authority, as well as NatureScot (previously operating as Scottish Natural Heritage), the Scottish Environment Protection Agency ("SEPA") and Historic Environment Scotland ("HES") as well as other persons that are likely to be concerned by the proposed Development by reason of their specific environmental responsibilities.

11. In accordance with requirements of both the Electricity (Applications for Consent) Regulations 1990 ("the Consents Regulations") and the EIA Regulations, a notice of the proposed Development was published on the Company's website and advertised in the local and national press. The Application was made available in the public domain, and the opportunity given for those wishing to make representations to do so. Notifications were sent to the Highland Council ("the Planning Authority") as well as to NatureScot, SEPA and HES and others likely to have interest in the proposed Development by reason of their specific environmental responsibilities.

12. The Company further submitted Additional Information (“AEI”) dated 13 December 2022 to support the Application and the EIA report, following an objection from the Scottish Environmental Protection Agency (SEPA). The AEI updated the description of the proposed Development and gave an analysis of its environmental effects, comprising of 3 volumes: Volume 1: Written Statement; Volume 2: Figure List and Volume 3: Appendices. The amendments included micro-siting Turbines T1 and T4, and related infrastructure, in addition to restoring a redundant track in line with the suggestions from SEPA.

13. In accordance with Regulation 20 of the EIA Regulations, the AEI was made available for public inspection. Further notices were published in the Edinburgh Gazette, the application website and in newspapers circulated in the respective local communities informing the public of the AEI and, if they wished to do so, how representations to the Scottish Ministers could be made.

14. The Scottish Ministers have had regard to the matters set out in Schedule 9 of the Electricity Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

15. In accordance with section 36(5A) of the Electricity Act, before granting any section 36 consent Scottish Ministers are also required to:

- obtain SEPA advice on matters relating to protection of the water environment; and
- have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

16. As required by section 36(5A) of the Electricity Act, SEPA’s advice has been considered by the Scottish Ministers with due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

17. SEPA raised no concerns regarding the potential effects on the water environment subject to conditions which are included in Annex 2. In its response to Scottish Ministers, SEPA direct the Company to the Regulations section of the SEPA website for advice on Regulatory requirements and good practice advice.

18. The Scottish Ministers are satisfied that the EIA report and AEI have been produced in accordance with the EIA Regulations. The Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the Application, EIA report, AEI, representations and consultation responses, including those from NatureScot, SEPA, HES and the Planning Authority, into consideration in reaching their decision.

19. The Scottish Ministers consider that there is sufficient information to allow Ministers to be satisfied that the Company has had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

20. Under paragraph 3(3) of Schedule 9 of the Electricity Act, the Scottish Ministers shall avoid, so far as possible, causing injury to fisheries or to stock of fish in any waters. The

Scottish Ministers are satisfied that this is the case and more generally that the requirements of paragraph 3 have been met.

21. The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations, EIA Regulations and The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider the proposed Development and make representations on it.

Public Inquiry

22. In accordance with paragraph 2(2) of Schedule 8 of the Electricity Act, where the relevant planning authority objects to an application and the objection is not withdrawn the Scottish Ministers shall cause a public inquiry to be held.

23. The Planning Authority did not object and therefore a Public Inquiry is not a statutory requirement. Paragraph 3 of Schedule 8 to the Electricity Act provides that where the Scottish Ministers are not by virtue of paragraph 2(2) to cause a public inquiry to be held, but objections or copies of objections have been sent to the Scottish Ministers, the Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a public inquiry should be held with respect to the application and, if they think it appropriate to do so, they must cause a public inquiry to be held.

24. Scottish Ministers have considered the objection raised by Dava Community Council and have taken all material considerations into account. Scottish Ministers are satisfied that there is sufficient information to be able to make an informed decision on the Application and that they can weigh all the conflicting issues without recourse to holding a public inquiry.

Conservation of Habitats and Species Regulations

25. The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) require Scottish Ministers to consider whether the proposed Development would be likely to have a significant effect on a European site, as defined in the Habitats Regulations, and if the development is directly connected with or necessary to the management of the European site.

26. NatureScot have advised that in relation to European sites, it is unlikely that the proposed Development will have a significant effect on any qualifying interests, either directly or indirectly. An appropriate assessment is therefore not required.

Summary of Consultation Responses

27. A summary of the consultation responses is provided below and the full responses are available on the Energy Consents Unit website www.energyconsents.scot

Statutory Consultees

28. **The Highland Council** does not object to the proposed Development subject to conditions to be imposed on the planning permission.

29. The Planning Authority has determined its response to the Application against the policies set out in the Development Plan, principally Policy 67 of the Highland-wide Local Development Plan with its eleven tests which are expanded upon with the Onshore Wind Energy Supplementary Guidance. This policy also reflects policy tests of other policies in the plan, for example Policy 28.

30. Considering the proposal against the provisions of the Revised Draft National Planning Framework 4 and the adopted Development Plan, the proposed Development was considered to benefit from in principle support. The localised effects are considered to be outweighed by the contribution the Development would make toward tackling climate change. The proposed Development also contains proposals for habitat management which if appropriately conditioned could lead to biodiversity enhancement.

31. The Planning Authority acknowledge that the proposed Development will increase the visibility of wind energy development in the area local to the proposed Development, an area which is identified as a Special Landscape Area. It was also acknowledged that the turbines are sited adjacent to the operational Tom Nan Clach Wind Farm and, despite the turbines being larger than those in the operational Development, do not appear out of scale from most views.

32. The Planning Authority noted that the difference in scale of the turbines will be more noticeable in close proximity, such as where views are afforded toward the Development from the shores of Lochindorb. However, the Planning Authority considered the adverse effects caused by the proposed Development would not be unacceptable. It is considered that the proposal is also consistent with the findings of the draft Dava Moor and Monadliath Landscape Sensitivity Appraisal.

33. The Planning Authority considered effects of the proposed Development on the setting of Lochindorb Castle Scheduled Monument and the concerns raised due to the cumulative impact with the existing operational Tom Nan Clach Wind Farm. While the impact on setting will be intensified beyond the baseline, the Planning Authority do not consider that the effect on setting is significantly different than that already experienced.

34. The Planning Authority have considered the benefits of the proposed Development weighed against potential drawbacks and consider that the Application is acceptable in terms of the Development Plan and national policy, which from 13 February 2023 includes National Planning Framework 4 ("NPF4"), and is acceptable in terms of all other applicable material considerations.

35. The Scottish Ministers have imposed appropriately worded conditions at **Annex 2** which give effect to the requirements of the Planning Authority.

36. **NatureScot** does not object to the proposed Development and state it will not result in adverse effects on the integrity of the Cairngorms National Park. In relation to European

sites, it is unlikely that the proposal will have a significant effect on any qualifying interests, either directly or indirectly. An appropriate assessment is therefore not required.

37. **Scottish Environment Protection Agency (SEPA)** does not object to the proposed Development following further information and site layout changes being made related to the proposed Development's impact on peat. SEPA requests a condition to secure that the crossing of the Allt Carn an t-Sean-liathanaich is a single span bridge and that all other crossings are oversized bottomless arched culverts. SEPA also requests conditions to secure borrow pit restoration at the end of the construction phase, decommissioning and restoration plans for the site, a habitat management plan and adherence with SEPA's good practice measures. The Scottish Ministers have imposed appropriately worded conditions at **Annex 2** which give effect to the requirements of SEPA.

38. **Historic Environment Scotland (HES)** does not object to the proposed Development. HES identified significant adverse effects on one scheduled monument – Lochindorb Castle (SM 1231) and noted such impacts are likely to be capable of mitigation through redesign. The impacts are at a level where HES strongly recommended that further mitigation options are explored in any future design process. The applicant has not proposed any amendments to the proposed Development to address HES's comments, through deletion or relocation of turbines, with the exceptions of movement of turbines T1 and T4 as detailed in the AEI.

Internal Advisors to Scottish Government

39. **Marine Directorate Science, Evidence, Data and Digital (MD SEDD)** does not object to the proposed Development. It advises that the applicant should follow its guidelines on preparing an integrated water quality and fish population monitoring programme. The Scottish Ministers have imposed appropriately worded conditions which address the requirements of Marine Scotland Science.

40. **Transport Scotland** does not object to the proposed Development. Recommended two conditions to be used to minimise interference and maintain the safety and free flow of traffic on the trunk road and to ensure that the transportation will not have any detrimental effect on the road and structures along the route. The Scottish Ministers have imposed appropriately worded conditions which address the requirements of Transport Scotland.

External Advisors to Scottish Government

41. **Ironside Farrar (Peat)** were advisors for the Scottish Ministers on Peatland Hazard Landslide Risk Assessment (PHLRA). Their Stage 1 Assessment identified a number of revisions to the PHLRA that the applicant should consider which were then addressed through the submission of the AEI. Ironside Farrar produced a stage 2 checking report which cleared most of the points raised but still required information relating to the consequence assessment in the updated PHLRA. Some areas of moderate and marginal instability for peat were not included in the updated PHLRA. It was suggested that these areas would warrant consideration, to provide a robust assessment. Developer provided a response in April 2023 and this was forwarded to Ironside Farrar for further comment. In its response of 20 April 2023, Ironside Farrar concluded that, although the risk assessment had omitted small areas <25m of moderate likelihood, the information provided in the risk

assessment and specifically Figure 10 was sufficient and no further response is required. Ironside Farrar also noted in their April 2023 response that future reporting should conduct full risk assessment on all sections of elevated likelihood, irrespective of size.

Other Consultees

42. **British Horse Society** does not object and provided a standard response.
43. **British Telecom (BT)** does not object. They concluded that, the proposal should not cause interference to BT's current and presently planned radio networks.
44. **Cairngorms National Park Authority (CNPA)** does not object to the proposed Development in combination with existing and consented wind farms. However CNPA noted that should the proposed Lethen Wind Farm (which CNPA objected to in April 2022) gain consent prior to the above proposed wind farm being determined, then CNPA object to the proposed Development. Lethen Wind Farm was refused consent in February 2024.
45. **Carrbridge Community Council** does not object. Community opinion is split due to impacts of community benefit from the project and the visual and environmental effects on an area of outstanding natural beauty and amenity value.
46. **Cawdor Community Council** does not object. Although there are some concerns regarding the effects on the natural beauty of the area as a result of more turbines, they appreciate the interest in and need to further develop wind power as an alternative to fossil fuel.
47. **Dava Community Council** objects to the proposed development as an extension to Tom Nan Clach windfarm will increase impacts on the Drynachan, Lochindorb and Dava Moors SLA. In addition, this proposal will exacerbate the detrimental impact of the existing operational scheme on visitor experience to Lochindorb.
48. **Defence Infrastructure Organisation (Ministry of Defence (MOD))** does not object to the proposed Development subject to suggested conditions. These relate to Aviation Lighting and Aviation Charting and Safety Management. The Scottish Ministers have imposed appropriately worded conditions at **Annex 2** which give effect to the requirements of MOD.
49. **Fisheries Management Scotland** does not object to the proposed Development and provided a standard response. It recommends that the Findhorn DSFB and Findhorn, Nairn & Lossie Rivers Trust are consulted on specific measures.
50. **Highlands and Islands Airport (HIAL)** does not object to the proposed Development. The proposed Development will not infringe the safeguarding criteria for Inverness Airport.
51. **Joint Radio Company (JRC)** does not object to the proposed Development. The proposal is cleared with respect to radio link infrastructure operated by Scottish Power and Scotia Gas networks.

52. **NATS Safeguarding** does not object to the proposed Development and stated it does not conflict with safeguarding criteria.

53. **Scotways** does not object. A formal response was not submitted for the Application but concerns on the now operational Tom Nan Clach were raised previously relating to impacts on landscape and damage to the recreational value of the area. These concerns remain for the proposed Development.

54. **Scottish Water** does not object to the proposed Development. No Scottish Water drinking water catchments or water abstraction sources, which are designated as Drinking Water Protected Areas under the Water Framework Directive, in the area that may be affected by the proposed activity.

55. The following consultees have no objection to the proposed Development:

- Aberdeen Airport;
- Crown Estates Scotland;
- Royal Society for the Protection of Birds (RSPB)

56. The following consultees did not respond to the consultation: Civil Aviation Authority (CAA); John Muir Trust; Mountaineering Scotland; Nuclear Safety Directorate; River Findhorn District Salmon Fishery Board; Scottish Forestry; Scottish Wildlife Trust; Scottish Wild Land Group; Visit Scotland; Dulnain Community Council; East Nairnshire Community Council and Strathdean Community Council.

Representations

57. The Scottish Ministers received no public representations, either in support of, or objecting to the Application.

The Scottish Ministers Considerations

Main Determining Issues

58. Having considered the Application, the EIA report, AEI, responses from consultees and Scottish Government policies, Scottish Ministers consider that the main determining issues are:

- Landscape and visual effects, including cumulative effects and effects on the setting of Lochindorb Castle Scheduled Monument;
- Benefits of the proposal; and
- Scottish Government policies and the Local Development Plan.

These issues are considered in turn below.

Assessment of the Determining Issues

Landscape and Visual Effects, including Lochindorb Castle Scheduled Monument and cumulative effects.

59. The proposed Development site is located on Cawdor Estate, with some elements of access infrastructure lying on the Lethan Estate, and predominantly consists of upland moorland. The site is located within the Drynachan, Lochindorb and Dava Moor Special Landscape Area. Additionally the Cairngorms National Park and the Cairngorm Mountain National Scenic Area are located approximately 4.5km and 16km south-east of the site, respectively.

60. The Company provided a detailed assessment of the landscape and visual impacts of the proposed Development in the EIA report at Volume 1, Chapter 9. In consideration of the proposed Development, the Scottish Ministers have reviewed the LVIA presented within the EIA report and AEI, and comments made by consultees including the Planning Authority, HES and NatureScot.

61. The LVIA is contained within the EIA report at Chapter 9. Figure 9.14 of the EIA report shows cumulative wind farms within 40km of the proposed Development.

62. In regard to the wind turbines, the Planning Authority acknowledge that the immediate landscape surrounding the Application site has several operational and consented wind farms and that the proposed Development would form an extension for Tom Nan Clach Wind Farm. The Planning Authority commented that it is clear from the EIA report and the Design and Access Statement that the applicant has tried, where possible, to reduce any potential landscape and visual effects through the proposed design and layout of the turbines. It is considered that in doing so they have created a wind farm which appears to be appropriately designed for the landscape it would sit within and takes account of visual features of the area.

63. Although HES do not object to the Application, it has identified significant adverse effects on Lochindorb Castle Scheduled Monument. HES highlighted that the existing development has a significant adverse effect on the setting of Lochindorb Castle when viewed from the Lochside Road. It considers that the increase of turbines in this location is likely to further and substantially increase the adverse effects already experienced. The Planning Authority have considered the concerns regarding visual effects on the setting of Lochindorb Castle and found that the areas in which the setting will be affected can be considered limited.

64. Having considered the EIA report, the AEI, the consultation responses and taking into account HES's and the Planning Authority's responses, the Scottish Ministers are of the view that the overall impact on Lochindorb Castle Scheduled Monument is acceptable. The Scottish Ministers consider that the landscape and visual impacts and cumulative effects are acceptable.

Benefits of the Proposal

Economic Benefits

65. The transition to a low carbon economy is an opportunity for Scotland to take advantage of our natural resources to grow low carbon industries and create jobs. The Company set out in the EIA report that during the construction phase of the proposed Development it would generate the equivalent to approximately 27-37 full time jobs. The

estimated development and construction cost of the Development is expected to be approximately £3.78 million - £5.4 million and it is anticipated that £310,000 - £546,000 per year (between £12.4m and £21.8m over the 40 year lifespan of the proposed Development) could be realised in the Highlands.

66. Whilst the overall net economic benefits are estimations of the effects of the proposed Development, Scottish Ministers are satisfied the proposed Development has the potential for significant positive net economic benefits both for the local community, the Highlands and Scotland.

Biodiversity Enhancement

67. In their response to Scottish Ministers the Planning Authority highlighted that the proposed Development's outline Habitat Management Plan ("oHMP"), which includes areas of habitat restoration across the site, did not set out a metric to demonstrate there would be overall enhancement to biodiversity across the proposed Development site, and noted it considers this to be in conflict with the Inner Moray Firth Local Development Plan 2 ("IMFLDP2") and NPF4.

68. The IMFLDP2 contains policies on Nature Protection, Preservation and Enhancement (Policy 2) and sets out that major development will only be supported where it is demonstrated that the proposal will conserve and enhance biodiversity within and adjacent to a site.

69. The Planning Authority considers there are opportunities across the site and wider Cawdor Estate for the Company to provide biodiversity enhancements beyond baseline conditions. The Planning Authority therefore requested inclusion of a condition to secure a minimum of 10% biodiversity enhancement above the existing baseline, in the event consent and deemed planning permission is granted to the proposed Development.

70. NatureScot did not object to the proposed development however provided recommendations for the oHMP which included: undertaking bog restoration and drain blocking over a "*large and ambitious area*" and implementing a Moorland Management Plan. NatureScot did not amend their advice following submission of the AEI.

71. Having considered the EIA report, the AEI and the consultation responses the Scottish Ministers are satisfied that condition 26 at **Annex 2** presents sufficient measures in relation to the impacts of the proposed Development on biodiversity.

Scottish Government Policies and the Local Development Plan

Climate Change and Renewable Targets

72. The seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority of the Scottish Ministers. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, introduced a target of net zero greenhouse gas emissions by 2045 at the latest.

73. The Scottish Ministers consider that this proposed Development makes a contribution towards meeting greenhouse gas emission reduction and renewable

electricity targets while using existing infrastructure, with a generating capacity of approximately 36.5MW.

74. The carbon saving is approximately 30,000 tonnes of CO₂ per year meaning a total of over 1.2 million tonnes over the proposed Development's 40 year operational life. The expected carbon payback period, assuming that the proposed Development will offset the emissions associated with fossil fuel electricity generation, is calculated to be in the region of 2.2 years.

75. It is noted by the Scottish Ministers that the proposed Development will make a valuable contribution to Scotland's renewable energy, electricity and emissions reductions targets.

Scottish Energy Strategy and Onshore Wind Policy Statement

76. Scottish Energy Strategy ("SES") was published in December 2017 and Onshore Wind Policy Statement ("OWPS") published in December 2022. SES sets out a vision for the future energy system in Scotland through to 2050 and sets out the priorities for an integrated system-wide approach that considers the use and supply of energy for heat, power and transport. SES provides a long-term vision to guide energy policy decisions to tackle the challenges of decarbonising heat and transport in order to meet Scotland's long-term energy and climate change targets.

77. The OWPS reaffirms the vital role for onshore wind in meeting Scotland's energy targets within the context of the Scottish Government's 2045 net zero emissions commitment. The OWPS sets out the Scottish Government's position for the ongoing need for more onshore wind development and capacity in locations across Scotland where it can be accommodated in appropriate locations.

Scotland's National Planning Framework

78. On 13 February 2023 the National Planning Framework 4 ("NPF4") was adopted by Scottish Ministers. NPF4 sets out the spatial principles and by applying these, the national spatial strategy will support the planning and delivery of: sustainable places, liveable places, and productive places. The national spatial strategy acknowledges that meeting the climate ambition will require rapid transformation across all sectors of our economy and society. It states that this means ensuring the right development happens in the right place. NPF4 recognises that every decision on future development must contribute to making Scotland a more sustainable place. The strategic renewable electricity generation and transmission infrastructure is a national development within NPF4 and supports renewable electricity generation, repowering, and expansion of the electricity grid.

79. The energy policy principles encourage, promote and facilitate all forms of renewable energy development onshore and offshore, including energy generation and storage. Development proposals for all forms of renewable technologies will be supported including wind farms and where they maximise net economic impact. Wind farms will not be supported in National Parks and National Scenic Areas.

80. The energy policy sets out the matters that are to be addressed in the design and mitigation of a development which include impacts (including cumulative) on communities

and individual dwellings; significant landscape and visual impacts; historic environment; biodiversity; trees and woodlands; public access; aviation and defence interests; telecommunications and broadcasting; road traffic; water environment; decommissioning of developments and site restoration. The policy requires that in considering these impacts, significant weight will be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets. The policies within NPF4 require to be considered and balanced when reaching a decision on applications for wind energy development.

81. The Scottish Ministers are satisfied that the matters pertaining to NPF4 have been assessed in the Application, EIA report, AEI and considered in responses from the Planning Authority, HES, SEPA, NatureScot and other relevant bodies.

82. As stated above, NPF4 supports the planning and delivery of sustainable places, liveable places and productive places, and that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits over the longer term. Decisions should be guided by policy principles including, among others, giving due weight to net economic benefit; supporting the delivery of renewable energy infrastructure; reducing greenhouse gas emissions and responding to the nature crisis.

83. Scotland's renewable energy and climate change targets, energy policies and planning policies are all material considerations when weighing up this proposed Development. NPF4, the Energy Strategy, and the OWPS make it clear that renewable energy deployment remains a priority of the Scottish Government. This is a matter which should be afforded significant weight in favour of the proposed Development.

84. The Scottish Ministers acknowledge that the proposed Development would result in some cumulative landscape and visual effects, these effects are considered acceptable in the context of the benefits that the proposed Development will bring in terms of net economic benefit, contributing to renewable energy and climate change targets, while protecting the natural environment. The biodiversity measures set out by the Company will conserve and restore natural assets affected by the proposed Development. A Habitat Management Plan (HMP) will be submitted to and approved in writing by the Planning Authority prior to the commencement of development setting out how the proposed habitat management and peatland restoration of the site shall meet or exceed the biodiversity measures described in the EIAR.

85. The Scottish Ministers in making their determination on the Application, have had to balance the above considerations, decide what weight is to be given to each and reach a view as to where the balance of benefit lies. On balance, it is considered that the proposed Development is acceptable.

Local Development Plan

86. The Planning Authority has determined its response to the Application against the policies set out in the Development Plan, principally Policy 67 of the Highland-wide Local

Development Plan with its eleven tests which are expanded upon with the Onshore Wind Energy Supplementary Guidance. This policy also reflects policy tests of other policies in the plan, for example Policy 28. Considering the proposal against the provisions of the Revised Draft NPF4 and the adopted Development Plan, the proposed Development can be considered to benefit from in principle support. The localised effects are considered to be outweighed by the contribution the development would make toward tackling climate change. The development also contains proposals for habitat management, which will conserve and restore natural assets.

87. Given the above analysis, the Application is, on balance, considered acceptable in terms of the Development Plan and national policy and is acceptable in terms of all other applicable material considerations.

88. The Scottish Ministers acknowledge the Planning Authority's view that the proposed Development is supported by its Local Development Plan and Supplementary Guidance and NPF4, and appropriate conditions are imposed as requested by the Planning Authority.

The Scottish Ministers' Conclusions

Reasoned Conclusions on the Environment

89. The Scottish Ministers are satisfied that the EIA report has been produced in accordance with the EIA Regulations, the Consents Regulations and the Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, where applicable, and that the procedures regarding publicity and consultation laid down in those regulations have been followed.

90. The Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect that the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites, buildings or objects.

91. The Scottish Ministers have fully considered the Application, including the EIA report, AEI, consultation responses and all other material information and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed. Taking into account the environmental information and assessments, and subject to conditions to secure mitigation measures, the Scottish Ministers consider the environmental effects of the proposed Development are acceptable.

92. The Scottish Ministers are satisfied having regard to current knowledge and methods of assessment, that this reasoned conclusion addresses the likely significant effects of the proposed Development on the environment. The Scottish Ministers are satisfied that this reasoned conclusion is up to date.

Acceptability of the proposed Development

93. Scotland's renewable energy and climate change targets, energy policies and planning policies are all material considerations when weighing up this proposed Development. NPF4, the Energy Strategy, and the OWPS make it clear that renewable

energy deployment remains a priority of the Scottish Government. This is a matter which should be afforded significant weight in favour of the proposed Development.

94. The Scottish Ministers have considered the environmental effects including the landscape and visual effects, their cumulative effects and aviation lighting impacts of the proposed Development and consider them to be acceptable subject to conditions. The Scottish Ministers are also satisfied that the proposed Development will not have any significant effects on any protected species, National Scenic Area or National Park.

95. The transition to a low carbon economy is an opportunity for Scotland to take advantage of our natural resources to grow low carbon industries and create jobs.

96. The Scottish Ministers consider that the effects, including cumulative effects, of the proposed Development will result in some environmental impacts but these are considered acceptable in the context of the benefits that the proposed Development will bring in terms of net economic benefit, contributing to renewable energy and climate change targets, while protecting the natural environment.

97. The Scottish Ministers are satisfied that the proposed Development will provide a contribution to renewable energy targets and carbon savings. The Scottish Ministers are also satisfied that it is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target date for net-zero emissions of all greenhouse gases by 2045.

98. The Scottish Ministers are satisfied that the proposed Development will provide carbon savings, and that these savings will be of an order that weighs in favour of the proposed Development and will contribute to the Scottish Government's strategic priorities.

99. Taking all of the above into account, the Scottish Ministers are content that the proposed Development is supported by Scottish Government Policies and should be granted consent.

The Scottish Ministers' Determination

100. Subject to the conditions set out in **Annex 2 - Part 1**, the Scottish Ministers grant consent under section 36 of the Electricity Act 1989 for the construction and operation of the Tom Na Clach Wind Farm Extension, in The Highland Council Planning Authority area as described in **Annex 1**.

101. Subject to the conditions set out in **Annex 2 - Part 2**, the Scottish Ministers direct that planning permission be deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the Tom Na Clach Wind Farm Extension described in **Annex 1**.

Section 36 consent and expiry of Planning Permission

102. The consent hereby granted will last for a period of 40 years from the earlier of:

- i) The date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; or
- ii) The date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.

103. Section 58(1)(a) of the Town and Country Planning (Scotland) Act 1997 requires where planning permission is deemed to be granted, that it must be granted subject to a condition that the permission will expire if has not begun within a period of 3 years.

104. Section 58(1)(b) of that Act enables the Scottish Ministers to specify that a longer period is allowed before planning permission will lapse. The Scottish Ministers consider that due to the constraints, scale and complexity of constructing such Developments, a 5-year time scale for the Commencement of development is typically appropriate.

105. The Scottish Ministers consider that 3 years is not to apply with regard to the planning permission granted above, and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction, unless the development to which the permission relates is begun before the expiry of that period. A condition has been imposed stating that development must be begun within 5 years beginning with the date on which the permission is deemed to be granted and if development has not begun at the expiration of that period, the planning permission will lapse in terms of section 58(3) of the Town and Country Planning (Scotland) Act 1997.

106. In accordance with the EIA Regulations, the Company must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality in which the land to which the Application relates is situated.

107. Copies of this letter have been sent to the public bodies consulted on the Application including the Planning Authority, NatureScot, SEPA and Historic Environment Scotland. This letter has also been published on the Scottish Government Energy Consents website at <http://www.energyconsents.scot>

108. Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts:

<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12>

109. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours faithfully

PP. *Temeeka Dawson*

Alan Brogan

A member of the staff of the Scottish Ministers

Annex 1 – Description of Development

Annex 2 – Section 36 conditions and Deemed Planning Conditions

Annex 3 – Site Layout Plan

ANNEX 1

Description of the Development

The Development comprises an electricity generating station known as Tom Na Clach Wind Farm Extension located in the Highlands. The principal components of the Development comprise (“the Development”).

The components of the generating station and ancillary development comprise:

- 7 wind turbines of 149.9m height to blade tip (capable of generating approximately 4.5 MW each), with internal transformers;
- Substation and control building;
- Turbine foundations;
- Battery Energy Storage System;
- Crane hardstanding;
- Approximately 4km of new on site access tracks;
- 4 water course crossings;
- Underground cabling; and
- Reopening of the borrow pit used for the operational Tom Nan Clach Wind Farm.

ANNEX 2

Part 1 Conditions Attached to section 36 Consent

1. Notification of Dates of First Commissioning and Final Commissioning

- (1) Written confirmation of the Date of First Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after those dates.
- (2) Written confirmation of the Date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

Reason: *To allow the Planning Authority and Scottish Ministers to calculate the date of expiry of the consent.*

2. Commencement of Development

- (1) The Development shall be commenced no later than five years from the date of this consent, or in substitution, such other period as the Scottish Ministers may hereafter direct in writing.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority as soon as is practicable after deciding on such a date and in any event no later than one calendar month prior to the Commencement of Development.

Reason: *To ensure that the consent is implemented within a reasonable period. And to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

3. Assignment

- (1) This consent shall not be assigned, alienated or transferred without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment (with or without conditions), or refuse the assignment.
- (2) In the event that the assignment is authorised, the Company shall notify the Planning Authority and Scottish Ministers in writing of the principal named contact at the assignee, and contact details within fourteen days of the consent being assigned.
- (3) The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with this condition.

Reason: *To safeguard the obligations of the consent if transferred to another company.*

4. Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Development causing harm to the environment (including human harm) during the period of this consent, written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

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

Part 2 – Conditions attached to Deemed Planning Permission

5. Commencement of Development

- (1) The Development must be begun not later than the expiration of 5 years beginning with the date of permission.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

Reason: *To comply with section 58 of the Town and Country Planning (Scotland) Act 1997.*

6. Design and operation of wind turbines

- (1) No development shall commence on the wind turbine foundations unless and until full details of the proposed wind turbines hereby permitted, including each turbine number and specific height of that turbine, have been submitted to and approved in writing by the Planning Authority. These details shall include:
 - (a) the make, model, design, direction of rotation (all wind turbine blades shall rotate in the same direction), power rating, sound power level and dimensions of the turbines to be installed; and
 - (b) the external colour and/or finish of the wind turbines to be used (including towers, nacelles and blades) which shall be non-reflective, pale grey semi-matte.
- (2) No wind turbines shall have any text, sign or logo displayed on any external surface of the wind turbines, save those required by law under other legislation.
- (3) Thereafter, the wind turbines shall be installed and operate in accordance with these approved details and, with reference to part (b) above, the wind turbines shall be maintained in the approved colour, free from rust, staining or discolouration until such time as the wind farm is decommissioned.
- (4) All cables between the turbines and the control building on the Site shall be installed and kept underground.

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

7. Design of energy storage facility

- (1) No development shall commence on the energy storage facility until details of the location, layout, external finishes and appearance, dimensions and surface materials of the energy storage facility have been submitted to, and approved in writing by, the Planning Authority.

- (2) The energy storage facility shall be constructed in accordance with the approved details.

Reason: *To ensure that the environmental impacts of the energy storage facility forming part of the Development conform to the impacts assessed in the EIA Report and in the interests of the visual amenity of the area.*

8. Signage

No anemometer, power performance mast, switching station, transformer building or enclosure, ancillary building or above ground fixed plant shall display any name, logo, sign or advertisement (other than health and safety signage) unless and until otherwise approved in writing by the Planning Authority.

Reason: *In the interests of health and safety on site.*

9. Design of sub-station and ancillary development

- (1) No development shall commence on the sub-station unless and until final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, construction compound boundary fencing, external lighting and parking areas have been submitted to, and approved in writing by, the Planning Authority.
- (2) The substation building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the details approved under paragraph (1).

Reason: *To ensure that the environmental impacts of the sub-station and ancillary development forming part of the Development conform to the impacts assessed in the EIA Report and in the interests of the visual amenity of the area*

10. Redundant turbines

- (1) The Company shall, at all times after the Date of First Commissioning, record information regarding the monthly supply of electricity to the national grid from the Site as a whole and electricity generated by each individual turbine within the Development and retain the information for a period of at least 12 months. The information shall be made available to the Planning Authority within one month of any request by them.
- (2) In the event that any one or more of the wind turbines hereby permitted cease to export electricity to the grid for a continuous period of 6 months then, unless otherwise agreed in writing with the Planning Authority, the Company shall:
 - (a) Within three months of the expiration of the 6-month period, submit a scheme to the Planning Authority for its written approval for the repair or removal of the affected turbines. The scheme shall include either a programme of remedial works where repairs to the relevant turbine(s) are required, or a programme for removal of the relevant turbine(s) and associated above

- ground works approved under this permission and the removal of the turbine foundations to a depth of at least 1 metre below ground and for site restoration measures following the removal of the relevant turbine(s); and
- (b) Implement the approved scheme in accordance with the approved details and timetable.
- (3) In the event that any one or more wind turbines installed and commissioned fail to generate electricity on a commercial basis to the grid network for a continuous period of 12 months then, unless otherwise agreed in writing by the Planning Authority, after consultation with the Scottish Ministers and NatureScot, such wind turbine(s) will be deemed to have ceased to be required. If deemed to have ceased to be required, the wind turbine(s) and its ancillary equipment will be dismantled and removed from the Site by the Company within the following 6-month period, and the ground reinstated to the specification and satisfaction of the Planning Authority after consultation with the Scottish Ministers and NatureScot.
- (4) In the event that 50% or more of the wind turbines hereby permitted cease to export electricity to the grid for a continuous period of 6 months then, unless otherwise agreed in writing with the Planning Authority, the Company shall:
- (a) Within three months of the expiration of the 6-month period, submit a scheme to the Planning Authority for its written approval for either the repair of those turbines, including a programme of remedial works, or in accordance with Condition 11; and
- (b) Implement the approved scheme in accordance with the programme contained therein.
- (5) In the event of the Development not generating electricity on a commercial basis to the grid network for a continuous period of 12 months from 50% or more turbines installed and commissioned from time to time, the Company must immediately notify the Planning Authority in writing of that situation and shall, if directed by the Planning Authority, in consultation with the Scottish Ministers, decommission the Development and reinstate the Site to the specification and satisfaction of the Planning Authority. The Planning Authority shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on decommissioning following discussions with the Scottish Ministers and other such parties as the Planning Authority consider appropriate.

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

11. Site Decommissioning, Restoration and Aftercare

- (1) The Development will be decommissioned and will cease to generate electricity by no later than the date forty years from the date of Final Commissioning. The total period for restoration of the Site in accordance with this condition shall not exceed three years from the date of Final Decommissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

- (2) No development shall commence unless and until a preliminary decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the Planning Authority (in consultation with NatureScot and SEPA). The strategy shall be based on EIAR Appendix 3 and shall include measures for the decommissioning of the Development and restoration and aftercare of the Site, and shall include proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.
- (3) Not later than 2 years before decommissioning of the Development or the expiration of this consent (whichever is the earlier), a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved preliminary decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the Planning Authority in consultation with NatureScot and SEPA. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include (but is not limited to):
- (a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases and, including details of measures to be taken to minimise waste associated with the Development and promote the recycling of materials and infrastructure components);
 - (b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
 - (c) a dust management plan;
 - (d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the Site entrances and the adjacent local road network;
 - (e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the Site;
 - (f) details of measures for soil storage and management;
 - (g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
 - (h) details of measures for sewage disposal and treatment;
 - (i) temporary site illumination;
 - (j) the construction of any temporary access into the Site and the creation and maintenance of associated visibility splays;
 - (k) details of watercourse crossings; and
 - (l) a species protection plan based on surveys for protected species (including birds) carried out no longer than eighteen months prior to submission of the plan.

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

12. Site Inspection Strategy

- (1) Prior to the Date of Final Commissioning, the Company shall submit an outline Site Inspection Strategy (Outline SIS) for the written approval of the Planning Authority. The Outline SIS shall set out a strategy for the provision of site inspections and accompanying Site Inspection Reports (SIR) to be carried out at 25 years of operation from the Date of Final Commissioning and every five years thereafter.
- (2) No later than 24 years after the Date of Final Commissioning, the Company shall submit a final detailed Site Inspection Strategy (Final SIS), based on the principles of the approved Outline SIS for the written approval of the Planning Authority. The Final SIS shall set out updated details for the provision of site inspections and accompanying Site Inspection Reports (SIR), in accordance with relevant guidance at that time, to be carried out at 25 years of operation from the Date of Final Commissioning and every five years thereafter.
- (3) At least one month in advance of submitting each SIR to the Planning Authority, the scope of the SIR shall be agreed with the Planning Authority.
- (4) The SIR shall include, but not be limited to:
 - (a) Details to demonstrate that the infrastructure components of the Development are still operating in accordance with Condition 6 and Condition 34; and
 - (b) An engineering report which details the condition of tracks, turbine foundations and the wind turbines and sets out the requirements and the programme for the implementation for any remedial measures which may be required.
- (5) The SIS and each SIR shall be implemented in full unless otherwise agreed in advance in writing by the Planning Authority.

Reason: *To ensure the Development is being monitored at regular intervals throughout after the first 25 years of operation.*

13. Financial Guarantee

- (1) No wind turbine foundations shall be put in place until a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in Condition 11 is submitted to the Planning Authority.
- (2) The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in Condition 11.

- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in Condition 11.
- (4) The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and at the time of the approval of the detailed decommissioning, restoration and aftercare plan approved under Condition 11.
- (5) The value of the financial guarantee shall be increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

Reason: *to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.*

14. Environmental Clerk Of Works

- (1) No development shall commence unless and until the terms of appointment of an independent Ecological Clerk of Works ("ECoW") by the Company have been submitted to, and approved in writing by the Planning Authority (in consultation with NatureScot and SEPA). The terms of appointment shall:
 - (a) Impose a duty to monitor compliance with the ecological, ornithological and hydrological commitments provided in the Environmental Impact Assessment Report May 2022 including EIAR Table 3.8 Summary of Mitigation and Enhancement Measures and the Construction Environmental Management Plan, Peat Management Plan, Habitat Management Plan, Species Protection Plan, Bird Protection Plan, Water Quality Management Plan and other plans approved in terms of the conditions of this permission ("the ECoW Works");
 - (b) Advise on micro-siting proposals issued pursuant to Condition 15;
 - (c) Require the ECoW to report to the nominated construction project manager any incidences of non-compliance with the ECoW Works at the earliest practical opportunity and, where any breach has been identified, enact a stop of works until the time that it has been reviewed by the construction project manager;
 - (d) Require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on the Site; and
 - (e) Require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity
- (2) The ECoW shall be appointed on the approved terms during the establishment of the Habitat Management Plan and throughout the period from Commencement of Development to completion of post construction restoration works.
- (3) No later than eighteen months prior to the Date of Final Generation or the expiry of this consent (whichever is the earlier), details of the terms of appointment of an ECoW by the Company throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for written approval.

- (4) The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

Reason: *To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development during the decommissioning, restoration and aftercare phases.*

15. Micro-siting

- (1) All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown on AI Figure 3.0a Site Layout.
- (2) Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the Site. However, unless otherwise approved in advance in writing by the Planning Authority in consultation with ECoW, micrositing is subject to the following restrictions:
 - (a) no wind turbine, building, mast, areas of hardstanding, tracks or other infrastructure hereby permitted shall be moved more than 50 metres from the position shown on AI Figure 3.0a Site Layout;
 - (b) no micro-siting shall take place within areas of peat of greater depth than that shown on EIAR Volume 2 Figure 13.9 – Depth of Penetration and Probe Locations and EIAR Volume 2 Figure 13.10 – Estimated Peat Depth; and
 - (c) no wind turbine or other infrastructure, other than as required for a water course crossing, shall be moved to within 50 metres of the water courses shown with buffers on EIAR Volume 2 Figure 13.6a – Hydrological Features and EIAR Volume 2 Figure 13.6b – Hydrological Features.
- (3) No later than one month after the Date of Final Commissioning an updated site layout plan showing the final position of all wind turbines buildings, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development shall be submitted to the Planning Authority. The plan shall also specify areas where micrositing has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

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

16. Borrow Pits – Scheme of Works

- (1) No development shall commence on the borrow pit until a scheme for the working and restoration of each borrow pit has been submitted to, and approved in writing by, the Planning Authority in consultation with SEPA. The scheme shall include:
 - (a) detailed working method statement based on site survey information and ground investigations;
 - (b) details of the handling of any overburden (including peat, soil and rock);

- (c) drainage measures, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependent 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(s) to be undertaken at the end of the construction period, including topographic surveys of pre-construction profiles and details of topographical surveys to be undertaken of the restored borrow pit profiles.

(2) The approved scheme shall thereafter be implemented in full.

Reason: *To ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on amenity and the environment, and to secure the restoration of borrow pit(s) at the end of the construction period.*

17. Borrow Pits – Blasting

Unless otherwise approved in writing in advance by the Planning Authority, blasting shall only take place on the Site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 13.00 on Saturdays, with no blasting taking place on a Sunday or on a Public Holiday.

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

18. Construction Method Statement

- (1) No development shall commence unless and until a Construction Method Statement ("CMS") has been submitted to and approved in writing by the Planning Authority. Thereafter the construction of the Development shall only be carried out in accordance with the approved CMS, subject to any variations approved in writing by the Planning Authority. The CMS shall include:
- (a) details of the phasing of construction works;
 - (b) the formation of temporary construction compounds, access tracks and any areas of hardstanding;
 - (c) details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the Development;
 - (d) the maintenance of visibility splays on the entrance to the Site;
 - (e) the method of construction of the crane pads and turbine foundations;
 - (f) the method of working cable trenches;
 - (g) the method of construction and erection of the wind turbines and meteorological masts;
 - (h) a dust management plan;
 - (i) pollution prevention and control statement: protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;
 - (j) temporary site illumination during the construction period;

- (k) details of the proposed storage of materials and soils and disposal of surplus materials;
- (l) details of timing of works;
- (m) details of surface treatments and the construction of all hard surfaces and access tracks between turbines and between turbines and other infrastructure;
- (n) details of routing of onsite cabling;
- (o) details of emergency procedures and pollution response plans;
- (p) siting and details of wheel washing facilities;
- (q) cleaning of site entrances, site tracks and the adjacent public road and the sheeting of all HGVs taking spoil or construction materials to/from the Site to prevent spillage or deposit of any materials on the road;
- (r) details and a timetable for post construction restoration/reinstatement of the temporary working areas, and the construction compound;
- (s) working practices for protecting nearby residential dwellings, including general measures to control noise and vibration arising from on-site activities, shall be adopted as set out in British Standard 5228 Part 1: 2009;
- (t) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy-duty plant, equipment and vehicles
- (u) details of the excavation, use and subsequent restoration of the approved borrow pits;
- (v) a Site Waste Management Plan to include details of measures to be taken during the construction period to minimise the disturbance of soil and peat;
- (w) site specific details for management and operation of any concrete batching plant (including disposal of pH rich waste water and substances); and
- (x) details of watercourse crossings.

Reason: *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA Report March 2022 accompanying the application, or as otherwise agreed, are fully implemented.*

19. Construction and Environmental Management Plan

- (1) No development shall commence unless and until a Construction Environmental Management Plan ("CEMP") outlining site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority. The CEMP shall include:
 - (a) a peat management plan following the principles set out in EIAR Appendix 13.C Outline Peat Management Plan (as updated by the ES Additional Information of December 2022 and the details submitted pursuant to Condition 18) including peat slide hazard and risk assessment and emergency plans for peat slide;
 - (b) a species protection plan;
 - (c) a bird protection plan; and
 - (d) a water quality management plan.
- (2) The Development shall be implemented thereafter in accordance with the approved CEMP and Peat Management Plan unless otherwise approved in advance in writing by the Planning Authority

Reason: *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA Report March 2022 accompanying the application, or as otherwise agreed, are fully implemented.*

20. Construction Hours

- (1) Unless otherwise agreed in advance in writing, construction work which is audible from any noise-sensitive receptor shall only take place on the Site between the hours of 0700 to 1900 on Monday to Friday inclusive and 0700 to 1300 on Saturdays, with no construction work taking place on a Sunday or on a Public Holiday. Out with these specified hours, construction activity shall be limited to concrete pours, wind turbine erection and delivery, maintenance, emergency works, dust suppression, and the testing of plant and equipment.
- (2) HGV movements (excluding abnormal loads) during construction of the wind farm shall be limited to 0700 to 1900 Monday to Friday, and 0700 to 1300 on Saturdays with no HGV movements to or from Site taking place on a Sunday or Public Holiday. Out with these hours, HGV movements are to be limited to wind turbine delivery (unless otherwise approved in advance in writing by the Planning Authority).

Reason: *In the interests of local amenity.*

21. Traffic Management Plan

- (1) No development shall commence unless and until a Traffic Management Plan ("TMP") has been submitted to and approved in writing by the Planning Authority. The approved Traffic Management Plan shall be implemented in full, until otherwise approved in advance in writing by the Planning Authority. The TMP shall include proposals for:
 - (a) the routing of construction traffic and traffic management including details of the capacity of existing bridges and structures along the abnormal load delivery route and a risk assessment;
 - (b) scheduling and timing of movements;
 - (c) the management of junctions to and crossings of the public highway and other public rights of way;
 - (d) any identified works to accommodate abnormal loads (including the number and timing of deliveries and the length, width and axle configuration of all extraordinary traffic accessing the Site) along the delivery route including any temporary warning signs;
 - (e) temporary removal and replacement of highway infrastructure/street furniture;
 - (f) details of all signage and lining arrangements to be put in place and the reinstatement of any signs, verges or other items displaced by construction traffic;
 - (g) banksman/escort details;
 - (h) a procedure for monitoring road conditions and applying remedial measures where required as well as reinstatement measures; and,
 - (i) a timetable for implementation of the measures detailed in the TMP;

- (j) Provisions for emergency vehicle access; and
- (k) Identification of a nominated person to whom any road safety issues can be referred.

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

22. Abnormal Indivisible Load Assessment

- (1) At least two months prior to the first delivery of an abnormal load, the Company shall undertake an Abnormal Indivisible Load survey, including trial runs as required, and submit a report describing the outcome of the assessment for the written approval of the Planning Authority in consultation with Transport Scotland. The report shall include:
 - (a) Details of a communications strategy to inform the relevant communities of the programme of abnormal load deliveries;
 - (b) Details of any accommodation measures required for the safe transport of abnormal loads on the proposed access route;
 - (c) A weight review of the proposed access route to be undertaken with the local and trunk road agencies. Any structures requiring a detailed assessment of load bearing capacity to cater for abnormal loads shall be undertaken to the satisfaction of the Planning Authority in consultation with Transport Scotland. Details of proposed upgrades and mitigation measures required for any bridge crossings shall be provided; and
 - (d) Details of the length, width and axle configuration of all Abnormal Indivisible Load vehicles associated with the Development shall be provided.
- (2) Prior to the first delivery of an abnormal load, a programme for abnormal load deliveries shall be submitted to and approved in writing by Planning Authority in consultation with Transport Scotland.
- (3) The details in the approved report shall thereafter be implemented in full.

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

23. Road Mitigation Works

- (1) No development shall commence on site until a detailed scheme for the following mitigation (including scale plans as necessary), inclusive of timescales for delivery has been submitted to, and approved in writing by, the Planning Authority, in consultation with the Roads Authority and Transport Scotland:
 - (a) A detailed design of the main site access junction onto the B9007 public road, if alteration is required to the existing junction is required; and
 - (b) A detailed scheme for the modifications required to the A95 / A938 junction to accommodate the delivery of turbine components, if alteration to the existing junction is required.

- (2) Unless otherwise agreed with the Council, the proposed mitigation works shall be subject to a combined Stage 1/Stage 2 Road Safety Audit in accordance with the Design Manual for Roads and Bridges. Thereafter the upgrades and other work approved under parts (a) and (b) above shall be completed to the satisfaction of the Planning Authority and the Roads Authority before commencement of construction, or as otherwise agreed in writing with the Planning Authority.

Reason: *In order to secure a proportionate level of road mitigation works to safeguard the local road network and local communities due to the increased numbers of HGV and workers traffic which will be generated.*

24. Access Management Plan

No development shall commence unless and until an Access Management Plan ("AMP") has been submitted to and agreed in writing by the Planning Authority. The AMP should ensure that the existing public access is retained where possible in the vicinity of the Tom Na Clach Extension Wind Farm during construction, and thereafter that suitable the existing public access is provided during the operational phase of the wind farm. The plan as agreed shall be implemented in full.

Reason: *In order to safeguard public access both during and after the construction phase of the Development.*

25. Floating Roads

Floating roads shall be installed in areas where peat depths are in excess of 1 metre as shown indicatively on EIAR Figure 3.0 'Comparison between Proposed Development and Revised Development' dated December 2022. Prior to the installation of any floating road, the detailed location and cross section of the floating road to be installed shall be submitted to and approved in writing by the Planning Authority. The floating road shall then be implemented as approved.

Reason: *In order to safeguard public access both during and after the construction phase of the Development.*

26. Habitat Management Plan

- (1) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the Planning Authority in consultation with NatureScot and SEPA.
- (2) The HMP shall follow the principles set out in EIAR Appendix 11.E Outline Habitat Management Plan, EIAR Appendix 13.C Outline Peat Management Plan, EIAR Figure 13.12 Peat Restoration Areas and Additional Information Figure 1.0.

- (3) The HMP shall set out proposed habitat management and peatland restoration of the Site during the period of construction, operation and decommissioning, restoration and aftercare, which would meet or exceed the biodiversity measures described in the EIAR and shall provide for the maintenance, monitoring and reporting of habitat and peatland on Site. The peatland restoration works shall deliver peatlands commensurate with the quality of the habitat that will be lost directly and indirectly and take advantage of the opportunity for peatland restoration at existing erosional gullies across the Site of the Tom Na Clach Wind Farm Extension, including through a Moorland Management Plan (MMP).
- (4) The HMP and MMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the HMP and MMP objectives.
- (5) Unless otherwise approved in advance in writing with the Planning Authority, the approved HMP shall be implemented in full.

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

27. Species Protection Plan

- (1) No development shall commence unless and until surveys have been carried out at an appropriate time of year for the species concerned, where necessary, by a suitably qualified person, comprising:
 - (a) otter surveys at watercourses and adjacent suitable habitats and within a 250m radius of each wind turbine and associated infrastructure;
 - (b) water vole surveys at watercourses and adjacent suitable habitats up to 200m upstream and downstream of watercourse crossings;
 - (c) pine marten surveys at suitable habitats prior to tree felling, vegetation removal and dismantling of log and rubble piles;
 - (d) red squirrel surveys at suitable habitats prior to tree felling, vegetation removal and dismantling of log and rubble piles;
 - (e) breeding bird surveys, particularly for wader and raptors, of any land upon which construction takes place, plus an appropriate buffer as agreed with the ECoW to identify any species within disturbance distance of construction activity (only required if construction work is carried out during the bird breeding season from 15 March to 31 August inclusive);
 - (f) electrofishing surveys of all watercourses on the Site.
 - (g) badger and wildcat surveys at suitable habitats and within 30m of each wind turbine and associated infrastructure.
- (2) The survey results and any mitigation measures required for these species on site shall be set out in a species mitigation and management plan, which shall inform construction activities. No development shall commence unless and until the plan is submitted to and approved in writing by the Planning Authority and the approved plan shall then be implemented in full.

Reason: *In the interests of nature conservation.*

28. Programme of Archaeological Works

- (1) No development shall commence unless and until the Company has secured the full implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation ("WSI") which has been submitted to and approved in writing by the Planning Authority. This written scheme shall include the following components:
 - (a) an archaeological evaluation to be undertaken in accordance with the agreed WSI; and
 - (b) an archaeological recording programme the scope of which will be dependent upon the results of the evaluation and will be in accordance with the agreed WSI.

Reason: *To ensure the protection or recording of archaeological features on the Site.*

29. Aviation Lighting

- (1) No turbine shall be erected, nor shall any construction equipment or temporal structure(s) 50 metres or more in height (above ground level) be deployed, until a scheme for aviation lighting has been submitted to and approved by the Planning Authority in consultation with the Civil Aviation Authority and Ministry of Defence.
- (2) The scheme shall define how the Development will be lit throughout its life to maintain civil and military aviation safety requirements as determined necessary for aviation safety by the Ministry of Defence, including:
 - (a) details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with; and
 - (b) the locations and heights of all wind turbine generators and any anemometry mast featured in the Development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used.
- (3) The approved scheme shall be implemented in full. No lighting other than that described in the scheme may be applied at the Site, other than as required for health and safety, unless otherwise approved in advance and in writing by the Planning Authority.

Reason: *To maintain aviation safety.*

30. Aviation Charting and Safety Management

- (1) No development shall commence unless and until the Company has provided the Planning Authority, Ministry of Defence, Defence Geographic Centre and National Air Traffic Services ("NATS") with the following information, at least 14 days prior to development commencing, and has provided evidence to the Planning Authority of having done so:

- (a) the date of the expected commencement of each stage of construction;
 - (b) the height above ground level of the tallest structure forming part of the Development;
 - (c) the maximum extension height of any construction equipment; and
 - (d) the position of the wind turbines and masts in latitude and longitude.
- (2) The Ministry of Defence must be notified of any changes to the information supplied in accordance with these requirements and of the completion of the construction of the Development.

Reason: *To maintain aviation safety.*

31. Surface Water Drainage

No development shall commence unless and until full details of all surface water drainage provision within the Site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Third Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the Planning Authority. Thereafter, only the approved details shall be implemented, and all surface water drainage provision shall be completed prior to the Date of First Commissioning.

Reason: *To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.*

32. Local Liaison Group

No development shall commence on Site until the membership of a Local Liaison Group including representatives of the Company, the contractor who are constructing the proposed development, the community councils affected by transportation of turbine components and representatives of The Highland Council, has been agreed in writing by the Planning Authority.

Reason: *To effectively control the impacts of this development in the interests of amenity.*

33. Water Course Crossings

No development shall commence until the final detailed design of the single span bridge watercourse crossing 1 on the Allt Carn an t-Sean-Liathanaich has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The information submitted shall demonstrate that the bridge is designed to pass the 1 in 200 year flood event plus an allowance for climate change. All other watercourse crossings shall be oversized bottomless culverts, unless otherwise agreed by the Planning Authority in consultation with SEPA prior to development commencing. Thereafter the approved details shall be implemented prior to operation of the Development.

Reason: *in the interest of protection of the water environment and to mitigate against flood risk.*

34. Noise Condition

- (1) The rating level of noise emissions from the combined effects of the wind turbines comprising the Tom Na Clach Extension wind farm, when determined in accordance with the attached Guidance Notes for this condition, shall not exceed the values for the relevant integer wind speed set out in, or derived from, Table 1 attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:
 - (a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1 (d). This data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the planning authority on its request, within 14 days of receipt in writing of such a request.
 - (b) No electricity shall be exported until the wind farm operator has submitted to the planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority.
 - (c) Within 21 days from receipt of a written request from the planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the planning authority to assess the level of noise emissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the planning authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.
 - (d) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in Table 1 attached to these conditions or approved by the planning authority pursuant to paragraph (f) of this condition shall be undertaken at the measurement location approved in writing by the planning authority.
 - (e) Prior to the submission of the independent consultant's assessment of the rating level of noise emissions pursuant to paragraph (g) of this condition, the wind farm operator shall submit to the planning authority for written approval a proposed assessment protocol setting out the following:
 - i. The range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine

- the assessment of rating level of noise emissions;
- ii. A reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request from the planning authority under paragraph (c), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise emissions shall be undertaken in accordance with the assessment protocol approved in writing by the planning authority and the attached Guidance Notes.
- (f) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise emissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the planning authority for the complainant's dwelling.
 - (g) The wind farm operator shall provide to the planning authority the independent consultant's assessment of the rating level of noise emissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the planning authority made under paragraph (c) of this condition unless the time limit is extended in writing by the planning authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the planning authority on the request of the planning authority. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise emissions.
 - (h) Where a further assessment of the rating level of noise emissions from the wind farm is required pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the planning authority.

Table 1 —Noise limits expressed in dB LA90, 10 minute as a function of the measured wind speed (m/s) at 10 metre height as determined within the Site averaged over 10 minute periods.

Location	Easting	Northing	Noise Limits (dB La90)

Ballachrochin	284705	836821	37
Balvraid Lodge	282934	831420	29
Daless	286062	838501	34
Quilichan	285458	837820	35
Ruthven	281700	833091	29

Reason: *To ensure that, following a complaint, noise levels can be measured to assess whether or not the predicted noise levels set out within the supporting Environmental Statement have been breached, and where excessive noise is recorded, suitable mitigation measures are undertaken.*

Definitions

In this consent and deemed planning permission:-

“the Application” means the application submitted by the Company on 31 March 2022.

“Commencement of the Development” means the date on which Development shall be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997 (as amended). For the avoidance of doubt ground investigation and site investigation works and its associated tree felling does not constitute Commencement of the Development for the purposes of this consent.

“the Company” means Nan Clach Extension Limited having its registered office at 16 West Borough, Wimborne BH21 1NG under the Company No. 12642086 or such other person who from time to time may lawfully have the benefit of this consent.

“Date of First Commissioning” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development.

“Date of Final Commissioning” means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling eighteen months from the Date of First Commissioning.

“Date of Final Generation” means the date that the Development ceases to generate electricity to the grid network.

“the Development” means the development as described in Annex 1 authorised by this section 36 consent and deemed planning permission.

“dwelling” means a building within Use Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 which lawfully exists or had planning permission at the date of this consent and deemed planning permission.

“EIAR” means the Environmental Impact Assessment report dated March 2022

“HES” means Historic Environment Scotland.

“Planning Authority” means The Highland Council.

“Public Holiday” means:

- New Year’s Day, unless it is a Sunday, in which case, 3rd January;
- 2nd January, unless it is a Sunday, in which case 3rd January;
- Good Friday;
- The first Monday in May;
- The first Monday in August;
- 30th November, Sunday or, if it is a Saturday or Sunday, the first Monday following that day;
- Christmas Day, if it is not a Sunday, or if it is a Sunday, 27th December; and

- Boxing Day, unless it is a Sunday, in which case 27th December.

“**SEPA**” means Scottish Environmental Protection Agency.

“**Site**” means the area of land outlined in red on AI Volume 2 Figure 3.0 site layout plan of the Additional Information dated December 2022 and Annex 3.

“**Nature Scot**” means Scotland’s Nature Agency previously known as Scottish Natural Heritage.

“**wind farm operator**” means the Company.

“**Wind Speed**” means Wind Speeds measured or calculated at a height of 10m above ground level on the wind farm Site at a specified Ordnance Survey national grid reference as agreed with the relevant Planning Authority.

Guidance Notes for Operational Noise Condition – Condition 34

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farms” (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

- (a) Values of the LA90,10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone should be mounted at 1.2 — 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the Company shall submit for the written approval of the Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The LA90,10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, such as direct measurement at a height of 10 metres, this wind speed, averaged across all operating wind turbines, and corrected to be representative of wind

speeds measured at a height of 10m, shall be used as the basis for the analysis. It is this 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

- (e) Data provided to the Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

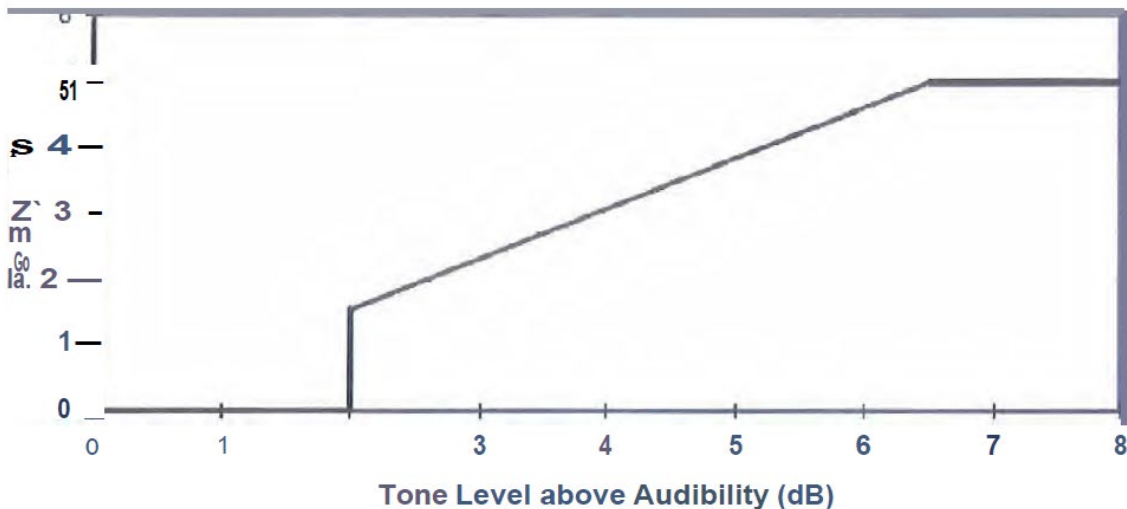
- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)
- (b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- (c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10 minute noise measurements and corresponding values of the 10- minute 10- metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the 10- metre height mean wind speed on the Xaxis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.
- (b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided

that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

- (c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.
- (e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- (a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Planning Authority in its written protocol under paragraph (d) of the noise condition.

- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The Company shall ensure that all the wind turbines in the Development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
 - (e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.
 - (f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$= 10 \log[10^{L_2 - X_g} - 10^{L_3}]$$

- (g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise Li at that integer wind speed.
- (h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the Development fails to comply with the conditions.