

21 June 2019

Ms Flaherty
Energy Consents Unit
The Scottish Government
5 Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU

Jones Lang LaSalle Ltd
7 Exchange Crescent Conference Square
Edinburgh EH3 8LL
+44 (0)131 225 8344

jll.co.uk

Dear Ms Flaherty,

**Electricity Act 1989, Section 36C
Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017
The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013**

Application to Vary the s.36 Consent and Deemed Planning Permission for the Pencloe Wind Farm, located within the Carsphairn Forest to the south of the settlement of New Cumnock within the East Ayrshire Council area

On behalf of our client, Pencloe Wind Energy Limited (Company registration number: SC398688), please find enclosed documents supporting this application made under Section 36C of the Electricity Act 1989 for a varied consent to construct and operate a wind farm with a generating capacity in excess of 50 MW, comprising 19 wind turbines and associated infrastructure with a ground to blade tip height of up to 149.9 meters located to the south of the settlement of New Cumnock within the East Ayrshire Council Area (Central Grid Reference NS 60507 06671) and as shown on Figure 1.1 Site Location (the 'map' as required by 3(1)(b) part 2 of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013, as amended, ("the Variation Regulations"). The description of the development sought is set out within Appendix 2 of this letter and more fully described within Chapter 4 of the EIA Report.

A copy of the variation application has been served on East Ayrshire Council in accordance with Variation Regulation 4(2)(b).

Statutory consents for the construction and operation of the Pencloe Wind Farm were issued by the Scottish Ministers dated 6 December 2018 where the Scottish Ministers granted consent under Section 36 of the Electricity Act 1989 ("the relevant section 36 consent"), together with a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") granting deemed planning permission for the proposed 19 turbine Pencloe Wind Farm. The decision letter is provided at Appendix 1.

In accordance with the requirement of Regulation 3(1)(d)(iii), a copy of the relevant decision letter from the Scottish Ministers is provided within Appendix 1. In terms of Section 36(4), the Scottish Ministers must have regard to the Applicant's reasons for seeking a variation to a Section 36 consent. In accordance with Regulation 3(1)(c) the reasons for seeking a variation to the section 36 consent is because turbine technology is now such that a significantly greater energy capacity and energy yield can be achieved from a wind farm generating station on the application site than was possible when the consented development was first designed. The proposed increase in capacity is around 22MW and the increase in energy yield from the proposed development when compared to the consented development, would be around 48%. The Applicant has secured sufficient grid capacity to accommodate the proposed capacity increase to the wind turbine generators and this does not necessitate any additional physical grid connection works than would be required to implement the consented

development. The grid connection point remains as the Scottish Power Blackhill collector substation located immediately to the south of the site and to be connected by way of underground cable. The Applicant believes that the likely significant environmental effects that would arise from the implementation of the proposed development are similar to those that would arise in implementing the consented development (see EIA Report). The Applicant is also of the view that the proposed development can draw additional policy support from the Scottish Energy Strategy and the Onshore Wind Policy Statement as it would assist further in meeting renewable energy and greenhouse gas reduction targets, which are likely to become more challenging owing to the proposed amendments to the Climate Change Act setting a 100% reduction in greenhouse gases by 2045.

The Applicant is also seeking a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) that planning permission be deemed to be granted should Scottish Ministers be minded to approve the s.36C application. It is proposed that a direction under section 57(2) would be subject to the conditions as set out in Appendix 2. So as to allow the Electricity Act consent and deemed planning permission to benefit from the same time period within which the permissions can be implemented, it is requested that a new deemed planning Direction is issued rather than a varied Direction.

The changes proposed to both the s.36 consent and Deemed Planning Direction for the consented development are highlighted in Appendix 2.

The changes proposed to conditions for both the s.36 consent and Deemed Planning Permission are required in order to reflect:

- the variations to the Description of Development (See Annex 1 of Appendix 2);
- updated environmental information contained in the Environmental Impact Assessment Report prepared under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, (“the 2017 EIA Regulations”);
- the Applicant’s proposal to use a blade lifting vehicle for transportation of turbine blades along part of the delivery route, including the Afton Road, and accordingly an addition to condition 16, highlighted yellow, is proposed within Appendix 2; and
- The potential requirement for mitigation of NATS en Route radar services, which may require a change to condition 5 ‘Aviation Radar’ of the Electricity Act consent.

In accordance with regulation 5(5) of the 2017 EIA regulations, by appointing SWECO and the other technical assessors referenced within the EIA Report to prepare the EIA Report for the proposed development, the Applicant has ensured that the EIA Report has been prepared by ‘competent experts’.

This s.36C application and accompanying EIA Report will be advertised in accordance with The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 and the EIA Regulations. The statutory Notices for this application will be published in the ‘Cumnock Chronicle’ for two consecutive weeks. The notice will also be published in the Edinburgh Gazette and Herald for one week. The first advertisements will appear on 25 June 2019. The period for representations to be submitted is specified in the advertisements as exceeding 30 days. The application documents are also available for viewing at the following website so as to accord with the EIA Regulations and Variation Regulation 4(2)(a):

www.pencloe.com

The EIA Report and other relevant documentation will be placed in the following local venues for public viewing:

- East Ayrshire Council, Planning and Economic Development, The Johnnie Walker Bond, Strand Street, Kilmarnock, KA1 1HU; and
- Cumnock Community Library, 1 Greenhold Road, Cumnock, KA18 1LH.

A copy of the agreed advert is enclosed with this letter (in Appendix 3). The landowner (Forestry and Land Scotland) and any relevant occupier have been notified in accordance with Part 4(2)d of the 2013 Regulations.

In accordance with the 2017 EIA Regulations, the Applicant confirms that the EIA Report and other application documents ('the application package' as described below) have been issued to the following consultees that were agreed between you and SWECO and who await the formal s.36C consultation from the Scottish Ministers:

- East Ayrshire Council;
- Dumfries and Galloway Council;
- Scottish Environment Protection Agency SW;
- Scottish Natural Heritage;
- Historic Environment Scotland;
- Transport Scotland;
- Forestry and Land Scotland;
- New Cumnock Community Council (East Ayrshire)
- Carsphairn Community Council (Dumfries and Galloway);
- Nith Catchment Fisheries Trust;
- Nith District Salmon Fisheries Board;
- British Horse Society;
- BT;
- Civil Aviation Authority – Airspace;
- Crown Estate Scotland;
- Defence Infrastructure Organisation;
- Glasgow Prestwick Airport;
- John Muir Trust;
- Joint Radio Company;
- Mountaineering Council of Scotland;
- Mountaineering Scotland;
- NATS Safeguarding;
- RSPB Scotland;
- Scottish Rights of Way and Access Society (ScotWays);
- Scottish Water;
- Scottish Wildlife Trust; and
- Visit Scotland.

In support of this application for s.36C consent, the application package that is enclosed comprises the following documentation, which together forms the EIA Report in support of the proposed development:

Variation Documents (providing the comparative assessment with the consented development):

- Variation Volume I: Non-Technical Summary;
- Variation Volume II: Main Text;
- Variation Volume III: Figures; and
- Variation Volume IV: Technical Appendices.

Original ES Documents:

- Original Volume I: Non-Technical Summary;
- Original Volume II: Main Text;

- Original Volume III: Figures; and
- Original Volume IV: Technical Appendices.

Further Environmental Information:

- Pencloe Updated Cumulative Noise Assessment (July, 2017);
- Updated Cumulative Landscape and Visual Impact Assessment (July, 2017);
- Plans indicating mitigation on the Afton Road including widening and the provision of passing places, and the results of swept path analysis based on a new topographic survey (June 2016);
- Pencloe Windfarm, Construction Traffic Management Strategy (June 2016); and
- Pencloe Windfarm, Further Environmental information Addendum (September 2015).

The application package also includes the application letter and the Planning Statement, which provides a comparative assessment of the proposed and consented developments in terms of their likely environmental effects in the context of relevant national and local policies.

On the basis of the information provided in this letter and the supporting documents that are lodged in support of this variation application, the Applicant requests that the Scottish Ministers grant consent for the proposed variations to the relevant section 36 consent and make a new direction under section 57(2) of the 1997 Act (as amended) that planning permission be deemed to be granted.

Please do not hesitate to contact me should you require any further information on the application or additional copies of the documents.

Yours sincerely,

For and on behalf of Jones Lang LaSalle as agents to Pencloe Wind Energy Limited



Stuart Winter

Director

Direct line 0131 301 6768

Mobile 07711 042601

Enc

Appendix 1: Particulars of Extant s.36 Consent and Deemed Planning Permission

Energy and Climate Change Directorate
Energy Division

T: 0131-244 1249
E: Nikki.anderson@gov.scot



Pencloe Wind Energy Limited
50 Lothian Road
Festival Square
Edinburgh
EH3 9WJ

06 December 2018

Dear Sirs,

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 THE PENCLOE WIND POWERED ELECTRICITY GENERATING STATION IN THE COUNCIL AREA OF EAST AYRSHIRE

Application

I refer to the application made by Pencloe Wind Energy Ltd, a company incorporated under the Companies Acts with company number SC398688 and having its registered office at 50 Lothian Road, Festival Square, Edinburgh UK EH3 9WJ dated 10 March 2015 for consent under section 36 of the Electricity Act 1989 ("the Electricity Act") for the construction and operation of Pencloe wind farm, situated approximately 2.5 km south of the closest edge of New Cumnock and 11 km to the west of Dalmellington, within the administrative area of East Ayrshire Council with a generating capacity exceeding 50MW.

The application (as amended) is for construction and operation of a wind powered electricity generating station with 19 turbines, with a maximum height of 125 metres to blade tip and generating capacity exceeding 50 MW.

This letter contains the Scottish Ministers' decision to grant consent for the development as more particularly described at Annex 1.

Planning Permission

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 Scottish Ministers may on granting consent under section 36 of the Electricity Act direct that planning permission is deemed to be granted in respect of that generating station and any ancillary developments. **This letter contains the Scottish Ministers' direction that planning permission is deemed to be granted.**

Consultation

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") on 10 March 2015 the Company submitted an Environmental Statement (ES) describing the development and giving an analysis of its environmental effects. The application proposed 21 turbines with a maximum height of 125 metres to blade tip, and with a total installed capacity of up to 69.3 MW. In accordance with statutory requirements, advertisement of the application and Environmental Statement was made in the local and national press and the opportunity given for those wishing to make representations to do so. The 2000 Regulations have subsequently (with effect from 16th May 2017) been replaced by the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the 2017 Regulations"). The 2017 Regulations now apply to this application subject to certain modifications. These modifications, among other things, provide that where the 2017 Regulations refer to an "EIA report" this includes an "environmental statement" prepared under the 2000 Regulations.

On 21st September 2015, the Company revised the application by deleting 2 wind turbines (T1 and T2); micrositing another turbine (T5); increasing the size of four of the proposed 5 on-site borrow pits; proposing an additional borrow pit and realignment of the tracks and substation on site to avoid areas of deeper peat.

Under paragraph 2(1) of Schedule 8 to the Electricity Act, notice of the Application must be served on the Relevant Planning Authority and notice was served on East Ayrshire Council. Notifications were also sent to Dumfries and Galloway Council (as a neighbouring authority) SNH and SEPA. A wide range of other relevant organisations were also notified and consulted.

In addition to responses from the Planning Authority, SNH, SEPA and Historic Environment Scotland, representations were received from 120 members of the public; 79 objected to the Development and 41 were in support. These figures take account of 3 individuals who had initially expressed support but subsequently informed Ministers they wished to withdraw their support and object to the Development.

Consultation responses

No objections were received from the following;

- CH2M Hill
- Civil Aviation Authority
- Defence Infrastructure Organisation
- Dumfries and Galloway Council

- Forestry Commission Scotland
- Historic Environment Scotland
- NATS safeguarding
- RSPB Scotland
- Scottish Water
- SEPA
- SNH
- Transport Scotland
- West of Scotland Archaeology Service

East Ayrshire Council (EAC) as the Planning Authority objected to Pencloe stating its view that the proposed development was contrary to the terms of the Development Plan, Planning Policy and Government guidance on wind farm development because it would present unacceptable visual and landscape impacts in terms of the setting of the proposed wind farm within the immediate wider landscape with significant adverse impacts on receptors, and furthermore, present unacceptable adverse cumulative impacts when considered by itself and in conjunction with the existing, authorised and proposed wind farms within the vicinity of the site resulting in significant adverse impacts on the amenity of nearby communities and on the landscape.

EAC also objected on the grounds that Pencloe presents an unresolved adverse impact to primary surveillance radar at Glasgow Prestwick Airport, however it noted the applicant has entered into a legal agreement with Glasgow Prestwick airport that has allowed the Airport to advise that it would be prepared to withdraw its objection provided that any consent is issued subject to suitable conditions regarding the identification and implementation of an appropriate radar mitigation scheme.

EAC further objected on grounds that due to the risk of simultaneous development with other wind farm developments using the Afton Road for construction traffic and the cumulative impact of such development, which could not be reasonably or adequately controlled or mitigated, conflict between construction traffic and other pedestrian and vehicular traffic would result in road safety impacts.

Glasgow Prestwick Airport Ltd objected (although it stipulated the terms of a condition which could overcome the objection).

Scotways (the Scottish Rights of Way and Access Society) objected due to possible negative impacts on right of way SCD100.

New Cumnock Community Council initially responded to the consultation on FEI on 5 October 2015 indicating it unanimously supported the proposed wind farm, it subsequently wrote to Ministers on 28 July 2016 indicating that it had voted again on the proposed development with a majority of members now voting to object on grounds of cumulative visual impact with Afton wind farm, Hare Hill wind farm and Hare Hill wind farm extension. It also objected on grounds of construction traffic impact, on residents of dwellings along with Afton Road and on access to New Cumnock Cemetery.

Public Local Inquiry (PLI)

East Ayrshire Council, the relevant Planning Authority objected, causing a Public Local Inquiry (PLI) to be held.

The PLI was held in New Cumnock Town Hall. The inquiry sessions were held on 25 - 27 September 2017 and 31 October 2017, and the hearing session took place on 27 September 2017. The Reporter conducted an accompanied inspection of the site on 28 September 2017. In addition the Reporter carried out unaccompanied site inspections of the site, its surroundings and other locations referred to in evidence on 11 May and 2 November 2017.

The Report of Inquiry was received by the Scottish Ministers on 2 March 2018.

The Reporter's recommendation to Scottish Ministers is that consent is granted under section 36 of the Electricity Act and that a direction is given that planning permission is deemed to be granted, both subject to conditions.

The Scottish Ministers' Considerations

Environmental matters

The Scottish Ministers are satisfied that the Environmental Statement, Further Information and Supplementary Environmental Information, has been produced in accordance with the 2000 Regulations and that the applicable procedures regarding publicity and consultation laid down in the those Regulations have been followed.

Scottish Ministers have 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. Scottish Ministers must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

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

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

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

SEPA advised the Scottish Ministers that, on the basis of information provided to them about the Development, appropriate authorisations applied for under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 would be capable of being granted.

Duration of planning permission

Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Ministers to direct that a longer period is allowed before planning permission lapses. Scottish Government policy is that due to the constraints, scale and complexity of constructing such developments, a 5 year time scale for the commencement of development is appropriate.

Main determinative issues

The Scottish Ministers, having taken account of all relevant information, consider that the main determining issues are:

- the extent to which the development accords with and is supported by Scottish Government policy and the terms of the development plan;
- the significant effects of the development on the environment, more particularly described in the Report at the reference provided in footnotes below, which are, in summary:
 - (a) the landscape and visual impact of the development;
 - (b) impacts on roads and traffic;
- the estimated contribution made by the development to reducing CO₂ emissions, and;
- the renewable energy benefits of the development.

Public Local Inquiry Report

In each chapter the Reporter summarises the cases for each party, taking account of the precognitions, hearing statements, the discussion at the inquiry and hearing sessions and the closing submissions. The Reporter also took into account the environmental information in the Environmental Assessment, Further Information and the Supplementary Environmental Information submitted during Inquiry, the written representations and all of the other information supplied for the inquiry and hearing sessions.

Chapter 2 of the Report deals with Policy Context, Chapter 3 with the landscape and visual effects (including landscape effects, visual effects and cumulative landscape and visual effects), chapter 4 with roads and traffic effects, chapter 5 with community and shared ownership issues, chapter 6 with other relevant issues including Ecology, forestry and tourism, chapter 7 the proposed conditions and planning obligations, chapter 8 the parties' policy assessment of the proposal and chapter 9 the Reporter's conclusions and recommendations.

Scottish Government Policy Context

The Reporter's findings in relation to national planning policy are summarised in paragraphs 9.12 to 9.18 of the Report.

The Reporter concludes the proposed Pencloe wind farm is supported by national energy and planning policies. The proposal would make a worthwhile contribution towards the achievement of challenging national renewable energy targets and a low carbon economy, which are identified priorities for the Scottish Government. Pencloe is located within an area with recognised potential for wind farm development, and the proposal meets the locational guidance in national planning policy.

Local Development Plan

The development plan for the area is the East Ayrshire Local Development Plan (LDP), adopted in 2017. The Reporter considered that the Pencloe proposal was generally compliant with Overarching Policy (OP1) within the LDP, in terms of how relevant it is to a commercial wind farm development. He concluded that, when the contribution of the proposal to sustainable development is taken into account, it is consistent with the policy.

The Reporter highlighted that of greatest relevance was the LDP's specific wind farm policy, Policy RE3. The policy states that wind energy proposals over 50 metres in height will be supported in areas shown on the Spatial Framework as Group 3 – Areas with Potential for Wind Energy. Most of the Pencloe site is shown to be within a Group 3 area, where wind energy proposals will be supported where they are acceptable in terms of all the applicable criteria in Schedule 1. Although part of the site is shown as a Group 2 area (area offered significant protection) due to the presence of a Class 2 carbon and peatland area, Policy RE3 states that development may be appropriate in Group 2 areas where any significant adverse effects can be overcome by siting, design or other mitigation. The Reporter concluded that the potential adverse effect on peat in the Group 2 area can be addressed in this way.

The Reporter concluded that the Pencloe proposal was in conformity with the LDP's spatial framework, together with Policy RE3 and Schedule 1, which are the critical provisions of the LDP in relation to the current application.

Landscape and Visual Impact

In his assessment of landscape and visual impact of the Development in Chapter 3 of his report, the Reporter has taken into account matters including relevant landscape designations, landscape character, impact on the Glenmuir and Afton Sensitive Landscape Area, landscape capacity, visual impact, the impact on New Cumnock, and cumulative impact.

East Ayrshire Council has, since submission of its consultation response, published an updated Landscape Wind Capacity Study (2018). Ministers have considered the contents of the study and do not consider that it gives rise to any new issues which have not previously been addressed by the Reporter and taken into account in his recommendation to Scottish Ministers.

Roads and Traffic

Chapter 4 of the Report provides the Reporter's conclusions on matters including the proposed access to the site, traffic impact, and cumulative impact with other developments.

Renewable Energy Generation and Associated Policy Benefits

The Reporter concludes the proposal would make a worthwhile contribution towards the achievement of challenging national renewable energy targets and a low carbon economy, and saving greenhouse gas emissions.

Community Shared Ownership

Scottish Ministers have considered the information provided by the Company regarding their aspirations to provide a community shared ownership offer and find it is not sufficient to determine the net benefit that this might bring to the economic position of the area. Scottish Ministers therefore disagree with the Reporter's view that the Company's offer to allow the community to obtain a share of the development is a matter to which they and Scottish Ministers should have regard. Scottish Ministers do not accept the Reporter's conclusion at paragraph 5.13 and have not taken this into account in their determination of this application and have not imposed the condition, (suggested by the Company and recommended by the Reporter) to the grant of the section 36 consent; requiring the Company to actively market its community ownership opportunity until placement of the turbine supply contract.

The Reporter's overall conclusions and recommendation with regard to Pencloe wind farm can be found in chapter 9 of the Report.

Scottish Ministers have considered fully the Reporter's findings and reasoned conclusions and adopt them for the purposes of their own decision, with the exception of their above noted conclusion regarding community shared ownership.

Scottish Ministers agree with the Reporters recommendation that section 36 consent should be granted for the proposed wind farm at Pencloe, and that a direction deeming planning permission to be granted should be given.

The Scottish Ministers' Determination

Subject to the conditions set out in **Part 1 of Annex 2**, Scottish Ministers **grant consent** under section 36 of the Electricity Act 1989 for the construction and operation of the Pencloe Wind Powered electricity generating station in East Ayrshire Council area (as described in **Annex 1**).

Subject to the conditions set out in **Part 2 of Annex 2**, Scottish Ministers direct that **planning permission is deemed to be granted** under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the development described in Annex 1.

Duration of Planning Permission and Section 36 Consent

The consent hereby granted will last for a period of 27 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.

The Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply with regard to that planning permission 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.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, 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.

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

The 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>

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

Yours faithfully
REDACTED

Nikki Anderson
Head of Energy Consents
A member of the staff of the Scottish Ministers

Description of the Development

The Pencloe wind farm with a generating capacity **exceeding 50 MW**, comprising a 19 turbine wind-powered electricity generating station, located on land approximately 2.5 km south of the closest edge of New Cumnock and 11 km west of Dalmellington, in East Ayrshire Council planning area.

All as more particularly shown on plan reference **Figure 1** appended to this decision letter and all as specified in the application submitted by Pencloe Wind Energy Limited, incorporated under the Companies Acts (Registered Number SC398688) and having its registered office at 50 Lothian Road, Festival Square, Edinburgh, EH3 9WJ and supporting environmental information, which comprises the Environmental Statement entitled 'Pencloe Windfarm Environmental Statement' dated March 2015; as amended by the addendum entitled 'Pencloe Windfarm Further Environmental Information Addendum' dated 21 September 2015.

The principal components and ancillary development comprise;

- 19 wind turbines up to 125 m high to blade tip and a transformer at each turbine base;
- permanent foundations and associated crane hardstandings;
- a new access bell mouth arrangement from the unclassified road along Glen Afton;
- approximately 15.53 km of onsite access tracks from the public highway entrance, comprising 6.86 km of widened existing tracks and 8.67 km of new tracks;
- a control building and substation compound (including electrical metering, stores, office and welfare facilities);
- three permanent freestanding anemometry masts up to 85 m;
- five borrow pits and
- onsite underground cabling

Conditions attached to Section 36 Consent

1. Duration of the Consent

Written confirmation of both the Date of First Commissioning and the Date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after those dates.

Reason: To define the duration of the consent.

2. Commencement of Development

(1) The Commencement of the Development shall be 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 Planning Authority and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and to ensure that consent is implemented within a reasonable period.

3. Non-assignment

(1) The Company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise assignment of the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

(2) The Company shall notify the Planning Authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignment having been granted.

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

4. Serious Incident Reporting

(1) In the event of any breach of health and safety or environmental obligations relating to the development during the period of this consent, the company shall provide written notification of the nature and timing of the incident to the

Scottish Ministers, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of the incident occurring.

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

5. Aviation Radar

- (1) No development shall commence unless and until such time as the Scottish Ministers and the Planning Authority receive written confirmation from the Airport Operator that:
 - a) a Radar Mitigation Scheme has been identified, and
 - b) the Radar Mitigation Scheme can be implemented and maintained for the lifetime of the development

- (2) No blade shall be fitted to any wind turbine or turbines forming part of the development and no such turbine shall operate, save as provided for and in accordance with the testing protocol, unless and until the Scottish Ministers and the Planning Authority receive written confirmation from the Airport Operator that;
 - a) All measures required by the Radar Mitigation Scheme prior to operation of any wind turbine have been implemented and
 - b) The Civil Aviation Authority (CAA) has evidenced its approval to the Airport Operator that the Radar Mitigation Scheme is acceptable mitigation for the development and has been satisfactorily implemented by the Airport Operator

- (3) No wind turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme.

Reason: *In the interests of aviation safety*

Definitions for the purposes of Condition 5

In condition 5 above:

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

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

as may be agreed in consultation with the Airport Operator as necessary to mitigate any such adverse impact.

“testing protocol” means the protocol to control the operation of any turbine or turbines forming part of the development for the purposes of testing of the radar mitigation Scheme.

Conditions attached to Deemed Planning Permission

6. Approved Details

The Development shall be undertaken in accordance with the Application and Environmental Statement (submitted on 10 March 2015) as amended by the Further Environmental Information (submitted on 21 September 2015), unless otherwise agreed in writing with the Planning Authority and except in so far as amended by the terms of this consent.

Reason: *To ensure the Development is carried out in accordance with the application documentation.*

7. Height of Wind Turbines

The overall height of the wind turbines shall not exceed 125 metres to tip of the blades when the turbine is in the vertical position as measured from the natural ground level immediately adjacent to the turbine base.

Reason: *To ensure the Development is carried out in accordance with the application documentation.*

8. Design and Operation of Wind Turbines

- (1) No development shall commence unless and until full details of the proposed wind turbines 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 be illuminated and no text, sign or logo shall be displayed on any external surface of the wind turbines, save those required by law under other legislation or as required in terms of Condition 31.
- (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.

Reason: *To ensure the Planning Authority is aware of the wind turbine details and to protect the visual amenity of the area.*

9. Ancillary Buildings and other Ancillary Development

- (1) No development shall commence unless and until final details of the external appearance, dimensions, and surface materials of the control buildings, substation building, associated compounds and parking areas and the permanent anemometer masts have been submitted to and approved in writing by the Planning Authority.
- (2) The development of the ancillary buildings/structures, associated compounds and parking areas shall be implemented in accordance with the details approved under paragraph (1).

Reason: *To safeguard the visual amenity of the area.*

10. Decommissioning, Restoration and Aftercare

- (1) The Development shall cease to generate electricity and shall be decommissioned by no later than the date falling twenty-seven years from the Date of Final Commissioning. The total period of restoration of the site in accordance with this condition shall not exceed three years beginning from the date falling twenty-seven years from the Date of Final Commissioning without prior written approval of the Planning Authority.
- (2) No development shall commence unless and until a decommissioning and restoration strategy has been submitted to and approved in writing by the Planning Authority. The strategy shall outline measures for the decommissioning of the development and restoration of the site and any aftercare. The strategy shall cover the following matters:
 - a) works for the decommissioning and removal of wind turbines and all above ground ancillary buildings and equipment;
 - b) proposals in respect of ground surfaces, including access tracks, water crossings and hardstanding areas that are not required for Forestry Commission operational purposes;
 - c) outline environmental provisions, the incorporation of relevant matters from the Construction and Environmental Management Plan (CEMP) and traffic management proposals;
 - d) outline decommissioning timetable;
 - e) aftercare provision; and
 - f) details of proposals for the review of the strategy during the operational lifetime of the development.
- (3) No later than 12 months prior to the decommissioning of the development or the date of expiry of the section 36 consent relating to the Development (whichever is earlier), a detailed decommissioning and restoration plan, based upon the approved decommissioning and restoration strategy, shall be submitted to the Planning Authority for its written approval. The detailed decommissioning and restoration plan shall provide updated and detailed proposals for the removal of the wind turbines and associated development above ground, and the

foundations of the wind turbines to a depth of one metre below ground level, and reinstatement of the land. The plan shall include proposals for the management and the timing of the works and for the restoration of the site.

- (4) The Development shall be decommissioned and the site restored thereafter in accordance with the plan, unless otherwise agreed in writing in advance with the Planning Authority.

Reason: *To ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

11. Financial guarantee

- (1) At least three months prior to the date of Commencement of Development, written details of the bond or other financial guarantee to cover the cost of all decommissioning, restoration and aftercare of the site as required by Condition 10 shall be submitted for the written approval of the Planning Authority. Where, before giving its written approval, the Planning Authority require the Company to commission a review of the bond or other provision by a suitably qualified person to advise on whether the provision is sufficient for restoration purposes such commission shall be instructed by the Company with the approval of the Planning Authority.
- (2) No works shall commence on site unless and until the approved bond or other financial guarantee has been delivered to the Planning Authority and the Planning Authority has provided written confirmation that the bond or other financial guarantee is satisfactory.
- (3) An approved bond or other financial guarantee shall be maintained throughout the duration of this consent and until the date of completion of all decommissioning, restoration and aftercare obligations as required by Condition 10 of this consent.
- (4) The adequacy of the approved bond or other financial guarantee shall be subject to review at five yearly intervals, or such other intervals as agreed by the Planning Authority, from Commencement of Development, to be paid for by the Company or operator and conducted by a competent independent professional who has relevant experience in such matters. The findings of such reviews shall be provided to the Company or operator and the Planning Authority within 14 days of the review taking place. Any revisions to the bond or other financial guarantee recommended by the review and agreed in writing by the Planning Authority shall be made within 28 days of receiving said written agreement from the Planning Authority and documentary evidence shall be provided to the Planning Authority to that effect.

Reason: *To ensure there are sufficient funds available for the full costs of decommissioning, restoration and aftercare and to ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and*

environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

12. Micro-siting

- (1) Subject to sub-paragraph (2) below, all wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location as shown on Figure 1 (Infrastructure layout) of the FEI (September 2015).
- (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 conjunction with SEPA, SNH and any other relevant bodies), micro-siting is subject to the following restrictions:
 - a) no wind turbine, building, mast, track or hardstanding shall be moved more than 50 metres from the position shown on Figure 1 of the FEI (September 2015);
 - b) no micro-siting shall take place into areas hosting ground water dependent terrestrial ecosystems (GWDTEs);
 - c) with the exception of watercourse crossings and related tracks, no element of the development shall be micro-sited to a location within 50 metres of a watercourse (or closer to a watercourse if approved within such a distance);
 - d) no micro-siting shall take place within areas of peat 0.5 metres deeper or greater than the approved location;
 - e) no micro-siting shall take place where it would result in a wind turbine foundation being positioned more than 5 metres in difference to the ordnance datum on the approved layout (i.e. that shown on Figure 1 of the FEI (September 2015)).
 - f) all micro-siting permissible under this condition must be approved in advance in writing by the environmental clerk of works appointed under Condition 29.
- (3) Within one calendar month following the Date of Final Commissioning , a plan of the development as built showing the final position of all wind turbines, 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 micro-siting has taken place and, for each instance, to be accompanied by copies of the environmental clerk of works or Planning Authority's approval, as applicable.

Reason: *To ensure that micro-siting decisions take account of environmental considerations and to ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

13. Construction and Environmental Management Plan (CEMP)

- (1) No development, tree felling or intrusive site or ground investigations shall commence unless and until the developer submits, for the written approval of the Planning Authority, in consultation with SEPA, a site investigation (SI) and ground investigation (GI) scheme ("the scheme") which shall detail all preliminary SI and GI works, in compliance with BS 5930:2015, proposed to inform the CEMP as required by part (4) below. The scheme shall include (but shall not necessarily be limited to):
 - a) the phasing of investigative works;
 - b) full details of all intrusive site investigation and ground investigation works proposed,
 - c) details of any tree felling which is required for intrusive site investigation and ground investigation works;
 - d) access plan including environmental mitigation works, any water crossings and PWS protection, and
 - e) detailed method statements for carrying out all the investigative works including any general mitigation measures required to protect the environment.

- (2) No development shall commence unless and until the site investigation and ground investigation works are carried out in full accordance with the scheme approved under part (1), above, unless otherwise agreed in writing by the Planning Authority.

- (3) At least three months prior to tree felling in addition to that undertaken in respect of (1)(c), a tree felling and management plan shall be submitted for the written approval of the Planning Authority.

- (4) At least three months prior to the Commencement of Development, a detailed, site specific construction and environmental management plan ("CEMP") detailing all on-site construction and post-construction works, site specific drainage and site specific mitigation measures, shall be submitted for the written approval of the Planning Authority in consultation with SEPA and SNH, (as appropriate). The CEMP shall incorporate detailed construction method statements (CMS) as required by the Planning Authority and have regard to the information and mitigation measures set out in the ES/FEI and be informed by the findings of the site and ground investigation works and best practice methods of the Scottish/UK wind farm industry. This CEMP shall include (but shall not necessarily be limited to) detailed specifications of:
 - i. a phasing plan for the construction works;
 - ii. the CMS for the site roads including their width, likelihood of widening or passing places, means of drainage (which shall have regard to SUDS principles), and edge reinstatement including anticipated verge width. The specification shall be accompanied by a plan at a scale of not less than 1:25,000 identifying the locations of:

- cut roads, other excavated roads
 - sections of floating track
 - the cable trenches and
 - the turbine bases
 - temporary clay/peat/overburden storage areas;
- iii. environmental policy statement, to include responsibility for all environmental features, safeguards and mitigation;
 - iv. the construction of crane pads;
 - v. all foundation works;
 - vi. the construction of the control buildings, sub-station and construction compound;
 - vii. the formation of the hardstanding areas;
 - viii. the method of working cable trenches, to include reinstatement;
 - ix. watercourse crossings, ensuring compliance with the Controlled Activity Regulations where appropriate;
 - x. a water quality monitoring plan (WQMP) including full details of locations and duration of monitoring, sampling methodology and an emergency action plan. This shall take account of the drinking water protection area;
 - xi. a pollution prevention and incident plan (PPIP) which takes account of the proposals within the ES and FEI, incorporating: a pollution prevention plan; pollution incident plan, and a pollution control monitoring plan. This shall include protection of watercourses, ground water, the drinking water protection area, management of natural surface hydrological flows (flushes, springs, etc.) and protection of ground water and peatland / soils, arrangements for onsite bunding of fuels/oil/other chemicals/ storage areas and sewage disposal. In association with this, a qualitative hydrogeological assessment of all GWDTEs the potential risk from the development, detailing measures to reduce or mitigate for all construction elements potentially capable of impacting on ground water flow affecting GWDTEs, which is in accordance with the Land Use Planning System SEPA Guidance Note 4, Appendix 2, Section 5.2;
 - xii. site drainage proposals which also clearly demonstrate how the hydraulic connectivity is to be maintained to the identified wetland habitats to the north and south of the access tracks between the proposed turbine locations, particularly between turbines 5 and 7;
 - xiii. post-construction restoration / reinstatement of the working areas not required during the operation of the development, including construction access tracks, construction compound, storage areas, access tracks and other temporary ancillary construction areas. Primary reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Where ground conditions do not allow for successful turf removal, the CMS must evidence this from SI/GI and provide additional details including all seed mixes and seeding methodologies to be used for the reinstatement of vegetation;

- xiv. a site waste management plan, including a peat management plan (PMP), detailing the proposals for the reuse of peat and forestry materials arising from the works, ensuring all proposals comply with SEPA's guidance and the requirements of the waste management licensing regime;
- xv. details of measures to be taken to prevent loose or deleterious material being deposited on the local public road network including wheel cleaning and lorry sheeting facilities and measures to clean the site entrances and the adjacent public road in addition to dust management measures;
- xvi. site specific construction method statements (CMS) for all construction elements of the Development;
- xvii. details of the management of noise and vibration during construction, including that caused by construction traffic, to the lowest practicable levels and in accordance with BS 5228, and
- xviii. details of any temporary site illumination.

(5) Thereafter, the tree felling and development shall be implemented in accordance with the CEMP (and its constituent CMS's) approved under part (3) and (4) unless otherwise approved in writing by the Planning Authority.

Reason: *To ensure appropriate investigative works are carried out without undermining the baseline environmental conditions of the site and to inform the CEMP and CMS's, subsequently ensuring that all construction operations are carried out in a manner that minimises their impact on the environment, to protect watercourses from sedimentation and pollution, and that mitigation measures are fully implemented and also to ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

14. Private Water Supplies

(1) No development shall commence unless and until a private water supply (PWS) risk assessment has been submitted to and approved in writing by the Planning Authority for the private water supply serving Laglaff. In the event that the risk assessment demonstrates that the Laglaff private water supply is at greater than minimal risk from the wind farm hereby approved then a PWS method statement shall be prepared and submitted for the written approval of the Planning Authority and shall include:

- a) details of all mitigation, monitoring and contingency measures to be delivered to maintain and secure the quality, quantity and continuity of the water supply that may be affected by the Development in so far as agreement with the owners and occupiers of Laglaff will allow and
- b) details of the water quality sampling methodology, including a scheme of monitoring

(2) The method statement approved under (1) shall thereafter be implemented in full should part (1) require a method statement to be prepared.

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

15. Traffic and Transport

(1) No development shall commence unless and until a traffic management plan has been submitted to and approved in writing by the Planning Authority. The traffic management plan shall set out:

- a) details of the routeing of all construction traffic on the local road network including any speed restrictions;
- b) required works to the public road network including widening, reconstruction, and provisions of laybys and strengthening of bridges to allow heavy and abnormal loads access/egress;
- c) measures to ensure that the specified routes are adhered to, including monitoring procedures;
- d) details of all signage and lining arrangements to be put in place;
- e) provisions for emergency vehicle access;
- f) road maintenance and mud suppression measures;
- g) the arrangements for establishing a community liaison group to be led by the Company/developer, in collaboration with East Ayrshire Council and New Cumnock Community Council, to discuss the arrangements for the delivery of all road and construction traffic mitigation measures required for the development along the Afton Road. This should include, but not be limited to, traffic management arrangements; to be in place during any roadworks associated with the development; for development traffic when Afton Cemetery is in use; for the operation of the Afton Road during delivery of abnormal loads and identification of contact arrangements between the community liaison group and the developer/applicant during the construction of the development;
- h) a plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width and axle configuration of all extraordinary traffic accessing the site;
- i) the scheduling of construction traffic excluding abnormal indivisible loads;
- j) vehicle parking and turning arrangements within the site;
- k) identification of any roads along which excessively heavy or other extraordinary traffic or vehicles are to be routed and for pre- and post-construction survey of such roads, if any; and
- l) a travel plan for the construction phase of the development to minimise private car travel during the construction phase of the development.

(2) The approved traffic management plan shall thereafter be implemented in full, unless otherwise agreed in writing with the Planning Authority.

Reason: In the interests of road safety and to ensure that site access and egress can be undertaken in a safe manner.

16. Traffic and Transport

- (1) There shall be no use of the C90 Afton Road by construction traffic involved in the construction of the development unless and until the Planning Authority has given written approval that either:
 - a) No other wind farm has commenced development, is under construction and construction traffic is also taking access/egress from the C90 Afton Road; or
 - b) Commencement of Development whilst another wind farm has commenced development, is under construction and construction traffic is also taking access/egress from the C90 Afton Road, is acceptable.

- (2) Unless development commences within 2 months from the date of the written approval under Part 1 (or within 2 months from any further written approval), the developer shall be required to seek the further written approval of the Planning Authority under Part 1.

Reason: *To minimise the potential for cumulative road safety impacts.*

Definitions for the purposes of Condition 16

In condition 16 above:

Commencement of the Development: means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

Under construction: means the period of time FROM either (A) a Notice of Initiation of Development has been received by the Planning Authority, or (B) written confirmation has been received by the Planning Authority under a condition of a Section 36 consent that a development is due to commence UNTIL the last turbine of any such scheme has been erected.

Wind farm: means any consented development comprising of two or more wind turbines.

Construction traffic: means HGV traffic involved in construction of a wind farm but excluding the movement of abnormal loads, which will be subject to the usual statutory notice periods and controls prior to movement of such loads.

17. Borrow Pits

- (1) No development shall commence unless and until a site-specific scheme ("borrow pit scheme") for the working and restoration of each borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include (but shall not necessarily be limited to):
 - a) 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 and water management, including measures to prevent surrounding areas of peatland, water dependent sensitive habitats and Groundwater Dependent Terrestrial Ecosystems (GWDTEs) from drying out, and
 - d) a programme of implementation of the works described in the scheme.
 - e) The approved scheme shall thereafter be implemented in full. Prior to any borrow pit blasting taking place, a scheme shall be submitted for the written approval of the Planning Authority which meets the requirements of Condition 40.
- (2) No later than 3 months prior to the end of the construction period, a scheme providing full details of the reinstatement, restoration and aftercare of the borrow pits at the end of the construction period, including topographic surveys of pre-construction profiles and details of topographical surveys to be undertaken on the restored borrow pit profiles, shall be submitted to the Planning Authority for its written approval.
- (3) The scheme approved under (2), above, shall be implemented in full within 6 months of the date of approval of the scheme.

Reason: *To ensure that borrow pit operations are carried out in a manner that minimises impact on the environment.*

18. Ecology – Protected Species

- (1) No development shall commence unless and until pre-construction surveys for protected species have been submitted to and approved in writing by the Planning Authority (in consultation with SNH). The surveys shall be conducted eight months prior to the Commencement of Development and shall detail any mitigation measures required.
- (2) Mitigation as detailed within the ES and approved under (a) above shall be implemented in full.

Reason: *In the interests of minimising impacts on protected species.*

19. Ecology – Minimising Otter Impact

- (1) Not more than 14 days prior to the Commencement of Development, a pre-commencement survey shall be conducted to determine the presence or otherwise of otters. The findings of this survey shall determine the need for mitigation. The survey shall be carried out in a radius of 250 metres from each proposed turbine and 100 metres from proposed access tracks. The findings of the survey and full details of any proposed mitigation required shall be submitted to the Planning Authority for its written approval.
- (2) Mitigation as detailed within the ES and/or approved under (1), above, shall thereafter be implemented in full where the survey conducted under (1) above has evidenced the presence of any otters within the construction site.

Reason: In the interests of minimising impacts on otters.

20. Ecology – Minimising Nesting Birds Impact

Not more than 14 days prior to any tree felling operations, pre-felling and construction surveys for nesting birds shall be conducted to determine the presence or otherwise of nesting birds. The findings of the surveys and full details of any proposed mitigation required shall be submitted to the Planning Authority for its written approval.

Reason: In the interests of minimising impacts on nesting birds.

21. Ecology – Minimising Impacts on Water Voles

A 10 metre buffer shall be maintained from water vole burrows to proposed works for the entire construction, operational and decommissioning phases.

Reason: In the interests of minimising impacts on water voles.

22. Ecology – Minimising Impacts on Wild Deer

- (1) No development shall commence unless and until an assessment of potential impacts on wild deer has been submitted to and approved in writing by the Planning Authority. The assessment shall specify any required mitigation measures.
- (2) Thereafter any mitigation as required under (1) above shall be implemented in full

Reason: In the interests of minimising impacts on wild deer.

23. Ecology – Minimising Impacts on Freshwater Habitats

- (1) No development shall commence unless and until a freshwater survey and where necessary, species specific surveys, have been submitted to an approved in writing by the Planning Authority. Full details of any required mitigation measures shall also be provided.
- (2) Thereafter any mitigation as required under (1) above shall be implemented in full.

Reason: In the interests of minimising impacts on freshwater habitats.

24. Ecology – Protection and Monitoring of Species and Habitats

- (1) No development shall commence unless and until a Habitat Management Plan (HMP) and a Species and Habitats Protection Plan (SHPP) for the duration of the consent, has been submitted for the written approval of the Planning

Authority in consultation, as required, with SEPA and SNH. The HMP and SHPP shall include (but shall not necessarily be limited to) measures for:

- a) the protection and/or restoration of peat land habitat;
- b) monitoring and mitigation protocols for protected species;
- c) management and mitigation of habitats and species present on site for the duration of the consent;
- d) a procedure for monitoring and reporting on implementation and for amending the approved measures, to include –
 - i. the methods, frequency and duration of ecological monitoring throughout the operational phase of the wind farm: and
 - ii. the submission of monitoring results to the Planning Authority on an annual basis or such other frequency as may be agreed;
- e) measures to benefit Black Grouse including post-construction monitoring.

(2) Thereafter the measures shall be implemented in accordance with the HMP and SHPP.

Reason: *To secure the protection and monitoring of species and habitats.*

25. Ecology – Protection of GDWTEs

- (1) No development shall commence unless and until details of cross track drainage where access tracks bisect ground water dependent terrestrial ecosystems (GDWTEs) have been submitted for the written approval of the Planning Authority in consultation with SEPA.
- (2) Cross track drainage shall thereafter be implemented in accordance with the details approved under (1) above.

Reason: *To secure the protection of GDWTEs*

26. Peat – Minimising Disruption

- (1) No development shall commence unless and until a detailed site specific Peat Management Plan (PMP), taking account of the draft peat management plan dated September 2015 provided within the FEI, has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA.
- (2) The PMP shall thereafter be implemented as approved.

Reason: *To ensure that disruption to peat is minimised.*

27. Peat – Minimising Risk of Peat Landslide

- (1) No development shall commence unless and until a detailed Peat Landslide Risk Assessment, addressing the construction phase of the development and the post construction monitoring, has been submitted to and approved in writing by the Planning Authority. The Peat Landslide Risk Assessment shall comply with best practice contained in the “Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments” published by the Scottish Government in January 2007 or such replacement standard as may be in place at the time of submission of the Peat Landslide Risk Assessment. The assessment shall include a scaled plan and details of any mitigation measures to be put in place.
- (2) Thereafter mitigation measures shall be implemented in full accordance with the assessment approved under (1) above.

Reason: *To minimise the risk of peat landslide.*

28. Planning Monitoring Officer

- (1) No development shall commence unless and until the Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant. The terms of appointment shall:
 - a) impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
 - b) require the planning monitoring officer to submit a monthly report to the Planning Authority summarising works undertaken on site; and
 - c) require the planning monitoring officer to report to the Planning Authority any incidences of non-compliance with the terms of the terms of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.
- (2) The planning monitoring officer shall be appointed on the approved terms during the period from the Commencement of Development to the completion of post-construction restoration works.

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

29. Environmental Clerk of Works

- (1) No development shall commence unless and until a full time independent and suitably qualified and experienced environmental clerk of works (ECoW) acceptable to the Planning Authority in consultation with SEPA and SNH has been appointed. The ECoW shall be appointed for the period of forestry felling, construction and post construction restoration and reinstatement works. The ECoW shall, by the terms of the appointment:

- a) monitor compliance with all construction works, including, but not limited to, the ecological, geological and hydrological aspects of each of the CEMP, HMP, SHPP, PMP and PPIP; and
 - b) report promptly to the Planning Authority and to the Company's nominated construction project manager any non-compliance with the hydrological, ecological or geological aspects of each of the CEMP, HMP, SHPP, PMP and PPIP.
- (2) The EcoW shall be appointed on the terms approved under (a) throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of conditions 10(2) and 10(3).
- c) No later than 18 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the Development to the Planning Authority for approval in consultation with SNH and SEPA. The EcoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

Reason: *In the interests of environmental protection.*

30. Aviation

- (1) At least one month prior to the Commencement of Development, the Company shall provide the Planning Authority, the Ministry of Defence (MOD) Defence Geographic Centre (DGC) and Defence Infrastructure Organisation Safeguarding (DIOS) with a written statement containing the following information:
 - a) the proposed dates of commencement and completion of the construction phase of the Development;
 - b) the latitude and longitude of the wind turbines, and
 - c) the proposed maximum extension height of any construction equipment on site.
- (2) The Company shall provide written details to the Planning Authority, evidencing compliance with (1).
- (3) The Company shall, as soon as is reasonably practicable and in any event within 7 days prior to the event, provide to the Planning Authority and the MOD, written notice of any proposed changes to the information provided under (1) above, including:
 - a) the location of each wind turbine in latitude and longitude and having taken into account any micro-siting adjustments agreed in the above Condition 12 (in degrees, minutes and seconds);

- b) the height above ground level of each wind turbine (in metres to blade tip). And no wind turbine shall be erected on site until the MOD has confirmed in writing to the Planning Authority that the above information has been provided and is satisfactory to the MOD.
- (4) Within 7 days of the Commencement of Development, the Company shall provide written confirmation to the Planning Authority and the MOD DGC and DIOS of the actual date on which construction commenced and the actual maximum extension height of any construction equipment on site.
- (5) Within 7 days of the erection of the final wind turbine, the Company shall provide written confirmation to the Planning Authority and the MOD DGC and DIOS of the actual date on which construction was completed.

Reason: *To ensure that the Ministry of Defence had been provided with sufficient information, in the interest of air safety and to demonstrate to the Planning Authority that the appropriate steps to protect air safety have been undertaken.*

31. Aviation Lighting

- (1) Prior to the erection of the first wind turbine, a scheme for aviation lighting for the wind farm cardinal turbines shall be submitted to the Planning Authority for written approval. The scheme shall include proposals for the cardinal turbines be fitted with combination red and infrared lighting, and the perimeter wind turbines be fitted with 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200 ms to 500 ms duration at the highest practicable point. No other lighting shall be applied at the site, other than that as required for health and safety, unless otherwise agreed in writing by the Planning Authority.
- (2) No wind turbines shall be erected on site unless and until the scheme has been approved in writing. The Development shall thereafter be operated fully in accordance with the approved scheme.

Reason: *In the interests of aviation safety*

32. Forestry

- (1) No development shall commence unless and until a replacement planting scheme has been submitted for the written approval of the Planning Authority, in consultation with Forestry Commission Scotland, detailing where re-planting shall take place, including the species composition.
- (2) Replacement planting shall be implemented in full accordance with the replacement planting scheme approved under (1), above, within a timeframe agreed by the Planning Authority within the scheme, which shall not exceed 6 months after the completion of the wind farm construction period.

Reason: To ensure replacement planting proposals are acceptable and are carried out in an appropriate, timely manner.

33. TV and Radio Reception Mitigation

- (1) Prior to Commencement of Development, a television and radio reception mitigation plan shall be submitted to and approved in writing by the Planning Authority, which shall include the results of a baseline television reception survey carried out prior to any works commencing on site.
- (2) The television and radio reception mitigation plan approved under (1), above, shall thereafter be implemented in full. Within 12 months of the final commissioning of the development, any claim by any individual person regarding TV picture loss or interference at their house, business premises or other building shall be investigated by an independent qualified engineer appointed by the Company and the results shall be submitted to the Planning Authority. Should any impairment to the TV signal be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline TV reception. For the avoidance of doubt the resolution of disputes shall be determined by an independent arbiter e.g. OFCOM or other professional body as appropriate.

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

34. Archaeological Works

No development will commence, save for site and ground investigations, unless and until a programme for the implementation of archaeological works in accordance with a written scheme of investigation has been submitted to and agreed in writing by the Planning Authority in consultation with the West of Scotland Archaeology Service, and approved. Thereafter the programme of archaeological works shall be fully implemented and all recording and recovery of archaeological resources within the development site shall be undertaken to the satisfaction of the Planning Authority in consultation with the West of Scotland Archaeology Service.

Reason: To ensure archaeological interests that may exist or be discovered on the site are not destroyed or disturbed without being recorded.

35. Non-Operational Wind Turbines

The Company shall submit confirmation to the Planning Authority that each turbine is continuing to generate electricity on a sixth monthly basis, which period shall commence from the date of first commissioning.

Reason: In the interests of the long term visual amenity of the surrounding area.

36. Removal of Non-Operational Wind Turbines

- (1) If any wind turbine installed and commissioned fails to supply electricity to the electricity grid network for a continuous period of 6 months, the Company shall notify this to the Planning Authority within seven days following that continuous period.
- (2) Unless the wind turbine is in the process of being repaired or replaced and evidenced to be so by the Company (or unless otherwise agreed in writing by the Planning Authority), the wind turbine shall be deemed to have ceased to be required and:
 - a) the wind turbine (including its foundations to a depth of at least 1 metre, its ancillary surface equipment, access tracks and hardstanding) shall be dismantled and removed from site; and
 - b) the land shall be restored to such condition as is agreed by the Planning Authority all in accordance with a scheme, having regard to the restoration strategy approved under Conditions 10(2) and/or 10(3), to be submitted by the developer within one month of the date of notification under part (1), for the written approval of the Planning Authority.
 - c) The scheme approved under part (2b) shall be implemented within three months of notification of its approval by the Planning Authority.

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

37. Access Management Plan

- (1) No development shall commence unless and until the developer has submitted to the Planning Authority, for its written approval, an access management plan (AMP) in full accordance with "Good Practice during Wind Farm Construction" Version 3, September 2015, Part 7 Recreation and Access. This AMP shall include (but shall not necessarily be limited to):
 - a) identified limitations on access rights during the construction phase, focussed on areas of actual risk;
 - b) full details of the diversion of public rights of way during construction and reinstatement following construction;
 - c) full details of appropriate access management during the construction and operational periods of the wind farm covering such matters as the installation of gates to allow public access (walking, cycling and horse riding); and
 - d) warning/management signage which is appropriate and takes account of both operational needs and access rights.
- (2) The access management plan approved under (1), above, shall be implemented in full during full construction and operational periods of the wind farm.

Reason: *In the interests of public safety and to allow for public access.*

38. Cabling

All cabling on the site between the wind turbines and the site sub-station shall be installed underground.

Reason: To protect the visual amenity of the area.

39. Construction Noise

- (1) Save in the case of an emergency or dust suppression and save for the delivery and erection of the turbine components as after mentioned, construction work on the site shall be confined to the hours of 07:00 to 19:00 on Monday to Friday inclusive and 07:00 to 16:00 on Saturdays, with no construction work taking place on a Sunday or on local and national public holidays. Heavy goods vehicle movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07:00 to 19:00 Monday to Friday inclusive and 07:00 to 16:00 on Saturdays, with no heavy goods vehicle movements to or from the site taking place on a Sunday or on local and national public holidays. Any exceptional requirement for the delivery of construction materials other than as provided above shall only take place if approved in writing by the Planning Authority having been given a minimum of two working days' notice of the proposed delivery. The Planning Authority shall also be informed in writing of any emergency works within 48 hours of their occurrence.
- (2) All plant and machinery should be operated in accordance with British Standard BS 5228:2009 "Code of Practice for noise and vibration control on construction and open sites – Part 1: Noise and Part 2: Vibration".
- (3) No blasting shall take place except between 10:00-12:00 and 14:00-16:00 on Mondays to Fridays inclusive and 10:00-12:00 on Saturdays. No blasting shall take place on Sundays or on local and national public holidays.

Reason: In the interests of residential amenity.

40. Borrow Pit Construction Noise

- (1) Except in respect of borrow pits, in which regard the developer shall comply with the terms of Condition 17(1), no blasting shall take place until a scheme to address site blasting has been submitted to, and received the written approval of the Planning Authority. The scheme shall make provision for the following elements:
 - a) blasting monitoring locations;
 - b) type of monitoring equipment to be used;
 - c) frequency of monitoring;
 - d) the methods employed to minimise the effects of over pressure arising from the blasting, having regard to blast design, methods of initiation and the weather conditions prevailing at the time;
 - e) limits on air overpressure levels at specified properties, and
 - f) submission of blasting records to the Planning Authority.

- (2) the scheme approved under (1), above, shall be implemented in full unless otherwise agreed in writing by the Planning Authority.

Reason: *In the interests of safety and residential amenity.*

41. Operational Noise

- (1) The wind turbines shall be designed to permit individually controlled operation, or cut-out, at specified wind speeds in order to enable, and ensure, compliance with the noise level criteria stated in these conditions.
- (2) Details from the turbine supplier and/or manufacturer regarding the tonality of the selected turbine model(s) in accordance with IEC 61400-11 (or successor) shall be provided to the Planning Authority.
- (3) The rating level of noise immisions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty and any amplitude modulation penalty) when determined in accordance with the accompanying Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the Tables 1 and 2 below at any dwelling which is lawfully existing or has planning permission at the date of this permission.
- (4) The rating level of noise immisions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty and any amplitude modulation penalty), operating in conjunction with any other operational wind turbines consented for the wind farms or single wind turbines given in the list of developments given in paragraph 2.1.1 of the Sine Acoustics Report, Pencloe Wind farm, Updated Cumulative Noise Assessment (Ref: A019-RP-PS-001 dated 10th July 2017), when determined in accordance with the attached Guidance Notes shall not exceed the values for the relevant integer wind speed set out in Tables 3 and 4 at any dwelling which is lawfully existing or has planning permission at the date of this permission. Following a complaint from an occupant of a dwelling that has been investigated in accordance with paragraph (9), in the event that the level of noise immisions (including the application of any tonal penalty and any amplitude modulation penalty) exceeds the relevant value in Table 3 or Table 4 at the dwelling where the complaint originated, the Company shall undertake appropriate mitigation to reduce turbine noise immisions such that the limits in Table 3 or Table 4 are met, or such that noise from the turbines hereby permitted (including the application of any tonal penalty and any amplitude modulation penalty) meets the levels set out in Tables 1 and 2 at the dwelling where the complaint originated.

Table 1 - Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	36	37	38	39	41	43	45	47	49	
Craig Braneoch	263160, 606413	32	32	34	35	36	39	42	45	49	
Corbyhill	263165, 606422	32	32	34	35	36	39	42	45	49	
Craigdarroch Farm	263316, 606543	32	32	32	35	36	39	42	45	49	
Craig An Dhu	262706, 605689	36	37	38	39	41	43	45	47	49	
The Craigs	263441, 606451	32	32	32	35	36	39	42	45	49	
Black Craig Farm	263425, 608153	32	32	32	33	36	39	42	45	49	
Pencloe Farm Cottage	261858, 609486	33	34	36	38	40	42	45	47	50	
Pencloe Farm	261851, 609529	33	34	36	38	40	42	45	47	50	
Lochingerroch Farm	262292, 609447	33	34	36	38	40	42	45	47	50	
Lochbrowan Farm	262212, 609754	33	34	36	38	40	42	45	47	50	

Table 3 - Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	40	40	42	43	44	45	47	48	50	
Craig Braneoch	263160, 606413	40	40	40	40	40	40	42	45	49	
Corbyhill	263165, 606422	40	40	40	40	40	40	42	45	49	
Craigdarroch Farm	263316, 606543	40	40	40	40	40	41	42	45	49	
Craig An Dhu	262706, 605689	40	40	42	43	44	45	47	48	50	
The Craigs	263441, 606451	40	40	40	40	40	41	42	45	49	
Black Craig Farm	263425, 608153	40	40	40	40	40	41	42	45	49	
Pencloe Farm Cottage	261858, 609486	40	40	40	40	40	42	45	47	50	
Pencloe Farm	261851, 609529	40	40	40	40	40	42	45	47	50	
Lochingerroch Farm	262292, 609447	40	40	40	40	40	42	45	47	50	
Lochbrowan Farm	262212, 609754	40	40	40	40	40	42	45	47	50	

Table 4 - Between 23:00 and 07:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	43	43	43	43	43	44	45	47	48	
Craig Braneoch	263160, 606413	43	43	43	43	43	43	44	47	50	
Corbyhill	263165, 606422	43	43	43	43	43	43	44	47	50	
Craigdarroch Farm	263316, 606543	43	43	43	43	43	43	44	47	50	
Craig An Dhu	262706, 605689	43	43	43	43	43	44	45	47	48	
The Craigs	263441, 606451	43	43	43	43	43	43	44	47	50	
Black Craig Farm	263425, 608153	43	43	43	43	43	43	44	47	50	
Pencloe Farm Cottage	261858, 609486	43	43	43	43	43	43	43	43	43	
Pencloe Farm	261851, 609529	43	43	43	43	43	43	43	43	43	
Lochingerroch Farm	262292, 609447	43	43	43	43	43	43	43	43	43	
Lochbrowan Farm	262212, 609754	43	43	43	43	43	43	43	43	43	

(5) Where any rating levels determined in accordance with paragraph (3) above is found to exceed the relevant limit in either Table 3 or Table 4 and it is necessary to correct the rating level for background noise following the method set out in Guidance Note 4, the background noise levels given in Tables 5 and 6 may be used instead of carrying out further background noise measurements.

Table 5 – Background Noise Levels for Quiet Daytime expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at ten metres height

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	33.4	34.3	35.4	36.8	38.5	40.3	42.2	44.3	46.5	
Craig Braneoch	263160, 606413	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Corbyhill	263165, 606422	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Craigdarroch Farm	263316, 606543	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Craig An Dhu	262706, 605689	33.4	34.3	35.4	36.8	38.5	40.3	42.2	44.3	46.5	
The Craigs	263441, 606451	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Black Craig Farm	263425, 608153	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Pencloe Farm Cottage	261858, 609486	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5	
Pencloe Farm	261851, 609529	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5	
Lochingerroch Farm	262292, 609447	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5	
Lochbrowan Farm	262212, 609754	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5	

Table 6 – Background Noise Levels for Night-time expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at ten metres height

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min								
Property Name	Map Ref	4	5	6	7	8	9	10	11	12
Lynn View	262718, 605712	33.1	34.3	35.3	36.3	37.2	38.1	39.0	39.9	40.9
Craig Braneoch	263160, 606413	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9
Corbyhill	263165, 606422	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9
Craigdarroch Farm	263316, 606543	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9
Craig An Dhu	262706, 605689	33.1	34.3	35.3	36.3	37.2	38.1	39.0	39.9	40.9
The Craigs	263441, 606451	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9
Black Craig Farm	263425, 608153	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9
Pencloe Farm Cottage	261858, 609486	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0
Pencloe Farm	261851, 609529	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0
Lochingerroch Farm	262292, 609447	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0
Lochbrowan Farm	262212, 609754	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0

(6) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The Company 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.

(7) No electricity shall be exported until the Company 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.

- (8) The Company shall employ an independent consultant, to measure, or to use a combination of noise measurements and noise predictions to determine, at the Company's own expense, the level of noise immisions from the wind turbines within the first year of the operation of the turbines, and every five years thereafter, unless and until the Planning Authority extends the period or determines that continued compliance monitoring is no longer required. The measurement procedures, which may include filtering data according to wind direction, shall be agreed in writing with the Planning Authority prior to commencement of the noise measurements. The results of any measurement exercise shall be forwarded to the Planning Authority as soon as practicable after the completion of the monitoring exercise. Background noise levels shall be determined by one of the following methods:
- a) wind turbines shall be switched off during part of the monitoring period to permit reliable background noise level data to be determined at the range of wind speeds from 4m/s to 12m/s; or
 - b) using background noise levels provided within Tables 5 and 6; or,
 - c) in accordance with a methodology submitted to and agreed in advance by the Planning Authority.

The method used shall be determined by the appointed independent consultant and shall be agreed in writing with the Planning Authority prior to measurements being undertaken.

- (9) 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 Company shall, at its expense, employ a consultant approved by the Planning Authority to assess the level of noise immisions from the wind farm at the complainant's property in accordance with the protocol required under paragraph (10) as informed by 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, as far as practicable, 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.
- (10) No wind turbine shall be erected unless a protocol for the assessment of the rating level of noise immisions has been submitted to and approved in writing by the Planning Authority. The protocol shall include the proposed measurement location(s) identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether the noise contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day)

to determine the assessment of rating level of noise immisions. The protocol shall also include details of the method of any required assessment of amplitude modulation of noise. The assessment shall be undertaken in accordance with the protocol approved. For a complaint investigation, the proposed range of conditions shall be those which prevailed during times with the complainant alleges there was disturbance due to noise, having regard to the written request of the Planning Authority under paragraph (9) and such others as the independent consultant considers likely to result in a breach of the noise limits. In the case that a complainant or land owner does not grant access to a property to enable investigation, the Planning Authority shall agree an alternative location and appropriate modifications to the relevant noise levels in Tables 1 to 4 with the applicant if the location is not listed in these tables.

- (11) The independent consultant appointed under (8) shall determine the need for an assessment of amplitude modulation and this shall be agreed in writing with the Planning Authority. This assessment shall be carried out in accordance with the reference method detailed in Institute of Acoustics Noise Working Group (Wind Turbine Noise) document "A Method for Rating Amplitude Modulation in Wind Turbine Noise", Final Report dated 9th August 2016, and shall be carried out at the expense of the Company.
- (12) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the Company 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 immisions 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.
- (13) The independent consultant appointed under (8) shall provide to the Planning Authority and Company, the assessment of the rating level of noise immisions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Planning Authority for compliance measurements to be made under paragraph (9), unless the time limit is extended in writing by the Planning Authority for example due to a lack of suitable wind conditions, or measurement equipment tampering or failure, during the 2 month period. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. 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 immisions.

(14) Where a further assessment of the rating level of noise immisions from the wind farm is required pursuant to Guidance Note 4(c), the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (4) above unless the time limit has been extended in writing by the Planning Authority.

Reason: *to protect nearby residents from undue noise and disturbance; to ensure that noise limits are not exceeded; and to enable prompt investigation of complaints.*

Guidance Notes for Noise Conditions

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 immisions 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 ETSUR-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 BS 4142: 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 at hub height for each turbine and arithmetic mean power generated by each wind turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be "standardised" to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in 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 immisions. 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 noise condition (10), 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 wind speed, as derived from the standardised ten 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 standardised mean wind speed on the X-axis. 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 noise condition (10), noise immisions 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.

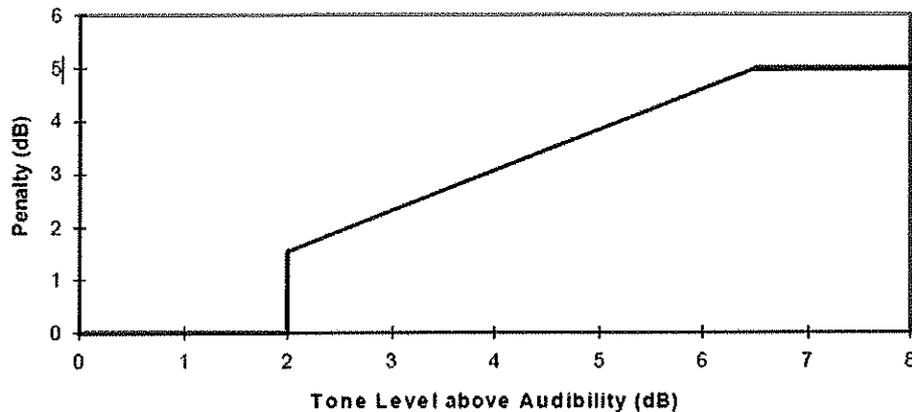
(b) For each 10 minute interval for which LA90, 10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immisions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that 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 (10) 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 (12) 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 immision 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 (i) and the approved protocol under paragraph (10) 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:

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

(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 L1 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 (12) 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 (12) of the noise condition then the development fails to comply with the conditions.

Guidance Note 5

The level of amplitude modulation shall be measured in accordance with the reference method detailed in IOA Noise Working Group (Wind Turbine Noise) document "A Method for Rating Amplitude Modulation in Wind Turbine Noise", Final Report dated 9th August 2016.

Definitions

“Commencement of the Development” means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

“The Company” means Pencloe Wind Energy Ltd, a company incorporated under the Companies Acts with company number SC398688 and having its registered office at 50 Lothian Road, Festival Square, Edinburgh UK EH3 9WJ or such other person as from time to time has the benefit of the consent granted under section 36 of The Electricity Act 1989.

“Development” means the development described in Annex 1.

“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.

“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.

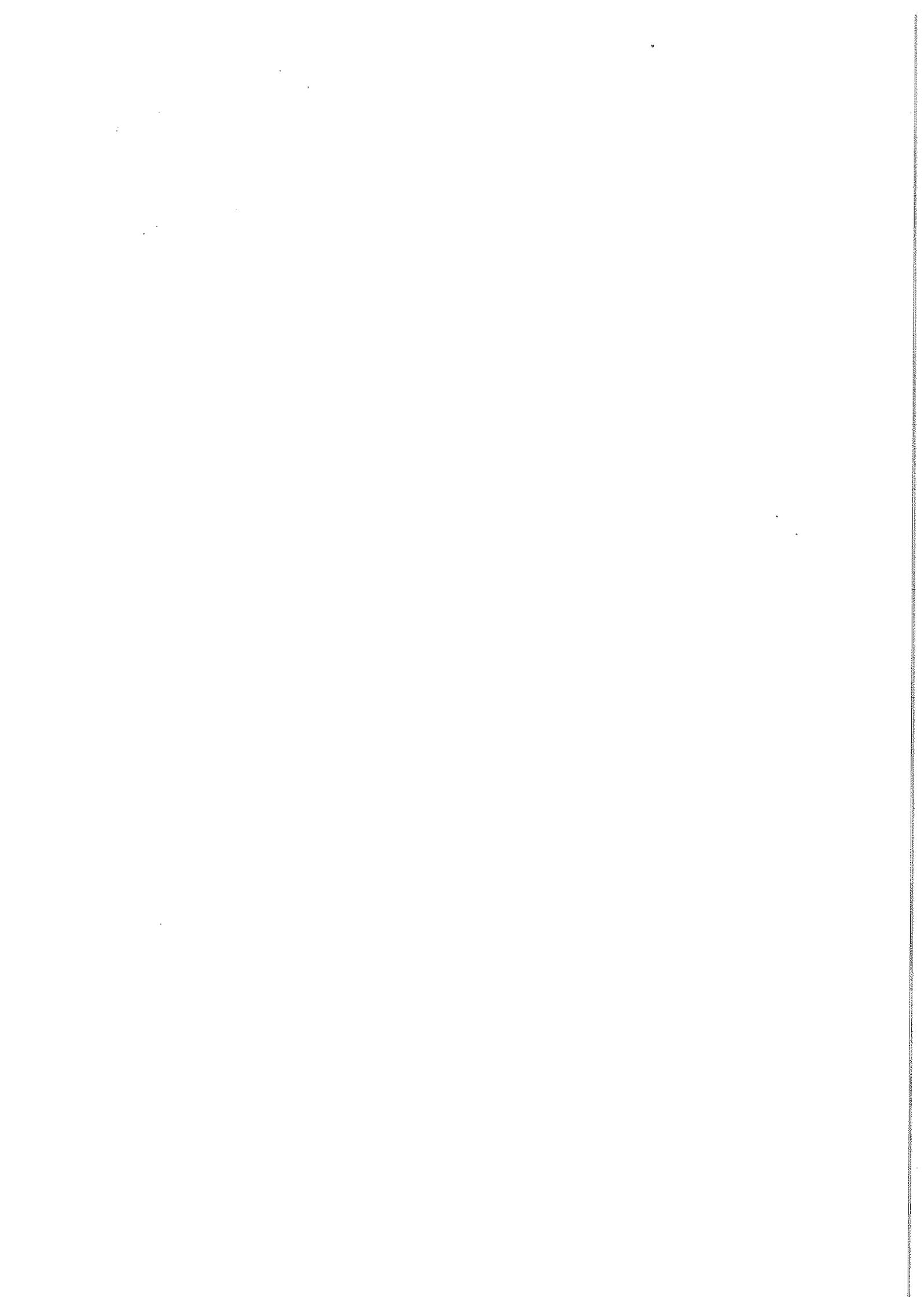
“Planning Authority” means East Ayrshire Council

“Public Holiday” means;

- New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January.
- 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January.
- Good Friday.
- Easter Monday.
- The first Monday in May.
- The fourth Monday in May.
- The first Monday in August.
- The third Friday and fourth Monday in September (subject to change according to published East Ayrshire school holidays).
- 30th November, if it is not a Saturday or 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.
- Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.

“SEPA” means Scottish Environment Protection Agency

“SNH” means Scottish Natural Heritage



Appendix 2: Proposed s.36C Variation and Deemed Planning Direction

Annex 1

Description of the Development

The Pencloe wind farm with a generating capacity **exceeding 50 MW**, comprising a 19 turbine wind-powered electricity generating station, located on land approximately 2.5 km south of the closest edge of New Cumnock and 11 km west of Dalmellington, in East Ayrshire Council planning area.

All as more particularly shown on ~~plan reference **Figure 1**~~ [Variation Volume 3 Figure 1.1](#) appended to this decision letter and all as specified in the application submitted by Pencloe Wind Energy Limited, incorporated under the Companies Acts (Registered Number SC398688) and having its registered office at 50 Lothian Road, Festival Square, Edinburgh, EH3 9WJ and supporting environmental information, which comprises the ~~Environmental Statement entitled 'Pencloe Windfarm Environmental Statement' dated March 2015; as amended by the addendum entitled 'Pencloe Windfarm Further Environmental Information Addendum' dated 21 September 2015.~~ [EIA Report 2019](#).

The principal components and ancillary development comprise;

- 19 wind turbines up to ~~125 m~~ [149.9 m](#) high to blade tip and a transformer at each turbine base;
- permanent foundations and associated crane hardstandings;
- a new access bell mouth arrangement from the unclassified road along Glen Afton;
- approximately ~~15.53 km~~ [15.86 km](#) of onsite access tracks from the public highway entrance, comprising ~~6.86 km~~ [5.59 km](#) of widened existing tracks and ~~8.67 km~~ [10.27 km](#) of new tracks;
- a control building and substation compound (including electrical metering, stores, office and welfare facilities);
- three permanent freestanding anemometry masts up to 85 m;
- five borrow pits and
- onsite underground cabling

Conditions attached to Section 36 Consent

1. Duration of the Consent

Written confirmation of both the Date of First Commissioning and the Date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after those dates.

Reason: *To define the duration of the consent.*

2. Commencement of Development

- (1) The Commencement of the Development shall be 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 Planning Authority and Scottish Ministers no later than one calendar month before that date.

Reason: *To avoid uncertainty and to ensure that consent is implemented within a reasonable period.*

3. Non-assignment

- (1) The Company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise assignment of the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.
- (2) The Company shall notify the Planning Authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignment having been granted.

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

4. Serious Incident Reporting

- (1) In the event of any breach of health and safety or environmental obligations relating to the development during the period of this consent, the company shall provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of the incident occurring.

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

5. Aviation Radar

- (1) No development shall commence unless and until such time as the Scottish Ministers and the Planning Authority receive written confirmation from the Airport Operator that:
 - a) a Radar Mitigation Scheme has been identified, and
 - b) the Radar Mitigation Scheme can be implemented and maintained for the lifetime of the development
- (2) No blade shall be fitted to any wind turbine or turbines forming part of the development and no such turbine shall operate, save as provided for and in accordance with the testing protocol, unless and until the Scottish Ministers and the Planning Authority receive written confirmation from the Airport Operator that;
 - a) All measures required by the Radar Mitigation Scheme prior to operation of any wind turbine have been implemented and
 - b) The Civil Aviation Authority (CAA) has evidenced its approval to the Airport Operator that the Radar Mitigation Scheme is acceptable mitigation for the development and has been satisfactorily implemented by the Airport Operator
- (3) No wind turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme.

Reason: *In the interests of aviation safety*

Definitions for the purposes of Condition 5

In condition 5 above:

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

“Radar Mitigation Scheme” means such equipment, procedural or technological measures, as the Airport Operator identifies as necessary and sufficient to prevent the operation of the

development or of any turbines forming part of the development impacting adversely on radar performance or on the performance of other navigational aids at Glasgow Prestwick Airport or on maintaining safe and efficient air traffic control services or procedures or airspace and which the Airport Operator is willing and able to implement and maintain for the lifetime of the development or for such shorter period as may be agreed in consultation with the Airport Operator as necessary to mitigate any such adverse impact.

“testing protocol” means the protocol to control the operation of any turbine or turbines forming part of the development for the purposes of testing of the radar mitigation Scheme.

Conditions attached to Deemed Planning Permission

6. Approved Details

The Development shall be undertaken in accordance with the Application and Environmental Statement (~~submitted on 10 March 2015~~) as amended by the Further Environmental Information (~~submitted on 21 September 2015~~), [EIA Report \(submitted on 21 June 2019\)](#) unless otherwise agreed in writing with the Planning Authority and except in so far as amended by the terms of this consent.

***Reason:** To ensure the Development is carried out in accordance with the application documentation.*

7. Height of Wind Turbines

The overall height of the wind turbines shall not exceed 125 metres to tip of the blades when the turbine is in the vertical position as measured from the natural ground level immediately adjacent to the turbine base.

***Reason:** To ensure the Development is carried out in accordance with the application documentation.*

8. Design and Operation of Wind Turbines

- (1) No development shall commence unless and until full details of the proposed wind turbines 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 be illuminated and no text, sign or logo shall be displayed on any external surface of the wind turbines, save those required by law under other legislation or as required in terms of Condition 31.
- (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 dis-colouration until such time as the wind farm is decommissioned.

Reason: *To ensure the Planning Authority is aware of the wind turbine details and to protect the visual amenity of the area.*

9. Ancillary Buildings and other Ancillary Development

- (1) No development shall commence unless and until final details of the external appearance, dimensions, and surface materials of the control buildings, substation building, associated compounds and parking areas and the permanent anemometer masts have been submitted to and approved in writing by the Planning Authority.
- (2) The development of the ancillary buildings/structures, associated compounds and parking areas shall be implemented in accordance with the details approved under paragraph (1).

Reason: *To safeguard the visual amenity of the area.*

10. Decommissioning, Restoration and Aftercare

- (1) The Development shall cease to generate electricity and shall be decommissioned by no later than the date falling twenty-seven years from the Date of Final Commissioning. The total period of restoration of the site in accordance with this condition shall not exceed three years beginning from the date falling twenty-seven years from the Date of Final Commissioning without prior written approval of the Planning Authority.
- (2) No development shall commence unless and until a decommissioning and restoration strategy has been submitted to and approved in writing by the Planning Authority. The strategy shall outline measures for the decommissioning of the development and restoration of the site and any aftercare. The strategy shall cover the following matters:
 - a) works for the decommissioning and removal of wind turbines and all above ground ancillary buildings and equipment;
 - b) proposals in respect of ground surfaces, including access tracks, water crossings and hardstanding areas that are not required for Forestry Commission operational purposes;
 - c) outline environmental provisions, the incorporation of relevant matters from the Construction and Environmental Management Plan (CEMP) and traffic management proposals;
 - d) outline decommissioning timetable;
 - e) aftercare provision; and
 - f) details of proposals for the review of the strategy during the operational lifetime of the development.

- (3) No later than 12 months prior to the decommissioning of the development or the date of expiry of the section 36 consent relating to the Development (whichever is earlier), a detailed decommissioning and restoration plan, based upon the approved decommissioning and restoration strategy, shall be submitted to the Planning Authority for its written approval. The detailed decommissioning and restoration plan shall provide updated and detailed proposals for the removal of the wind turbines and associated development above ground, and the foundations of the wind turbines to a depth of one metre below ground level, and reinstatement of the land. The plan shall include proposals for the management and the timing of the works and for the restoration of the site.
- (4) The Development shall be decommissioned, and the site restored thereafter in accordance with the plan, unless otherwise agreed in writing in advance with the Planning Authority.

Reason: *To ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

11. Financial guarantee

- (1) At least three months prior to the date of Commencement of Development, written details of the bond or other financial guarantee to cover the cost of all decommissioning, restoration and aftercare of the site as required by Condition 10 shall be submitted for the written approval of the Planning Authority. Where, before giving its written approval, the Planning Authority require the Company to commission a review of the bond or other provision by a suitably qualified person to advise on whether the provision is sufficient for restoration purposes such commission shall be instructed by the Company with the approval of the Planning Authority.
- (2) No works shall commence on site unless and until the approved bond or other financial guarantee has been delivered to the Planning Authority and the Planning Authority has provided written confirmation that the bond or other financial guarantee is satisfactory.
- (3) An approved bond or other financial guarantee shall be maintained throughout the duration of this consent and until the date of completion of all decommissioning, restoration and aftercare obligations as required by Condition 10 of this consent.
- (4) The adequacy of the approved bond or other financial guarantee shall be subject to review at five yearly intervals, or such other intervals as agreed by the Planning Authority, from Commencement of Development, to be paid for by the Company or operator and conducted by a competent independent professional who has relevant experience in such matters. The findings of such reviews shall be provided to the Company or operator and the Planning Authority within 14 days of the review taking place. Any revisions to the bond or other financial guarantee recommended by the

review and agreed in writing by the Planning Authority shall be made within 28 days of receiving said written agreement from the Planning Authority and documentary evidence shall be provided to the Planning Authority to that effect.

Reason: *To ensure there are sufficient funds available for the full costs of decommissioning, restoration and aftercare and to ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

12. Micro-siting

- (1) Subject to sub-paragraph (2) below, all wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location as shown on ~~Figure 4 (Infrastructure layout) of the FEI (September 2015)~~ [Variation Volume 3 Figure 1.1](#).
- (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 conjunction with SEPA, SNH and any other relevant bodies), micro-siting is subject to the following restrictions:
 - a) no wind turbine, building, mast, track or hardstanding shall be moved more than 50 metres from the position shown on ~~Figure 1 of the FEI (September 2015)~~ [Variation Volume 3 Figure 4.1](#);
 - b) no micro-siting shall take place into areas hosting ground water dependent terrestrial ecosystems (GWDTEs);
 - c) with the exception of watercourse crossings and related tracks, no element of the development shall be micro-sited to a location within 50 metres of a watercourse (or closer to a watercourse if approved within such a distance);
 - d) no micro-siting shall take place within areas of peat 0.5 metres deeper or greater than the approved location;
 - e) no micro-siting shall take place where it would result in a wind turbine foundation being positioned more than 5 metres in difference to the ordnance datum on the approved layout (i.e. that shown on ~~Figure 1 of the FEI (September 2015)~~ [Variation Volume 3 Figure 4.1](#)).
 - f) all micro-siting permissible under this condition must be approved in advance in writing by the environmental clerk of works appointed under Condition 29.
- (3) Within one calendar month following the Date of Final Commissioning, a plan of the development as built showing the final position of all wind turbines, 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 micro-siting has taken place and, for each instance, to be accompanied by copies of the environmental clerk of works or Planning Authority's approval, as applicable.

Reason: *To ensure that micro-siting decisions take account of environmental considerations and to ensure the satisfactory decommissioning of the wind farm and*

reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

13. Construction and Environmental Management Plan (CEMP)

- (1) No development, tree felling or intrusive site or ground investigations shall commence unless and until the developer submits, for the written approval of the Planning Authority, in consultation with SEPA, a site investigation (SI) and ground investigation (GI) scheme (“the scheme”) which shall detail all preliminary SI and GI works, in compliance with BS 5930:2015, proposed to inform the CEMP as required by part (4) below. The scheme shall include (but shall not necessarily be limited to):
 - a) the phasing of investigative works;
 - b) full details of all intrusive site investigation and ground investigation works proposed,
 - c) details of any tree felling which is required for intrusive site investigation and ground investigation works;
 - d) access plan including environmental mitigation works, any water crossings and PWS protection, and
 - e) detailed method statements for carrying out all the investigative works including any general mitigation measures required to protect the environment.

- (2) No development shall commence unless and until the site investigation and ground investigation works are carried out in full accordance with the scheme approved under part (1), above, unless otherwise agreed in writing by the Planning Authority.

- (3) At least three months prior to tree felling in addition to that undertaken in respect of (1)(c), a tree felling, and management plan shall be submitted for the written approval of the Planning Authority.

- (4) At least three months prior to the Commencement of Development, a detailed, site specific construction and environmental management plan (“CEMP”) detailing all on-site construction and post-construction works, site specific drainage and site specific mitigation measures, shall be submitted for the written approval of the Planning Authority in consultation with SEPA and SNH, (as appropriate). The CEMP shall incorporate detailed construction method statements (CMS) as required by the Planning Authority and have regard to the information and mitigation measures set out in the ~~ES/FEI~~ [EIA Report](#) and be informed by the findings of the site and ground investigation works and best practice methods of the Scottish/UK wind farm industry. This CEMP shall include (but shall not necessarily be limited to) detailed specifications of:
 - i. a phasing plan for the construction works;

- ii. the CMS for the site roads including their width, likelihood of widening or passing places, means of drainage (which shall have regard to SUDS principles), and edge reinstatement including anticipated verge width. The specification shall be accompanied by a plan at a scale of not less than 1:25,000 identifying the locations of:
 - cut roads, other excavated roads
 - sections of floating track
 - the cable trenches and
 - the turbine bases
 - temporary clay/peat/overburden storage areas;
- iii. environmental policy statement, to include responsibility for all environmental features, safeguards and mitigation;
- iv. the construction of crane pads;
- v. all foundation works;
- vi. the construction of the control buildings, sub-station and construction compound;
- vii. the formation of the hardstanding areas;
- viii. the method of working cable trenches, to include reinstatement;
- ix. watercourse crossings, ensuring compliance with the Controlled Activity Regulations where appropriate;
- x. a water quality monitoring plan (WQMP) including full details of locations and duration of monitoring, sampling methodology and an emergency action plan. This shall take account of the drinking water protection area;
- xi. a pollution prevention and incident plan (PPIP) which takes account of the proposals within the ~~ES and FEI~~ [EIA Report](#), incorporating: a pollution prevention plan; pollution incident plan, and a pollution control monitoring plan. This shall include protection of watercourses, ground water, the drinking water protection area, management of natural surface hydrological flows (flushes, springs, etc.) and protection of ground water and peatland / soils, arrangements for onsite bunding of fuels/oil/other chemicals/ storage areas and sewage disposal. In association with this, a qualitative hydrogeological assessment of all GWDTEs the potential risk from the development, detailing measures to reduce or mitigate for all construction elements potentially capable of impacting on ground water flow affecting GWDTEs, which is in accordance with the Land Use Planning System SEPA Guidance Note 4, Appendix 2, Section 5.2;
- xii. site drainage proposals which also clearly demonstrate how the hydraulic connectivity is to be maintained to the identified wetland habitats to the north and south of the access tracks between the proposed turbine locations, particularly between turbines 5 and 7;
- xiii. post-construction restoration / reinstatement of the working areas not required during the operation of the development, including

- construction access tracks, construction compound, storage areas, access tracks and other temporary ancillary construction areas. Primary reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Where ground conditions do not allow for successful turf removal, the CMS must evidence this from SI/GI and provide additional details including all seed mixes and seeding methodologies to be used for the reinstatement of vegetation;
- xiv. a site waste management plan, including a peat management plan (PMP), detailing the proposals for the reuse of peat and forestry materials arising from the works, ensuring all proposals comply with SEPA's guidance and the requirements of the waste management licensing regime;
 - xv. details of measures to be taken to prevent loose or deleterious material being deposited on the local public road network including wheel cleaning and lorry sheeting facilities and measures to clean the site entrances and the adjacent public road in addition to dust management measures;
 - xvi. site specific construction method statements (CMS) for all construction elements of the Development;
 - xvii. details of the management of noise and vibration during construction, including that caused by construction traffic, to the lowest practicable levels and in accordance with BS 5228, and
 - xviii. details of any temporary site illumination.

(5) Thereafter, the tree felling, and development shall be implemented in accordance with the CEMP (and its constituent CMS's) approved under part (3) and (4) unless otherwise approved in writing by the Planning Authority.

Reason: *To ensure appropriate investigative works are carried out without undermining the baseline environmental conditions of the site and to inform the CEMP and CMS's, subsequently ensuring that all construction operations are carried out in a manner that minimises their impact on the environment, to protect watercourses from sedimentation and pollution, and that mitigation measures are fully implemented and also to ensure the satisfactory decommissioning of the wind farm and reinstatement of the site in a suitable and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

14. Private Water Supplies

- (1) No development shall commence unless and until a private water supply (PWS) risk assessment has been submitted to and approved in writing by the Planning Authority for the private water supply serving Laglaff. In the event that the risk assessment demonstrates that the Laglaff private water supply is at greater than minimal risk from the wind farm hereby approved then a PWS method statement shall be prepared and submitted for the written approval of the Planning Authority and shall include:

- a) details of all mitigation, monitoring and contingency measures to be delivered to maintain and secure the quality, quantity and continuity of the water supply that may be affected by the Development in so far as agreement with the owners and occupiers of Laglaff will allow and
- b) details of the water quality sampling methodology, including a scheme of monitoring

(2) The method statement approved under (1) shall thereafter be implemented in full should part (1) require a method statement to be prepared.

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

15. Traffic and Transport

(1) No development shall commence unless and until a traffic management plan has been submitted to and approved in writing by the Planning Authority. The traffic management plan shall set out:

- a) details of the routeing of all construction traffic on the local road network including any speed restrictions;
- b) required works to the public road network including widening, reconstruction, and provisions of laybys and strengthening of bridges to allow heavy and abnormal loads access/egress;
- c) measures to ensure that the specified routes are adhered to, including monitoring procedures;
- d) details of all signage and lining arrangements to be put in place;
- e) details of any offsite loading/unloading area for wind turbine components and a method statement for loading and unloading arrangements;
- f) provisions for emergency vehicle access;
- g) road maintenance and mud suppression measures;
- h) the arrangements for establishing a community liaison group to be led by the Company/developer, in collaboration with East Ayrshire Council and New Cumnock Community Council, to discuss the arrangements for the delivery of all road and construction traffic mitigation measures required for the development along the Afton Road. This should include, but not be limited to, traffic management arrangements; to be in place during any roadworks associated with the development; for development traffic when Afton Cemetery is in use; for the operation of the Afton Road during delivery of abnormal loads and identification of contact arrangements between the community liaison group and the developer/applicant during the construction of the development;
- i) a plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width and axle configuration of all extraordinary traffic accessing the site;
- j) the scheduling of construction traffic excluding abnormal indivisible loads;
- k) vehicle parking and turning arrangements within the site;

- l) identification of any roads along which excessively heavy or other extraordinary traffic or vehicles are to be routed and for pre- and post-construction survey of such roads, if any; and
 - m) a travel plan for the construction phase of the development to minimise private car travel during the construction phase of the development.
- (2) The approved traffic management plan shall thereafter be implemented in full, unless otherwise agreed in writing with the Planning Authority.

Reason: *In the interests of road safety and to ensure that site access and egress can be undertaken in a safe manner.*

16. Traffic and Transport

- (1) There shall be no use of the C90 Afton Road by construction traffic involved in the construction of the development unless and until the Planning Authority has given written approval that either:
- a) No other wind farm has commenced development, is under construction and construction traffic is also taking access/egress from the C90 Afton Road; or
 - b) Commencement of Development whilst another wind farm has commenced development, is under construction and construction traffic is also taking access/egress from the C90 Afton Road, is acceptable.
- (2) Unless development commences within 2 months from the date of the written approval under Part 1 (or within 2 months from any further written approval), the developer shall be required to seek the further written approval of the Planning Authority under Part 1.

Reason: *To minimise the potential for cumulative road safety impacts.*

Definitions for the purposes of Condition 16

In condition 16 above:

Commencement of the Development: means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

Under construction: means the period of time FROM either (A) a Notice of Initiation of Development has been received by the Planning Authority, or (B) written confirmation has been received by the Planning Authority under a condition of a Section 36 consent that a development is due to commence UNTIL the last turbine of any such scheme has been erected.

Wind farm: means any consented development comprising of two or more wind turbines.

Construction traffic: means HGV traffic involved in construction of a wind farm but excluding the movement of abnormal loads, which will be subject to the usual statutory notice periods and controls prior to movement of such loads.

17. Borrow Pits

- (1) No development shall commence unless and until a site-specific scheme (“borrow pit scheme”) for the working and restoration of each borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include (but shall not necessarily be limited to):
 - a) 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 and water management, including measures to prevent surrounding areas of peatland, water dependent sensitive habitats and Groundwater Dependent Terrestrial Ecosystems (GWDTEs) from drying out, and
 - d) a programme of implementation of the works described in the scheme.
 - e) The approved scheme shall thereafter be implemented in full. Prior to any borrow pit blasting taking place, a scheme shall be submitted for the written approval of the Planning Authority which meets the requirements of Condition 40.
- (2) No later than 3 months prior to the end of the construction period, a scheme providing full details of the reinstatement, restoration and aftercare of the borrow pits at the end of the construction period, including topographic surveys of pre-construction profiles and details of topographical surveys to be undertaken on the restored borrow pit profiles, shall be submitted to the Planning Authority for its written approval.
- (3) The scheme approved under (2), above, shall be implemented in full within 6 months of the date of approval of the scheme.

Reason: *To ensure that borrow pit operations are carried out in a manner that minimises impact on the environment.*

18. Ecology – Protected Species

- (1) No development shall commence unless and until pre-construction surveys for protected species have been submitted to and approved in writing by the Planning Authority (in consultation with SNH). The surveys shall be conducted eight months prior to the Commencement of Development and shall detail any mitigation measures required.
- (2) Mitigation as detailed within the [ES EIA Report](#) and approved under (a) above shall be implemented in full.

Reason: In the interests of minimising impacts on protected species.

19. Ecology – Minimising Otter Impact

- (1) Not more than 14 days prior to the Commencement of Development, a pre-commencement survey shall be conducted to determine the presence or otherwise of otters. The findings of this survey shall determine the need for mitigation. The survey shall be carried out in a radius of 250 metres from each proposed turbine and 100 metres from proposed access tracks. The findings of the survey and full details of any proposed mitigation required shall be submitted to the Planning Authority for its written approval.
- (2) Mitigation as detailed within the [ES EIA Report](#) and/or approved under (1), above, shall thereafter be implemented in full where the survey conducted under (1) above has evidenced the presence of any otters within the construction site.

Reason: In the interests of minimising impacts on otters.

20. Ecology – Minimising Nesting Birds Impact

Not more than 14 days prior to any tree felling operations, pre-felling and construction surveys for nesting birds shall be conducted to determine the presence or otherwise of nesting birds. The findings of the surveys and full details of any proposed mitigation required shall be submitted to the Planning Authority for its written approval.

Reason: In the interests of minimising impacts on nesting birds.

21. Ecology – Minimising Impacts on Water Voles

A 10 metre buffer shall be maintained from water vole burrows to proposed works for the entire construction, operational and decommissioning phases.

Reason: In the interests of minimising impacts on water voles.

22. Ecology – Minimising Impacts on Wild Deer

- (1) No development shall commence unless and until an assessment of potential impacts on wild deer has been submitted to and approved in writing by the Planning Authority. The assessment shall specify any required mitigation measures.
- (2) Thereafter any mitigation as required under (1) above shall be implemented in full

Reason: In the interests of minimising impacts on wild deer.

23. Ecology – Minimising Impacts on Freshwater Habitats

(1) No development shall commence unless and until a freshwater survey and where necessary, species specific surveys, have been submitted to an approved in writing by the Planning Authority. Full details of any required mitigation measures shall also be provided.

(2) Thereafter any mitigation as required under (1) above shall be implemented in full.

Reason: *In the interests of minimising impacts on freshwater habitats.*

24. Ecology – Protection and Monitoring of Species and Habitats

(1) No development shall commence unless and until a Habitat Management Plan (HMP) and a Species and Habitats Protection Plan (SHPP) for the duration of the consent, has been submitted for the written approval of the Planning Authority in consultation, as required, with SEPA and SNH. The HMP and SHPP shall include (but shall not necessarily be limited to) measures for:

- a) the protection and/or restoration of peat land habitat;
- b) monitoring and mitigation protocols for protected species;
- c) management and mitigation of habitats and species present on site for the duration of the consent;
- d) a procedure for monitoring and reporting on implementation and for amending the approved measures, to include –
 - i. the methods, frequency and duration of ecological monitoring throughout the operational phase of the wind farm: and
 - ii. the submission of monitoring results to the Planning Authority on an annual basis or such other frequency as may be agreed;
- e) measures to benefit Black Grouse including post-construction monitoring.

(2) Thereafter the measures shall be implemented in accordance with the HMP and SHPP.

Reason: *To secure the protection and monitoring of species and habitats.*

25. Ecology – Protection of GDWTEs

(1) No development shall commence unless and until details of cross track drainage where access tracks bisect ground water dependent terrestrial ecosystems (GDWTEs) have been submitted for the written approval of the Planning Authority in consultation with SEPA.

(2) Cross track drainage shall thereafter be implemented in accordance with the details approved under (1) above.

Reason: To secure the protection of GDWTEs

26. Peat – Minimising Disruption

- (1) No development shall commence unless and until a detailed site specific Peat Management Plan (PMP), taking account of the draft peat management plan dated 2019 provided within the ~~FEI~~ [EIA Report](#), has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA.
- (2) The PMP shall thereafter be implemented as approved.

Reason: To ensure that disruption to peat is minimised.

27. Peat – Minimising Risk of Peat Landslide

- (1) No development shall commence unless and until a detailed Peat Landslide Risk Assessment, addressing the construction phase of the development and the post construction monitoring, has been submitted to and approved in writing by the Planning Authority. The Peat Landslide Risk Assessment shall comply with best practice contained in the “Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments” published by the Scottish Government in January 2007 or such replacement standard as may be in place at the time of submission of the Peat Landslide Risk Assessment. The assessment shall include a scaled plan and details of any mitigation measures to be put in place.
- (2) Thereafter mitigation measures shall be implemented in full accordance with the assessment approved under (1) above.

Reason: To minimise the risk of peat landslide.

28. Planning Monitoring Officer

- (1) No development shall commence unless and until the Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant. The terms of appointment shall:
 - a) impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
 - b) require the planning monitoring officer to submit a monthly report to the Planning Authority summarising works undertaken on site; and
 - c) require the planning monitoring officer to report to the Planning Authority any incidences of non-compliance with the terms of the terms of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.

- (2) The planning monitoring officer shall be appointed on the approved terms during the period from the Commencement of Development to the completion of post-construction restoration works.

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

29. Environmental Clerk of Works

- (1) No development shall commence unless and until a full time independent and suitably qualified and experienced environmental clerk of works (ECoW) acceptable to the Planning Authority in consultation with SEPA and SNH has been appointed. The ECoW shall be appointed for the period of forestry felling, construction and post construction restoration and reinstatement works. The ECoW shall, by the terms of the appointment:
 - a) monitor compliance with all construction works, including, but not limited to, the ecological, geological and hydrological aspects of each of the CEMP, HMP, SHPP, PMP and PPIP; and
 - b) report promptly to the Planning Authority and to the Company's nominated construction project manager any non-compliance with the hydrological, ecological or geological aspects of each of the CEMP, HMP, SHPP, PMP and PPIP.
- (2) The EcoW shall be appointed on the terms approved under (a) throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of conditions 10(2) and 10(3).
 - c) No later than 18 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the Development to the Planning Authority for approval in consultation with SNH and SEPA. The EcoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

Reason: *In the interests of environmental protection.*

30. Aviation

- (1) At least one month prior to the Commencement of Development, the Company shall provide the Planning Authority, the Ministry of Defence (MOD) Defence Geographic Centre (DGC) and Defence Infrastructure Organisation Safeguarding (DIOS) with a written statement containing the following information:

- a) the proposed dates of commencement and completion of the construction phase of the Development;
 - b) the latitude and longitude of the wind turbines, and
 - c) the proposed maximum extension height of any construction equipment on site.
- (2) The Company shall provide written details to the Planning Authority, evidencing compliance with (1).
- (3) The Company shall, as soon as is reasonably practicable and in any event within 7 days prior to the event, provide to the Planning Authority and the MOD, written notice of any proposed changes to the information provided under (1) above, including:
- a) the location of each wind turbine in latitude and longitude and having taken into account any micro-siting adjustments agreed in the above Condition 12 (in degrees, minutes and seconds);
 - b) the height above ground level of each wind turbine (in metres to blade tip). And no wind turbine shall be erected on site until the MOD has confirmed in writing to the Planning Authority that the above information has been provided and is satisfactory to the MOD.
- (4) Within 7 days of the Commencement of Development, the Company shall provide written confirmation to the Planning Authority and the MOD DGC and DIOS of the actual date on which construction commenced and the actual maximum extension height of any construction equipment on site.
- (5) Within 7 days of the erection of the final wind turbine, the Company shall provide written confirmation to the Planning Authority and the MOD DGC and DIOS of the actual date on which construction was completed.

Reason: *To ensure that the Ministry of Defence had been provided with sufficient information, in the interest of air safety and to demonstrate to the Planning Authority that the appropriate steps to protect air safety have been undertaken.*

31. Aviation Lighting

- (1) Prior to the erection of the first wind turbine, a scheme for aviation lighting for the wind farm cardinal turbines shall be submitted to the Planning Authority for written approval. The scheme shall include proposals for the cardinal turbines be fitted with combination red and infrared lighting, and the perimeter wind turbines be fitted with 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200 ms to 500 ms duration at the highest practicable point. No other lighting shall be applied at the site, other than that as required for health and safety, unless otherwise agreed in writing by the Planning Authority.

- (2) No wind turbines shall be erected on site unless and until the scheme has been approved in writing. The Development shall thereafter be operated fully in accordance with the approved scheme.

Reason: *In the interests of aviation safety*

32. Forestry

- (1) No development shall commence unless and until a replacement planting scheme has been submitted for the written approval of the Planning Authority, in consultation with Forestry Commission Scotland, detailing where re-planting shall take place, including the species composition.
- (2) Replacement planting shall be implemented in full accordance with the replacement planting scheme approved under (1), above, within a timeframe agreed by the Planning Authority within the scheme, which shall not exceed 6 months after the completion of the wind farm construction period.

Reason: *To ensure replacement planting proposals are acceptable and are carried out in an appropriate, timely manner.*

33. TV and Radio Reception Mitigation

- (1) Prior to Commencement of Development, a television and radio reception mitigation plan shall be submitted to and approved in writing by the Planning Authority, which shall include the results of a baseline television reception survey carried out prior to any works commencing on site.
- (2) The television and radio reception mitigation plan approved under (1), above, shall thereafter be implemented in full. Within 12 months of the final commissioning of the development, any claim by any individual person regarding TV picture loss or interference at their house, business premises or other building shall be investigated by an independent qualified engineer appointed by the Company and the results shall be submitted to the Planning Authority. Should any impairment to the TV signal be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline TV reception. For the avoidance of doubt the resolution of disputes shall be determined by an independent arbiter e.g. OFCOM or other professional body as appropriate.

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

34. Archaeological Works

No development will commence, save for site and ground investigations, unless and until a programme for the implementation of archaeological works in accordance with

a written scheme of investigation has been submitted to and agreed in writing by the Planning Authority in consultation with the West of Scotland Archaeology Service, and approved. Thereafter the programme of archaeological works shall be fully implemented and all recording and recovery of archaeological resources within the development site shall be undertaken to the satisfaction of the Planning Authority in consultation with the West of Scotland Archaeology Service.

Reason: *To ensure archaeological interests that may exist or be discovered on the site are not destroyed or disturbed without being recorded.*

35. Non-Operational Wind Turbines

The Company shall submit confirmation to the Planning Authority that each turbine is continuing to generate electricity on a sixth monthly basis, which period shall commence from the date of first commissioning.

Reason: *In the interests of the long term visual amenity of the surrounding area.*

36. Removal of Non-Operational Wind Turbines

- (1) If any wind turbine installed and commissioned fails to supply electricity to the electricity grid network for a continuous period of 6 months, the Company shall notify this to the Planning Authority within seven days following that continuous period.
- (2) Unless the wind turbine is in the process of being repaired or replaced and evidenced to be so by the Company (or unless otherwise agreed in writing by the Planning Authority), the wind turbine shall be deemed to have ceased to be required and:
 - a) the wind turbine (including its foundations to a depth of at least 1 metre, its ancillary surface equipment, access tracks and hardstanding) shall be dismantled and removed from site; and
 - b) the land shall be restored to such condition as is agreed by the Planning Authority all in accordance with a scheme, having regard to the restoration strategy approved under Conditions 10(2) and/or 10(3), to be submitted by the developer within one month of the date of notification under part (1), for the written approval of the Planning Authority.
 - c) The scheme approved under part (2b) shall be implemented within three months of notification of its approval by the Planning Authority.

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

37. Access Management Plan

- (1) No development shall commence unless and until the developer has submitted to the Planning Authority, for its written approval, an access management plan (AMP) in full accordance with “Good Practice during Wind Farm Construction” Version 3,

September 2015, Part 7 Recreation and Access. This AMP shall include (but shall not necessarily be limited to):

- a) identified limitations on access rights during the construction phase, focussed on areas of actual risk;
 - b) full details of the diversion of public rights of way during construction and reinstatement following construction;
 - c) full details of appropriate access management during the construction and operational periods of the wind farm covering such matters as the installation of gates to allow public access (walking, cycling and horse riding); and
 - d) warning/management signage which is appropriate and takes account of both operational needs and access rights.
- (2) The access management plan approved under (1), above, shall be implemented in full during full construction and operational periods of the wind farm.

Reason: *In the interests of public safety and to allow for public access.*

38. Cabling

All cabling on the site between the wind turbines and the site sub-station shall be installed underground.

Reason: *To protect the visual amenity of the area.*

39. Construction Noise

- (1) Save in the case of an emergency or dust suppression and save for the delivery and erection of the turbine components as after mentioned, construction work on the site shall be confined to the hours of 07:00 to 19:00 on Monday to Friday inclusive and 07:00 to 16:00 on Saturdays, with no construction work taking place on a Sunday or on local and national public holidays. Heavy goods vehicle movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07:00 to 19:00 Monday to Friday inclusive and 07:00 to 16:00 on Saturdays, with no heavy goods vehicle movements to or from the site taking place on a Sunday or on local and national public holidays. Any exceptional requirement for the delivery of construction materials other than as provided above shall only take place if approved in writing by the Planning Authority having been given a minimum of two working days' notice of the proposed delivery. The Planning Authority shall also be informed in writing of any emergency works within 48 hours of their occurrence.
- (2) All plant and machinery should be operated in accordance with British Standard BS 5228:2009 "Code of Practice for noise and vibration control on construction and open sites – Part 1: Noise and Part 2: Vibration".

- (3) No blasting shall take place except between 10:00-12:00 and 14:00-16:00 on Mondays to Fridays inclusive and 10:00-12:00 on Saturdays. No blasting shall take place on Sundays or on local and national public holidays.

Reason: *In the interests of residential amenity.*

40. Borrow Pit Construction Noise

- (1) Except in respect of borrow pits, in which regard the developer shall comply with the terms of Condition 17(1), no blasting shall take place until a scheme to address site blasting has been submitted to, and received the written approval of the Planning Authority. The scheme shall make provision for the following elements:
- a) blasting monitoring locations;
 - b) type of monitoring equipment to be used;
 - c) frequency of monitoring;
 - d) the methods employed to minimise the effects of over pressure arising from the blasting, having regard to blast design, methods of initiation and the weather conditions prevailing at the time;
 - e) limits on air overpressure levels at specified properties, and
 - f) submission of blasting records to the Planning Authority.
- (2) the scheme approved under (1), above, shall be implemented in full unless otherwise agreed in writing by the Planning Authority.

Reason: *In the interests of safety and residential amenity.*

41. Operational Noise

- (1) The wind turbines shall be designed to permit individually controlled operation, or cut-out, at specified wind speeds in order to enable, and ensure, compliance with the noise level criteria stated in these conditions.
- (2) Details from the turbine supplier and/or manufacturer regarding the tonality of the selected turbine model(s) in accordance with IEC 61400-11 (or successor) shall be provided to the Planning Authority.
- (3) The rating level of noise immisions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty and any amplitude modulation penalty) when determined in accordance with the accompanying Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the Tables 1 and 2 below at any dwelling which is lawfully existing or has planning permission at the date of this permission.

(4) The rating level of noise immisions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty and any amplitude modulation penalty), operating in conjunction with any other operational wind turbines consented for the wind farms or single wind turbines given in the list of developments given in paragraph 2.1.1 of the ~~Sine Acoustics Report, Pencloe Wind farm, Updated Cumulative Noise Assessment (Ref: A019-RP-PS-001 dated 10th July 2017)~~ [12.9 of the EIA Report](#), when determined in accordance with the attached Guidance Notes shall not exceed the values for the relevant integer wind speed set out in Tables 3 and 4 at any dwelling which is lawfully existing or has planning permission at the date of this permission. Following a complaint from an occupant of a dwelling that has been investigated in accordance with paragraph (9), in the event that the level of noise immisions (including the application of any tonal penalty and any amplitude modulation penalty) exceeds the relevant value in Table 3 or Table 4 at the dwelling where the complaint originated, the Company shall undertake appropriate mitigation to reduce turbine noise immisions such that the limits in Table 3 or Table 4 are met, or such that noise from the turbines hereby permitted (including the application of any tonal penalty and any amplitude modulation penalty) meets the levels set out in Tables 1 and 2 at the dwelling where the complaint originated.

Table 1 - Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
		4	5	6	7	8	9	10	11	12	
Property Name	Map Ref										
Lynn View	262718, 605712	36	37	38	39	41	43	45	47	49	
Craig Braneoch	263160, 606413	32	32	34	35	36	39	42	45	49	
Corbyhill	263165, 606422	32	32	34	35	36	39	42	45	49	
Craigdarroch Farm	263316, 606543	32	32	32	35	36	39	42	45	49	
Craig An Dhu	262706, 605689	36	37	38	39	41	43	45	47	49	

The Craigs	263441, 606451	32	32	32	35	36	39	42	45	49
Black Craig Farm	263425, 608153	32	32	32	33	36	39	42	45	49
Pencloe Farm Cottage	261858, 609486	33	34	36	38	40	42	45	47	50
Pencloe Farm	261851, 609529	33	34	36	38	40	42	45	47	50
Lochingerroch Farm	262292, 609447	33	34	36	38	40	42	45	47	50
Lochbrowan Farm	262212, 609754	33	34	36	38	40	42	45	47	50

Table 2 - Between 23:00 and 07:00 – Noise limits expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, $L_{A90,10\text{min}}$									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	40	40	40	40	40	40	40	40	40	
Craig Braneoch	263160, 606413	40	40	40	40	40	40	40	40	40	
Corbyhill	263165, 606422	40	40	40	40	40	40	40	40	40	
Craigdarroch Farm	263316, 606543	40	40	40	40	40	40	40	40	40	
Craig An Dhu	262706, 605689	40	40	40	40	40	40	40	40	40	
The Craigs	263441, 606451	40	40	40	40	40	40	40	40	40	

Black Craig Farm	263425, 608153	40	40	40	40	40	40	40	40	40
Pencloe Farm Cottage	261858, 609486	40	40	40	40	40	40	40	40	40
Pencloe Farm	261851, 609529	40	40	40	40	40	40	40	40	40
Lochingerroch Farm	262292, 609447	40	40	40	40	40	40	40	40	40
Lochbrowan Farm	262212, 609754	40	40	40	40	40	40	40	40	40

Table 3 - Between 07:00 and 23:00 – Noise limits expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, $L_{A90,10\text{min}}$									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	40	40	42	43	44	45	47	48	50	
Craig Braneoch	263160, 606413	40	40	40	40	40	40	42	45	49	
Corbyhill	263165, 606422	40	40	40	40	40	40	42	45	49	
Craigdarroch Farm	263316, 606543	40	40	40	40	40	41	42	45	49	
Craig An Dhu	262706, 605689	40	40	42	43	44	45	47	48	50	
The Craigs	263441, 606451	40	40	40	40	40	41	42	45	49	
Black Craig Farm	263425, 608153	40	40	40	40	40	41	42	45	49	

Pencloe Farm Cottage	261858, 609486	40	40	40	40	40	42	45	47	50
Pencloe Farm	261851, 609529	40	40	40	40	40	42	45	47	50
Lochingerroch Farm	262292, 609447	40	40	40	40	40	42	45	47	50
Lochbrowan Farm	262212, 609754	40	40	40	40	40	42	45	47	50

Table 4 - Between 23:00 and 07:00 – Noise limits expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at ten metres height as determined within the site averaged over 10 minute periods

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, $L_{A90 10\text{min}}$									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	43	43	43	43	43	44	45	47	48	
Craig Braneoch	263160, 606413	43	43	43	43	43	43	44	47	50	
Corbyhill	263165, 606422	43	43	43	43	43	43	44	47	50	
Craigdarroch Farm	263316, 606543	43	43	43	43	43	43	44	47	50	
Craig An Dhu	262706, 605689	43	43	43	43	43	44	45	47	48	
The Craigs	263441, 606451	43	43	43	43	43	43	44	47	50	
Black Craig Farm	263425, 608153	43	43	43	43	43	43	44	47	50	
Pencloe Farm Cottage	261858, 609486	43	43	43	43	43	43	43	43	43	

Pencloe Farm	261851, 609529	43	43	43	43	43	43	43	43	43
Lochingerroch Farm	262292, 609447	43	43	43	43	43	43	43	43	43
Lochbrowan Farm	262212, 609754	43	43	43	43	43	43	43	43	43

(5) Where any rating levels determined in accordance with paragraph (3) above is found to exceed the relevant limit in either Table 3 or Table 4 and it is necessary to correct the rating level for background noise following the method set out in Guidance Note 4, the background noise levels given in Tables 5 and 6 may be used instead of carrying out further background noise measurements.

Table 5 – Background Noise Levels for Quiet Daytime expressed in dB $L_{A90,10\text{-minute}}$ as a function of the standardised wind speed (m/s) at ten metres height

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, $L_{A90,10\text{min}}$									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	33.4	34.3	35.4	36.8	38.5	40.3	42.2	44.3	46.5	
Craig Braneoch	263160, 606413	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Corbyhill	263165, 606422	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Craigdarroch Farm	263316, 606543	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Craig An Dhu	262706, 605689	33.4	34.3	35.4	36.8	38.5	40.3	42.2	44.3	46.5	
The Craigs	263441, 606451	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	
Black Craig Farm	263425, 608153	27.3	27.8	29.1	31.0	33.5	36.4	39.6	43.0	46.4	

Pencloe Farm Cottage	261858, 609486	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5
Pencloe Farm	261851, 609529	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5
Lochingerroch Farm	262292, 609447	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5
Lochbrowan Farm	262212, 609754	30.2	31.8	33.6	35.6	37.7	40.0	42.4	44.9	47.5

Table 6 – Background Noise Levels for Night-time expressed in dB L_{A90,10-minute} as a function of the standardised wind speed (m/s) at ten metres height

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, L _{A90 10min}									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Lynn View	262718, 605712	33.1	34.3	35.3	36.3	37.2	38.1	39.0	39.9	40.9	
Craig Braneoch	263160, 606413	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9	
Corbyhill	263165, 606422	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9	
Craigdarroch Farm	263316, 606543	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9	
Craig An Dhu	262706, 605689	33.1	34.3	35.3	36.3	37.2	38.1	39.0	39.9	40.9	
The Craigs	263441, 606451	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9	
Black Craig Farm	263425, 608153	28.4	28.9	30.0	31.7	33.9	36.4	39.2	42.0	44.9	
Pencloe Farm Cottage	261858, 609486	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0	

Pencloe Farm	261851, 609529	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0
Lochingerroch Farm	262292, 609447	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0
Lochbrowan Farm	262212, 609754	27.7	29.3	31.0	32.6	34.0	34.0	34.0	34.0	34.0

- (6) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The Company 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.
- (7) No electricity shall be exported until the Company 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.
- (8) The Company shall employ an independent consultant, to measure, or to use a combination of noise measurements and noise predictions to determine, at the Company's own expense, the level of noise immisions from the wind turbines within the first year of the operation of the turbines, and every five years thereafter, unless and until the Planning Authority extends the period or determines that continued compliance monitoring is no longer required. The measurement procedures, which may include filtering data according to wind direction, shall be agreed in writing with the Planning Authority prior to commencement of the noise measurements. The results of any measurement exercise shall be forwarded to the Planning Authority as soon as practicable after the completion of the monitoring exercise. Background noise levels shall be determined by one of the following methods:
- a) wind turbines shall be switched off during part of the monitoring period to permit reliable background noise level data to be determined at the range of wind speeds from 4m/s to 12m/s; or
 - b) using background noise levels provided within Tables 5 and 6; or,
 - c) in accordance with a methodology submitted to and agreed in advance by the Planning Authority.

The method used shall be determined by the appointed independent consultant and shall be agreed in writing with the Planning Authority prior to measurements being undertaken.

- (9) 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 Company shall, at its expense, employ a consultant approved by the Planning Authority to assess the level of noise immisions from the wind farm at the complainant's property in accordance with the protocol required under paragraph (10) as informed by 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, as far as practicable, 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.
- (10) No wind turbine shall be erected unless a protocol for the assessment of the rating level of noise immisions has been submitted to and approved in writing by the Planning Authority. The protocol shall include the proposed measurement location(s) identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether the noise contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immisions. The protocol shall also include details of the method of any required assessment of amplitude modulation of noise. The assessment shall be undertaken in accordance with the protocol approved. For a complaint investigation, the proposed range of conditions shall be those which prevailed during times with the complainant alleges there was disturbance due to noise, having regard to the written request of the Planning Authority under paragraph (9) and such others as the independent consultant considers likely to result in a breach of the noise limits. In the case that a complainant or land owner does not grant access to a property to enable investigation, the Planning Authority shall agree an alternative location and appropriate modifications to the relevant noise levels in Tables 1 to 4 with the applicant if the location is not listed in these tables.
- (11) The independent consultant appointed under (8) shall determine the need for an assessment of amplitude modulation and this shall be agreed in writing with the Planning Authority. This assessment shall be carried out in accordance with the reference method detailed in Institute of Acoustics Noise Working Group (Wind Turbine Noise) document "A Method for Rating Amplitude Modulation in Wind Turbine Noise", Final Report dated 9th August 2016, and shall be carried out at the expense of the Company.
- (12) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the Company 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 immisions 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.

(13)The independent consultant appointed under (8) shall provide to the Planning Authority and Company, the assessment of the rating level of noise immisions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Planning Authority for compliance measurements to be made under paragraph (9), unless the time limit is extended in writing by the Planning Authority for example due to a lack of suitable wind conditions, or measurement equipment tampering or failure, during the 2 month period. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. 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 immisions.

(14)Where a further assessment of the rating level of noise immisions from the wind farm is required pursuant to Guidance Note 4(c), the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (4) above unless the time limit has been extended in writing by the Planning Authority.

Reason: *to protect nearby residents from undue noise and disturbance; to ensure that noise limits are not exceeded; and to enable prompt investigation of complaints.*

Guidance Notes for Noise Conditions

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 immisions 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 ETSUR-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 BS 4142: 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 at hub height for each turbine and arithmetic mean power generated by each wind turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be "standardised" to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in 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 immisions. 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 noise condition (10), 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 wind speed, as derived from the standardised ten 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 standardised mean wind speed on the X-axis. 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 noise condition (10), noise immisions 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.

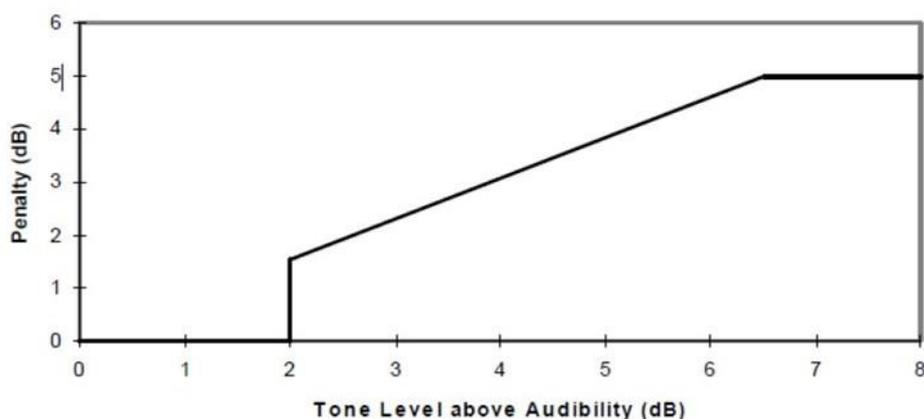
(b) For each 10 minute interval for which LA90, 10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immisions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that 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 104109 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 (10) 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 (12) 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 immersion 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 (i) and the approved protocol under paragraph (10) 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:

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

(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 L1 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 (12) 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 (12) of the noise condition then the development fails to comply with the conditions.

Guidance Note 5

The level of amplitude modulation shall be measured in accordance with the reference method detailed in IOA Noise Working Group (Wind Turbine Noise) document "A Method for Rating Amplitude Modulation in Wind Turbine Noise", Final Report dated 9th August 2016.

Definitions

“Commencement of the Development” means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

“The Company” means Pencloe Wind Energy Ltd, a company incorporated under the Companies Acts with company number SC398688 and having its registered office at 50 Lothian Road, Festival Square, Edinburgh UK EH3 9WJ or such other person as from time to time has the benefit of the consent granted under section 36 of The Electricity Act 1989.

“Development” means the development described in Annex 1.

“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.

“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.

“Planning Authority” means East Ayrshire Council

“Public Holiday” means;

- New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January.
- 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January.
- Good Friday.
- Easter Monday.
- The first Monday in May.
- The fourth Monday in May.
- The first Monday in August.
- The third Friday and fourth Monday in September (subject to change according to published East Ayrshire school holidays).
- 30th November, if it is not a Saturday or 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.
- Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.

“SEPA” means Scottish Environment Protection Agency

“SNH” means Scottish Natural Heritage

Appendix 3: EIA Advert Text

Pencloe Wind Energy Ltd
ELECTRICITY ACT 1989 (SECTION 36C)
THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION OF
CONSENT)(SCOTLAND) REGULATIONS 2013

Notice is hereby given that Pencloe Wind Energy Ltd (Company registration number: SC398688 and having its registered office at 50 Lothian Road, Festival Square, Edinburgh UK EH3 9WJ) has applied to the Scottish Ministers to vary the section 36 consent to construct and operate the Pencloe Wind Farm on land at Pencloe Farm and the Carsphairn Forest to the south of the settlement of New Cumnock (central grid reference: NS 60507 06671) previously consented on 6 December 2019 by Scottish Ministers (“the variation application”).

The variation application seeks to make the following variations:

- Increase tip height from 125m to 149.9m;
- Relocation of turbines 6 and 15; and
- Realign access track and laydown area infrastructure.

A summary of the variation application, a copy of the variation application, a link to the original section 36 consent decision letter and the EIA Report prepared in relation to the proposed varied development can be found at the following website: www.pencloe.com

The variation application and EIA Report are also available for inspection, free of charge, during normal office hours at:

- East Ayrshire Council, Planning and Economic Development, The Johnnie Walker Bond, Strand Street, Kilmarnock, KA1 1HU
- Cumnock Community Library, 1 Greenhold Road, Cumnock, KA18 1LH

They can also be viewed at the Scottish Government Library at Victoria Quay, Edinburgh, EH6 6QQ

Copies of the information may be obtained from SWECO on behalf of Pencloe Wind Energy Limited at a charge of £1000 for a hard copy and £25 on CD. Copies of a short non-technical summary are available free of charge. Copies can be obtained from Rebecca McClenaghan, Principal Consultant (EIA), SWECO 2nd Floor Quay 2, 139 Fountainbridge, Edinburgh EH3 9QG (+44 131 550 6332).

Any representations to the application may be submitted via the Energy Consents Unit website at www.energyconsents.scot/Register.aspx or by email to the Scottish Government, Energy Consents Unit mailbox at representations@gov.scot or alternatively by post to the Scottish Government, Energy Consents Unit, 4th Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU, identifying the proposal and specifying the grounds for representation.

Written or emailed representations should be dated, clearly stating the name (in block capitals), full return email and postal address of those making representations. Only representations sent by email to the address stipulated will receive acknowledgement.

All representations should be received not later than 14 August 2019 although Ministers may consider representations received after this date.

Should additional substantive information be made available in relation to this application, then further public notices will give advice on how this information may be viewed by members of the public, and how representations may be made to Scottish Ministers.

Where Scottish Ministers decide to exercise their discretion to do so, Scottish Ministers may cause a Public Local Inquiry (PLI) to be held.

Following receipt of all views and representations, Scottish Ministers will determine the application for consent in one of two ways:

- Consent the proposal, with or without conditions attached; or
- Reject the proposal

Fair Processing Notice

The Scottish Government Energy Consents Unit processes consent applications and consultation representations under the Electricity Act 1989. During the process, to support transparency in decision making, the Scottish Government publishes online at www.energyconsents.scot. A privacy notice and a fair processing notice are published on the help page at www.energyconsents.scot. These explain how the Energy Consents Unit processes your personal information. If you have any concerns about how your personal data is handled, please email EconsentsAdmin@gov.scot or write to Energy Consents Unit, 4th Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.