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Our ref: ECU00000660

07 July 2020

Dear Mr Winter

**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 CONSTRUCTION AND OPERATION OF SANDY KNOWE WIND POWERED ELECTRICITY GENERATING STATION IN THE PLANNING AUTHORITY AREA OF DUMFRIES AND GALLOWAY**

**Application**

I refer to the application made on 16 August 2018 under section 36 of the Electricity Act 1989 (“the Electricity Act”) made by Sandy Knowe Wind Farm Limited (“the Company”), incorporated under the Companies Acts with company number 06850950, (a wholly owned subsidiary of ERG Power Generation), and having its registered office at Seebeck House, 1 Seebeck Place, Knowlhill, Milton Keynes, Buckinghamshire, MK5 8FR for the construction and operation of Sandy Knowe Wind Farm, a wind powered generating station with 24 wind turbines, with a tip height of up to 125 metres (“the proposed Development”).

The proposed Development is located approximately 2.6 km south west of Kirkconnel and Kelloholm in the Planning Authority area of Dumfries and Galloway, with a total generating capacity in excess 50 Mega Watts (“MW”) (indicative generating capacity of approximately 81 MW).

**This letter contains the Scottish Ministers' decision to grant section 36 consent for the proposed Development as described at Annex 1 subject to conditions.**

**Planning Permission**

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

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

## **Background**

On 18 February 2015, the Scottish Ministers refused section 36 consent (“2015 refusal for section 36 consent”) for the Sandy Knowe Wind Farm which comprised 30 wind turbines, up to 125m in height. The reasons for refusal are set out in that decision letter which, included the unacceptable landscape and visual impacts, including cumulative impacts and that the proposal is contrary to, and not compatible with the Dumfries and Galloway Council’s Local Development Plan (2014).

The Company reviewed these reasons and amended the scheme to reduce the number of turbines to 24 which reduced the capacity of the proposal to below 50MW. Any proposed wind turbine development that generates less than 50 MW requires to apply for planning permission under the Town and Country Planning (Scotland) Act 1997. Any proposed wind turbine development that generates 50MW or over requires to seek consent from the Scottish Ministers under section 36 of the Electricity Act.

On 9 July 2015 the Company submitted a planning application under the Town and Country Planning (Scotland) Act 1997 to Dumfries and Galloway Council, as the relevant Planning Authority, for the reduced development with a capacity of 48MW.

On 24 November 2016 the Planning Authority granted planning permission for Sandy Knowe Wind Farm comprising 24 wind turbines (maximum height 125m to blade to tip) with associated infrastructure and works.

On 21 March 2017 the Planning Authority granted a non-material variation to the planning permission under section 64 the Town and Country Planning (Scotland) Act 1997 to permit the increase in rotor diameter by 1m.

The planning permission for Sandy Knowe Wind Farm is subject to 39 conditions and requires development to commence by 24 November 2021. Prior to construction starting on site, there are a number of pre-commencement conditions that require to be satisfied. The Company has submitted information to the Planning Authority to satisfy and discharge the required conditions. As of 11 February 2020 the Planning Authority has discharged the pre-commencement conditions in relation to the planning permission.

On 16 August 2018 the Company applied for consent under section 36 of the Electricity Act to construct and operate a wind farm with a generation capacity in excess of 50MW, comprising 24 turbines (blade to tip height of 125 metres) with a nominal generating capacity up to 81.6 MW. The physical components of the proposed Development remain the same as those consented under the Town and Country Planning (Scotland) Act 1997 by Dumfries and Galloway Council. The difference between the planning permission and the proposed Development is the proposed generating capacity of the turbine model, which therefore increases the capacity of the overall proposed Development to in excess of 50MW.

## **Legislation**

Under Schedule 8 to the Electricity Act, and the Electricity (Applications for Consent) Regulations 1990 (“the Consents Regulations”) made under the Electricity Act, the relevant Planning Authority (in this case Dumfries and Galloway Council) is required to be notified in respect of a section 36 consent application. In accordance with the Electricity Works

(Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) the Company submitted an Environmental Impact Assessment report (“the EIA report”) dated August 2018, Additional Information (“AI”) dated October 2019, and Additional Information 2 (“AI2”) dated March 2020 in support of the application describing the proposed Development and giving an analysis of its environmental effects.

In addition, to comply with the EIA Regulations, Scottish Ministers are required to consult the relevant Planning Authority, as well as Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland (HES) as well as other persons that are likely to be concerned by the proposed development by reason of their specific environmental responsibilities.

Scottish Ministers are satisfied that the EIA report, AI and AI2 have been produced in accordance with the EIA Regulations (as amended). AI2 was submitted in March 2020 and the Scottish Ministers are satisfied that the AI2 has been produced in accordance with The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020.

In accordance with requirements of both the Consents Regulations and the EIA Regulations, a notice of the proposed Development was published on the Company’s website and advertised in local and national press. The application was also placed in the public domain, and the opportunity given for those wishing to make representations to do so. Notifications were sent to Dumfries and Galloway Council as the relevant Planning Authority as well as to SNH, SEPA and HES.

Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the Application, EIA report, AI, AI2, representations, consultation responses including those from SNH, SEPA, HES and the Planning Authority into consideration in reaching their decision.

Scottish Ministers have had regard to the matters set out in Schedule 9 of the Electricity Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. Scottish Ministers shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

Scottish Ministers have given consideration to the extent to which the Company has demonstrated in the Application submitted that they have done what they reasonably can to mitigate any effect, which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites buildings or objects.

In accordance with section 36(5A) of the Electricity Act, before granting any section 36 consent Scottish Ministers are also 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’s advice has been considered as required by section 36(5A) with due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003. SEPA have no objection to the proposed Development. In their response to Scottish Ministers, they direct the Company to the Regulations and the relevant section of the SEPA website for advice on Regulatory requirements and good practice advice.

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

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.

Under paragraph 3(3) of Schedule 9 of the 1989 Act, Scottish Ministers must also avoid, so far as possible, causing injury to fisheries or to stock of fish in any waters. Scottish Ministers are satisfied that the Company has avoided so far as possible, causing injury to fisheries or to stock of fish in any waters.

Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and EIA Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representation on the proposed Development.

### **Public Inquiry (PI)**

In terms of paragraph 2 of Schedule 8 to the Electricity Act if the Planning Authority make an objection and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the Planning Authority. Following the consultation Dumfries and Galloway Council (a statutory consultee and the relevant “Planning Authority”) did not object and therefore a PI is not a statutory requirement.

Paragraph 3 of Schedule 8 provides that where objections or copies of objections have been sent to the Scottish Ministers. The Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a PI should be held with respect to the application and, if they think it appropriate to do so, they must cause a PI to be held.

Scottish Ministers have considered the two public objections received and have taken all material considerations into account, and other consultation responses into account, consider that there are no significant issues which have not been adequately considered in the EIA report, AI, AI2 and the consultation responses.

Scottish Ministers are satisfied there is sufficient information to be able to make an informed decision on the application and that it would not be appropriate to hold a PI.

### **Consultation Responses**

A summary of all consultation responses is provided below.

### **Statutory Consultees**

**Dumfries and Galloway Council (“the Planning Authority”)** raised **no objection** to the proposed Development. The Planning Authority stated that the latest Dumfries and Galloway

Wind Farm Landscape Capacity Study (DGWLCS) guidance takes the consented planning permission into account as part of the cumulative situation. The Planning Authority considers that the proposed Development now forms part of the accepted baseline of cumulative development within the DGWLCS. This carries significant weight for the Planning Authority when determining whether or not to raise an objection with Scottish Ministers. The Planning Authority considered they could not reasonably object to this proposal given that there is a secured planning permission for a development with the same physical characteristics as the proposed Development. In the Planning Authority's opinion it is a material consideration of considerable weight, that greater renewable energy would be created with the proposed Development without any additional adverse impacts. The Planning Authority raised no objection, subject to conditions being applied to any determination. The Planning Authority have confirm they are not seeking a legal obligation to form part of any consent where Scottish Ministers grant consent for the proposed Development, under section 36 of the Electricity Act. The Planning Authority had no further comments to make when consulted on the AI and AI2.

**SNH did not object** to the proposed Development, however they stated that the issues highlighted for the 2015 application remain, which include significant cumulative landscape and visual effects. SNH note that the only change is the cumulative situation with more applications coming forward in the planning system within this area. The most relevant changes being the approval of Harehill Extension, Sanquar Six, Twentysilling Hill and Glenmuckloch wind farms. Their main concerns were that the design of the scheme was contrary to the existing pattern of wind farm development in the area. SNH advise there will be cumulative landscape impacts to the Upper Dale Valley Landscape Character Type (LCT) and significant adverse landscape and visual effects upon the A76 valley and the settlements of Sanquhar and Kirkconnel.

SNH were content with the various survey methods and assessment of results in the EIA report. On the basis that mitigation measures are adhered to, in particular the need for repeat survey and assessments, the appointment of an Ecological Clerk of Works, the production of an agreed Construction and Decommissioning Environmental Method Plan (CDEMP), an Operational Management Plan (OEMP) and an agreed Habitat Management Plan (HMP). SNH's view is that the proposed Development will not have any adverse impact on protected habitat or species. The requirement for these submissions can be secured by way of a condition attached to the deemed planning permission.

**SEPA have no objection** to the proposed Development subject to the Company submitting a Habitat Management Plan, Construction Environmental Management Plan, Operation Environmental Management Plan, detailed drainage strategy (inclusive of water quality monitoring), Peat Management Plan, Forestry Waste Management Plan and Pollution Prevention Plan for their approval. The requirement for these submissions can be secured by way of a condition attached to the deemed planning permission. SEPA also require the Company to contact them in advance of any work commencing on site regarding SEPA regulations and the required construction site licence and any engineering works in and around the water environment.

**HES have no objection** to the proposed Development, and they confirmed that there are no scheduled monuments, category A listed buildings, inventory battlefields or gardens and designed landscapes within the proposed Development site. HES noted there are a number of heritage assets within HES's remit in the vicinity of the proposed Development, including the Scheduled Crichton Peel and Sanquhar Castle. HES agree with the conclusion of the EIA report that the proposed Development would give rise to impacts of national interest, which are indiscernible to those identified for the planning permission consented for the Sandy Knowe Wind Farm development (same physical dimensions as the proposed Development).

## Internal Advisors

**AM Geomorphology** were advisors for the Scottish Ministers on Peatland Hazard Landslide Risk Assessment (PHLRA). They considered that on the basis of the combined 2013 Peat Slide Risk Assessment (PSRA) and Supplementary PSRA (2018), the assessment of peat landslide risks at the application site is considered to be satisfactory.

**Scottish Forestry (formerly Forestry Commission Scotland)** did **not object** and requested that the compensatory planting be secured through condition. The requirement for compensatory planting can be secured by way of a condition attached to the deemed planning permission.

**Marine Scotland Science** did **not object** to the proposed Development. They recommended that monitoring water quality and fish populations before, during and after construction could act as a further form of mitigation whereby any changes, should they occur, could be detected and rapid remediation carried out. The requirement for monitoring can be secured by way of a condition attached to the deemed planning permission.

**Transport Scotland** did **not object** subject to conditions minimising the impact on the trunk road network covering: visibility splays; access and road network; abnormal load route trial; road network and safety and; road network and safety. The requirements can be secured by way of conditions attached to the deemed planning permission.

## Non-statutory Consultees

**Kirkconnel and Kelloholm Community Council** are **in support** of the proposed Development which increases capacity of the Sandy Knowe Wind Farm.

**Royal Burgh of Sanquhar and District Community Council** are **in support** of the proposed Development and highlighted that they remain committed to their community benefit partnership with the Company.

**British Horse Society** have **no objection** to the proposed Development and shared a copy of their guidance on access and how horses react to turbines.

**BT** did **not object**. They concluded that, the proposal should not cause interference to BT's current and presently planned radio networks.

**Crown Estates Scotland** did **not object** as they are not affected by the proposal and had no comments to make.

**Defence Infrastructure Organisation (Ministry of Defence (MOD))** did **not object**. They requested that perimeter turbines be fitted with 25 candela omni-directional red lighting or infrared lighting with optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point. The MOD requested that cardinal turbines should be fitted with combination lighting: 25 candela omni-directional red lighting and infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point. This is the principal safeguarding concern of the MOD with respect to the proposed Development of turbines relates to their potential to create a physical obstruction to air traffic movements and cause interference to Air Traffic Control and Air Defence radar installations. In the interest of air safety, they request they be informed of the height and location of the turbines and construction equipment, the latitude and longitude of

every turbine, as well as the dates of when construction begins and ends. The requirement for these safeguarding principles can be secured by way of a condition attached to the section 36 consent and deemed planning permission.

**East Ayrshire Council (Neighbouring Planning Authority)** did **not object**. They recognised that there is an existing consent for the same physical development and were content there is no need for them to provide comment on the application.

**Fisheries Management Scotland** did **not object** to the proposed Development and shared links to their guidance.

**Galloway Fisheries Trust** did **not object** and had no comments to make.

**Glasgow Prestwick Airport** did **not object** to the proposed Development, subject to the conditions being imposed on the consented development being carried over which includes a mitigation scheme being approved to mitigate the effects on the airport radar. The requirement for a radar mitigation scheme can be secured by way of a condition attached to the deemed planning permission.

**Joint Radio Company** did **not object** to the proposed Development.

**NATS Safeguarding** did **not object** subject to the conditions from the planning permission (conditions 15, 16 and 17) are attached to any future consent which includes a mitigation scheme being approved to mitigate the effects on the operation of Lowther Hill radar. The requirement for a radar mitigation scheme can be secured by way of a condition attached to the deemed planning permission.

**Nith District Salmon Fishery Board (NDSFB)** did **not object** and had no comments to make.

**Royal Society for the Protection of Birds (RSPB)** did **not object** and had no comments to make.

**Scottish Rights of Way and Access Society (Scotways)** did **not object** and had no comments to make.

**Scottish Water** did **not object** to the proposed Development. They highlighted the proposed Development falls within the River Nith headwaters and Scottish Water has boreholes in the Nith water catchment. Scottish Water consider that any impact from a pollution event would be unlikely and low, however, as a precautionary measure, mitigation in this catchment is required. The requirement for a mitigation scheme can be secured by way of a condition attached to the deemed planning permission.

**Visit Scotland** did **not object** and they recommended that the application consider the potential impact on any tourism offerings in the vicinity. Tourism has been assessed in the EIA report and no objection has been raised.

The following bodies had no comments or did not respond:

Civil Aviation Authority (CAA), John Muir Trust, Local District Salmon Fisheries Board, Mountaineering Scotland and Scottish Wildlife Trust.

## **Representations**

Scottish Ministers have considered the 211 public representations received. 208 were in support, two were objections and one was neither for nor against the development. A summary of the representations received are provided below.

Of the 208 representations in support of the proposed Development 206 were provided on a standard pro forma as letters of general support. The 2 further representations of support provided the following reasons:

- The proposed Development represents a great advantage to the community;
- Reduces the national carbon footprint;
- Positive impact of the increase in community benefit package;
- Opportunity for community ownership partnership; and
- Benefits to local business.

The two objections received raised concerns relating to:

- The proposal will prove to be a health risk to people due to increased noise pollution, vibrations and magnetic fields.

One neutral representation was received from ScottishPower Renewables (SPR), which raised technical concerns in relation to the assessment of cumulative wind farm noise at the receptor property, called Hillend, located approximately 800 metres from the nearest operational wind farm development (Hare Hill Extension Wind Farm) and approximately 1000 metres from the proposed Development. Following the submission of AI1 and AI2 in relation to the noise assessment and the proposed impacts on the property Hillend, the assessment has concluded that the noise impacts are satisfactory subject to a suitably worded deemed planning condition being attached to the consent to ensure compliance with approved noise limits (as set out in condition 43).

Scottish Ministers are satisfied that the matters pertaining to representations have been appropriately assessed and taken into account in the determination of the proposed Development.

## **Scottish Government Policy Context**

### **Climate Change and Renewable Energy Targets**

The seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority of Scottish Ministers.

The Climate Change (Scotland) Act 2009, sets out the targets for reducing greenhouse gas emissions as an interim 42% reduction target for 2020 and an 80% reduction target for 2050. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (2019 Act) received Royal Assent on 31 October 2019 and sets a target for Scotland to be carbon-neutral, meaning net-zero CO<sub>2</sub>, by 2045 at the latest. Additionally the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

### **Scottish Energy Strategy and Onshore Wind Policy Statement**

Scottish Energy Strategy (SES) and Onshore Wind Policy Statement (OWPS) were published in December 2017. SES sets out a vision for the future energy system in Scotland through to



2050 and sets out the priorities for an integrated system-wide approach that considers the use and supply of energy for heat, power and transport. The strategy provides a long-term vision to guide energy policy decisions to tackle the challenges of decarbonising heat and transport in order to meet Scotland's long-term energy and climate change targets. The OWPS reaffirms the vital role for onshore wind in meeting Scotland's energy targets. The statement sets out the Scottish Government's position for the ongoing need for more onshore wind development and capacity in locations across Scotland where it can be accommodated in appropriate locations.

The proposed Development will, by providing an anticipated 65% greater renewable electricity output than the planning permission granted by the Planning Authority, making a significantly greater contribution towards meeting greenhouse gas emissions and renewable electricity targets.

### **National Planning Framework 3 (NPF3)**

NPF3 June 2014 sets out the long term vision for the development of Scotland and is the spatial expression of the Scottish Government's Economic Strategy, that has a focus on supporting sustainable economic growth which respects the quality of the environment, place and life in Scotland and the transition to a low carbon economy. NPF3 sets out strategic outcomes aimed at supporting the vision – a successful, sustainable place, a low carbon place, a natural, resilient place and a connected place. It establishes the Scottish Government's commitment to establishing Scotland as a leading location for the development of renewable energy technology. Amongst its wide-ranging policies, NPF3 sets out the need for a strategy to reduce reliance on fossil fuels and emphasises not just the challenges in embracing a renewable and low carbon economy while protecting and sustaining environmental assets but also the wider benefits that this will bring, especially in employment creation. It sets out that onshore wind will continue to make a significant contribution to the diversification of energy supplies.

NPF3 together with Scottish Planning Policy further sets out what is expected of the planning system, including a spatial strategy for low carbon place where an 80% reduction in greenhouse gas emissions is achieved by 2050.

### **Scottish Planning Policy**

The Scottish Government supports wind energy development in appropriate locations. Scottish Planning Policy (SPP) 2014 aligns itself with NPF3 and one of its policy principles states that there will be a presumption in favour of development that contributes to sustainable development. SPP sets out that policies and decisions should be guided by certain principles giving due weight to net economic benefit; the contribution to renewable energy targets; supporting delivery of infrastructure, including energy, and; protecting natural heritage, including landscape and the wider environment. SPP also states that the planning system should support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity.

The proposed Development is located on a site that already has planning permission from the Planning Authority for a wind farm development of the same physical dimensions as the proposed Development under consideration of the Scottish Ministers. The Planning Authority set out in their response that their spatial framework presented in LDP2 as Map 8 shows the proposed wind turbines as not located within any of the identified 'Areas where wind farms will not be acceptable'.

Scottish Ministers acknowledge that the existing planning permission is a material consideration. The proposed Development would result in significant landscape and visual impacts, however, on balance, the benefits that the proposed Development will bring in terms of net economic benefit, contribution to renewable energy and climate change targets, and therefore, it is considered that the proposed Development contributes to sustainable development.

### **Local Development Plan**

The Planning Authority assessed the proposed Development against their local development plan policies at that time of the consultation, which included:

- Dumfries and Galloway Local Development Plan (adopted on 29 September 2014)
- Dumfries and Galloway Supplementary Guidance – Part 1 Wind Energy Development: Development Management Considerations (adopted 22 June 2017)
- Dumfries and Galloway Proposed Local Development Plan 2

The Dumfries and Galloway Local Development Plan 2 (LDP2) was adopted on 3 October 2019 and replaces the previous adopted 2014 LDP. Supporting the LDP2 is the Dumfries and Galloway Supplementary Guidance – Part 1 Wind Energy Development: Development Management Considerations Appendix 'C' Dumfries & Galloway Wind Farm Landscape Capacity Study (February 2020) (DGWLCS).

The Planning Authority in their consultation response give significant weight to the material consideration of the proposed LDP2 (at that time) given that the proposed Development was included within the accepted baseline of cumulative developments within the DGWLCS. These documents are formally adopted and form the current development plan to be taken into account in the consideration of the proposed Development.

The Scottish Ministers accept that the proposed Development forms part of the accepted baseline of cumulative developments within the DGWLCS, which forms part of the Supplementary Guidance to the adopted LDP2.

### **The Scottish Ministers' Considerations**

#### **Main Determining Issues**

Having considered the Application, the EIA report, A1 and A12, responses from consultees and third parties and Scottish Government policies, Scottish Ministers consider that the main determining issues are:

- environmental impacts of the proposed Development, in particular the landscape and visual impact, including cumulative effects;
- the extent to which the proposed Development accords with Dumfries and Galloway development plan and its supplementary guidance;
- material consideration of the planning permission granted by the Planning Authority on 24 November 2016 for Sandy Knowe Wind Farm (48MW) which has the same physical dimensions of the proposed Development;
- the estimated economic benefits which the proposed Development is likely to bring and;
- the extent to which the proposed Development accords with and is supported by Scottish Government policy including renewable energy benefits.

## **Assessment of the Determining Issues**

### **Landscape and Visual Impacts, including cumulative effects**

In consideration of the proposed Development, the Scottish Ministers have considered the Landscape and Visual Impact Assessment (LVIA) presented within the EIA report, comments made by consultees including the Planning Authority and SNH, and reviewed the previous decisions made for a wind farm at this location, as set out in the background section above at page 2.

The reasons for the Scottish Ministers refusing the section 36 application in February 2015 included, the unacceptable landscape and visual impacts, including cumulative impacts and, that the proposal is contrary to, and not compatible with the Dumfries and Galloway Council's Local Development Plan (2014).

The cumulative effects of the proposed Development in the landscape is a key consideration and its proximity to the nearby settlements. The proposed Development is for 24 wind turbines, which has been reduced from the previous 30 wind turbines proposal in the 2015 refusal for section 36 consent. Amendments to the scheme have increased the distance of the proposed Development's turbines to 2.6km from the nearest settlements of Kirkconnel and Kelloholm. This amendment will also in turn reduced the angle of view of the proposed Development from transport routes, including A76, which was previously a concern in the 2015 refusal for section 36 consent.

SNH maintain their concerns regarding the cumulative effects of the proposed Development. Since the 2015 refusal for section 36 consent, SNH highlight there have been other wind farm developments consented in the area, which include Harehill Extension, Sanquhar Six, Twentyshillin Hill and Glenmuckloch. SNH note that these proposals have further consolidated the pattern of wind development being located within the Southern Uplands/Southern Uplands with forestry Landscape Character Type (LCT). The proposed Development is located within the transition between the Upper Dale (Valley) LCT and Southern Uplands with forest LCT (with 15 turbines proposed in the valley and 9 turbines proposed in the more elevated uplands).

The Planning Authority in their consultation response give significant weight to the material consideration of the proposed LDP2 (at that time) and the Supplementary Planning Guidance document Part 1 Wind Energy Development; Development Management Considerations (Adopted 22 June 2017). The Dumfries and Galloway LDP 2 is now adopted and the supporting Supplementary Guidance – Part 1 Wind Energy Development: Development Management Considerations Appendix 'C' Dumfries & Galloway Wind Farm Landscape Capacity Study (February 2020) (DGWLCS) is finalised. It is acknowledged that the proposed Development is now included within the accepted baseline of cumulative developments within the DGWLCS.

In consideration of the significant landscape and visual impacts of the proposed Development, the Scottish Ministers place significant importance on the material consideration of the existing planning permission, which concludes on balance that the significant landscape and visual effects are acceptable given the wider benefits to renewable energy and the socio and economic benefits. The application for the proposed Development before the Scottish Ministers has not changed from that granted by the Planning Authority in November 2016,

other than the production of renewable energy is increased. Due to advances in technology, the candidate turbine model can generate 3.4MW; instead of the candidate 2MW wind turbine generators that were proposed in 2016.

Scottish Ministers acknowledge that the proposed Development will result in significant landscape and visual impacts, and in particular significant cumulative effects. It is acknowledged that the level of some of these impacts have been reduced since the 2015 refusal for section 36 consent, and that the development plan position has changed, and in addition the proposed Development is within the accepted baseline of cumulative developments within the landscape capacity study.

Taking into account the Scottish Government policy context; the contribution to renewable energy targets; the changes to the development plan and the proposed Development since the 2015 refusal for section 36 consent; and the local support for the proposal, on balance the Scottish Ministers consider that there is no justifiable basis for refusing section 36 consent for the proposed Development on landscape and visual cumulative grounds.

Scottish Ministers conclude that on the basis of the above assessment, the proposed Development is acceptable.

### **Economic Benefits**

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

The Company sets out in the EIA report that the proposed Development will result in a substantial investment in Dumfries and Galloway and Scotland, and is expected to generate economic impacts during the development, construction and operational phases.

The proposed Development is expected to generate up to £7.6 million net additional Gross Value Added, and the creation of 10.5 Full Time Equivalent (FTE) construction jobs during the construction process. During the operation and maintenance phase over 28 years it is estimated there will 4.2 FTE jobs created.

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

### **Scottish Government policy, renewable energy targets and carbon payback**

Scotland's renewable energy and climate change targets, energy policies and planning policies are all material considerations when weighing up this proposed Development. NPF3, SPP, the Energy Strategy, and the Onshore Wind Policy Statement make it clear that renewable energy deployment remains a priority of the Scottish Government. This is a matter which should be afforded significant weight in favour of the proposed Development.

Scottish Ministers note that this development makes a considerable contribution towards meeting greenhouse gas emission and renewable electricity targets, as well as the diversification of energy supplies.

As previously set out, SPP contains guidance in respect of the granting of development consent for wind farm development. SPP is to be read and applied as a whole. It sets out

overarching Principal Policies to be applied to all development and Subject Policies which set out guidance in respect of development management. An overarching principle of SPP is that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. This means that decisions and policies should be guided by certain principles including, among others, giving due weight to net economic benefit; supporting the delivery of infrastructure; supporting climate change mitigation and protecting natural heritage. The aims of these policies require to be considered and balanced when reaching a decision on applications for wind energy development.

SPP advises that proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms where these are relevant. SPP identifies a number of considerations to be taken into account when determining energy infrastructure developments (set out at SPP paragraph 169) including but not limited to, landscape and visual, cumulative impact, net economic impact, and contribution to the renewable energy generation targets.

Scottish Ministers are satisfied that the matters pertaining to SPP have been assessed in the application, EIA report and responses to the consultation by the Planning Authority, SEPA, SNH and other relevant bodies.

SES and OWPS sets out targets for the increase in the supply of renewable energy. The OWPS in particular reaffirms the vital role for onshore wind in meeting Scotland's energy targets. The statement sets out the Scottish Government's position for the ongoing need for more onshore wind development in locations across Scotland where it can be accommodated.

Scottish Ministers consider the proposal will make a significant positive contribution to reducing CO<sub>2</sub> emissions. The total carbon dioxide saving from the proposed 24 turbine wind farm is estimated in the EIA report to be 148,321 tonnes per year through displacement of fossil fuel mix of electricity generation or 108,473 tonnes per year over grid mix electricity generation.

It is estimated the time required for the proposed Development to generate enough carbon-free electricity to offset its own carbon footprint (known as the "CO<sub>2</sub> payback period") is approximately 0.8 to 1.8 years (fossil fuel mix) and 1.0 to 2.4 years (grid mix) respectively.

The CO<sub>2</sub> payback period serves to demonstrate that the wind farm will make a significant positive contribution to reducing CO<sub>2</sub> emissions.

The proposed Development makes a significant contribution towards meeting greenhouse gas emission and renewable electricity targets with a generating capacity of approximately 81.6MW. This is an increase of around 33.6MW from the granted planning permission.

The proposed Development as reported in the Environmental Impact Assessment report is considered to generate enough power to supply over 60,512 average households, this is around a 17,000 additional homes compared to the consented planning permission. On the basis the proposed Development were to continue to generate on the average load factor over its proposed 28 year lifespan, it is expected that 6,608 GWh would be generated. This is around 40% increase in the energy yield generated compared to the consented planning permission.

The deployment of this amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for the equivalent of 100% of Scotland's electricity demand to be met from renewable sources by the end 2020.

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

## **Conclusions**

### **Reasoned Conclusions on the Environment**

The Scottish Ministers are satisfied that the Environmental Impact Assessment Report, Additional Information, and Additional Information 2 has been produced in accordance with the applicable Regulations and that the procedures regarding publicity and consultation laid down in the those Regulations have been followed.

In accordance with paragraph 3 of Schedule 9 to the Electricity Act, the 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. The Scottish Ministers must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

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

The Scottish Ministers have considered fully and carefully the application, including the Environmental Impact Assessment Report, Additional Information, Additional Information 2, consultation responses and all other material information and, are satisfied that the environmental impacts of the Development have been assessed and have taken the environmental information into account when reaching their decision.

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

### **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.

### **The Scottish Ministers' Determination**

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

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

### **Section 36 consent and expiry of Planning Permission**

The consent hereby granted will last for a period of 28 years from the earlier of:

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

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 HES. 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: <http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=20>

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

Yours faithfully

Redacted

**William Black**  
**For and on behalf of the Scottish Ministers**  
**A member of the staff of the Scottish Government**

**Part 1 – Description of the Development**

The Development comprises a wind powered electricity generating station known as Sandy Knowe Wind Farm, located approximately 2.6 km southwest of Kirkconnel and Kelloholm in the Dumfries & Galloway Council planning area as specified in the application and accompanying Environmental Impact Assessment Report dated August 2018 and Additional Information dated October 2019 and Additional Information 2 dated March 2020.

The principal components of the wind farm and related ancillary developments of the wind farm comprise:

- 24 wind turbines with a maximum height from ground to blade tip of up to 125m;
- turbine foundations;
- crane hardstanding areas and turning circle to enable the construction of the turbines;
- access tracks in order to allow construction and maintenance of the turbines;
- watercourse crossings;
- drainage;
- underground connection taking electrical power produced by turbines to substation;
- a substation;
- a meteorological monitoring mast;
- temporary construction compounds; and
- compensatory planting.



## Part 1 – Conditions attached to section 36 consent

### 1. Notification of Date of First and Final Commissioning

- (1) 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 allow the Planning Authority and Scottish Ministers to calculate the date of expiry of the consent*

### 2. Commencement of Development

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

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

### 3. Non-assignment

- (1) This consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment, with or without conditions.
- (2) The Company shall notify the Planning Authority and Scottish Ministers in writing of the name of the assignee, principal named contact and contact details within fourteen days of the consent being assigned.

**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 written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

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

## Part 2 – Conditions attached to the deemed Planning Permission

### 5. Implementation in accordance with approved plans and requirements of the section 36 consent

Except as otherwise required by the terms of the section 36 consent and deemed planning permission, the Development shall be undertaken in accordance with the application and the accompanying Environmental Impact Assessment (EIA) Report including all Appendices, dated August 2018, Additional Information dated October 2019, Additional Information 2 dated March 2020 including all mitigation and monitoring measures stated in it, and other documentation lodged in support of the application.

**Reason:** *to ensure that the Development is carried out in accordance with the approved details.*

### 6. Ecological Clerk of Works

No Development shall commence unless and until the terms of appointment of an independent Ecological Clerk of Works (“ECoW”) by the Company have been submitted to, and approved in writing by the Planning Authority (in consultation with SNH and SEPA). The terms of appointment shall:

- (a) impose a duty to monitor compliance with the ecological and hydrological commitments and mitigations measures provided in the EIA Report and other information lodged in support of the application, the Construction and Environmental Management Plan approved under condition 9, the Habitat Management Plan approved under condition 9, any species or habitat management plans identified in the EIA Report and other plans approved under condition 30 (“the ECoW works”);
- (b) require the ECoW to report to the nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- (c) require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site;
- (d) require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- (e) Advising the Company on adequate protection of nature conservation interests on the site; and
- (f) Directing the micro-siting and placement of the turbines and infrastructure.

The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post construction restoration works.

**Reason:** *In order to define the terms of this planning permission and to ensure appropriate monitoring of the development takes place.*

### 7. Site Decommissioning, Restoration and Aftercare

- (1) The wind turbines shall be decommissioned and cease to generate electricity by no later than the date falling twenty-eight years from the Date of Final Commissioning. The total period for restoration of the Site in accordance with this condition shall not exceed 12 months from the date upon which the Development ceases to generate electricity

without the prior written approval of the Scottish Ministers in consultation with the Planning Authority.

- (2) No later than two years prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier) a written Decommissioning Plan and Method Statement (DPMS) for the decommissioning of the wind farm and restoration of the site shall be submitted in writing to the Planning Authority for its approval, based on the decommissioning commitments set out in Chapter 3 of the EIA Report and specifically providing for:
  - (a) all above ground components of the wind farm including turbines, substation, and anemometers to be deconstructed and removed from the site;
  - (b) turbine and building foundations to be excavated to 1m below ground level, soiled and reseeded; and
  - (c) access tracks, construction compounds, crane pads and other hard surfaced areas to be soiled and reseeded.
- (3) The DPMS shall incorporate an accurate scaled plan of the site, and include a specification of all land reinstatement including a traffic management plan for the decommissioning period, and a timetable for implementation. Decommissioning in accordance with the approved DPMS shall include the dismantling and removal from the site of all turbines, buildings and ancillary development. The approved DPMS shall be implemented and overseen by an Ecological Clerk of Works funded as per Condition 6 above.

**Reason:** *In order to define the terms of this planning permission, to minimise the level of visual intrusion, and to ensure the satisfactory reinstatement of the site.*

## **8. Redundant Turbines**

- (1) If any wind turbine fails to produce an electricity supply to the local grid for a continuous period of 12 months then, unless otherwise agreed in writing by the Planning Authority, that wind turbine and any associated above ground infrastructure solely required for that turbine, together with the above ground elements of the turbine foundation, shall be dismantled and removed from the area around the turbine that shall be restored in accordance with a scheme to be submitted to and approved in writing by the Planning Authority.
- (2) The scheme shall be submitted to the Planning Authority within 3 months of the expiry of the 12 month period and shall include a timetable for its implementation.

**Reason:** *In order to define the terms of this planning permission, to minimise the level of visual intrusion, and to ensure the satisfactory reinstatement of the site.*

## **9. Construction Environmental Management Plan (CEMP)**

- (1) With the exception of any enabling works agreed in writing with the planning authority, no development in respect of this section 36 consent shall take place unless a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority (in consultation with SNH, SEPA, Nith District Salmon Fisheries Board, the roads authorities, flood risk management authority and the Council's Environmental Health Officer as required).

(2) The CEMP shall integrate 'best practice' methods for the Scottish / UK windfarm industry and include the mitigation measures identified in the Environmental Statement. The CEMP shall include plans to a suitable scale showing the location of any site compound or contractor's laydown area or area where any fuel, oil, lubricant, paint or solvent is stored on site temporarily in connection with the construction of the development. The CEMP shall incorporate the following matters:-

- (a) a Traffic Management Plan (TMP);
- (b) a Site Waste Management Plan;
- (c) a Peat Management Plan (PMP);
- (d) construction and post-construction fish surveys;
- (e) a sustainable drainage system (SuDS) design concept including surface water run-off and sediment control measures;
- (f) details of foul drainage arrangements;
- (g) details of proposed temporary site compounds for storage of materials, machinery, and designated car parking;
- (h) details of pollution prevention and control measures;
- (i) a Habitat Management Plan (HMP) and details of ecological monitoring over the construction period including all necessary pre-construction surveys as required by this Habitat Management Plan;
- (j) details of any tree felling, felling waste and replacement planting;
- (k) details of on-site storage of materials, including fuel and other chemicals;
- (l) details of on-site storage and off-site disposal of excavated material;
- (m) details and timetable for phasing of construction works;
- (n) details of turning arrangements for vehicles on site;
- (o) plans for the cleaning of site entrance, site tracks and the adjacent public road, and the sheeting of all HGVs taking spoil or construction materials to / from the site to prevent spillage or deposit of any materials on the public road,
- (p) details of all internal access tracks and hardstanding areas, including full details of measures to reduce the impacts on groundwater dependent terrestrial ecosystems;
- (q) details and timetable for post-construction restoration and / or reinstatement of the working areas or as agreed with the ECoW;
- (r) details of the management of noise and vibration during construction, including that caused by construction traffic and works on site; and
- (s) a hydrological assessment of all culverts and bridges implemented as part of the development to ensure no increase to the risk of potential flood risk event capacity issues.

(3) Thereafter, the construction of the development shall be carried out in accordance with the approved CEMP (including all associated and agreed details under a - s above) unless otherwise agreed in writing with the planning authority.

**Reason:**, *To minimise the level of visual intrusion, and to minimise any adverse impacts as a result of the construction phase of the development.*

## **10. Compensatory Planting**

(1) No development in respect of this section 36 consent shall take place unless a scheme of compensatory mitigation measures including details of compensatory tree planting, felling plans, and restocking proposals has been submitted to and approved in writing by the Planning Authority, in consultation with Scottish Ministers and based on the

Forestry Management Plan within the EIA Report. This scheme shall include a timetable with regard to implementation.

- (2) Following written approval by the Planning Authority, the scheme shall be implemented in accordance with the approved details and timetable unless otherwise agreed in writing by the Planning Authority in consultation with Scottish Ministers.

**Reason:** *In the interests of visual amenity and biodiversity and to ensure compliance with the Scottish Government's Policy on the Control of Woodland Removal and the UK Forestry Standard.*

## **11. Design and operation of wind turbines**

- (1) No development in respect of this planning permission shall take place unless precise details (including where relevant the size, type, external finish / colour, power rating, sound levels and position) of the proposed turbines have been submitted to and approved in writing by the planning authority.
- (2) For the avoidance of doubt, the height of the proposed turbines shall not exceed 125 metres to tip above ground level.
- (3) The wind turbines shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.

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

## **12. Signage**

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

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

## **13. Blade rotation**

The wind turbine blades on all the turbines hereby granted section 36 consent shall rotate in the same direction.

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

## **14. Aviation Safety**

- (1) No development shall commence unless and until the Planning Authority, Ministry of Defence, Defence Geographic Centre and NATS have been provided with the following information, and evidence has been provided to the Planning Authority that this has been done:

- (a) the date of the expected commencement of each stage of construction;

- (b) the height above ground level of the tallest structure forming part of the Development;
- (c) the maximum extension height of any construction equipment; and
- (d) the position of the wind turbines and masts in latitude and longitude.

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

## **15. Archaeological works**

- (1) No development shall commence (with the exception of tree felling) unless and until a programme of archaeological works to be carried out during construction of the Development has been submitted to, and approved in writing by, the Planning Authority. (in consultation with the Council Archaeologist).
- (2) In addition, the Company shall afford access at all reasonable times to the Council Archaeologist or a nominated representative and shall allow them to observe work in progress.

**Reason:** *To enable the opportunity to identify and examine any items of archaeological interest which may be found on the site, and to allow any action required for the protection, preservation or recording of such remains.*

## **16. Micro-siting**

- (1) That the wind turbines, crane pads, tracks, substation compound, and meteorological mast locations shall not be erected in any position other than the positions shown in the EIA Report , unless agreed by the Ecological Clerk of Works (ECoW) in consultation with the Planning Monitoring Officer.
- (2) Any such variation (micro-siting) shall not exceed 100 metres in any direction from that shown in the EIA Report . Any variation of between 50 metres and 100 metres shall only be permitted following prior written approval of the Council as planning authority (in consultation with the MOD, NATS, Glasgow Prestwick Airport and where relevant SEPA and / or SNH).
- (3) No later than one month after the date of First Commissioning an updated site plan showing the final position of all wind turbines, buildings, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development shall be submitted to the Planning Authority. The plan shall also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

**Reason:** *In order to define the terms of this consent and in the interests of visual amenity.*

## **17. Radar Mitigation**

- (1) No development shall commence unless and until such time as the Planning Authority receives confirmation from Glasgow Prestwick Airport (regarding the airport radar) and NATS en Route plc (regarding the operation of Lowther Hill) that:
  - (a) a Radar Mitigation Scheme has been identified; and

- (b) the Radar Mitigation Scheme can be implemented and maintained for the lifetime of the development.

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

## **18. Radar Mitigation**

- (1) No blade shall be fitted to any turbine or turbines forming part of the development and no such turbine shall operate, save as provided for and in accordance with testing protocol, unless and until such time as the Planning Authority receives confirmation from Glasgow Prestwick Airport and NATS en Route plc that:
  - (a) all measures required by the Radar Mitigation Scheme prior to operation of any turbine have been implemented or will be implemented at an appropriate point in time; and
  - (b) the Civil Aviation Authority has evidenced its approval to the Airport Operator that the Radar Mitigation Scheme is acceptable mitigation for the development and has been satisfactorily implemented or that acceptable alternative measures have been agreed.

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

## **19. Radar Mitigation**

- (1) No turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme unless otherwise agreed by the Planning Authority.

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

## **20. Design of sub-station and ancillary development**

- (1) Development of the substation building or any associated compound shall not take place until details of the layout of the proposed substation compound and specification of the substation building (including external finishing materials), external plant / machinery and boundary treatments have been submitted to and approved in writing by the Planning Authority.
- (2) The substation compound and building/s, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

**Reason:** *In in the interests of visual amenity.*

## **21. Cabling**

- (1) All electricity and control cables between the turbines, substations and control buildings shall be laid out underground.

**Reason:** *In order to define the terms of this planning permission and in the interests of visual amenity.*

## 22. Operational Environmental Management Plan

- (1) Within 12 months of final commissioning a full site specific Operational Environmental Management Plan (OEMP) in respect of the operational phase shall be submitted to the Planning Authority. The OEMP shall be in accordance with the principles for mitigation and pollution prevention set out in the EIA Report. Thereafter, the development shall be operated in accordance with the OEMP unless otherwise agreed in writing with the Planning Authority.

**Reason:** *In order to minimise the level of visual intrusion, and to minimise any adverse impacts as a result of the operational phase of the development.*

## 23. Visibility splays

- (1) Visibility splays shall be provided and maintained on each side of the access to the A76, to the satisfaction of the Planning Authority (in consultation with Transport Scotland as the trunk roads authority). These splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the access driveway (the setback dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road, unless otherwise agreed in writing with the Planning Authority in consultation with Transport Scotland.
- (2) In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the setback dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

**Reason:** *To ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road and to ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the A76 trunk road is not diminished.*

## 24. Access road network

- (1) The gradient of the access road from the A76 shall not exceed 1 in 40 for a distance of 15 metres from the nearside edge of the trunk road carriageway, and the first 20 metres shall be surfaced in a bituminous surface and measures shall be adopted to ensure that all drainage from the site does not discharge onto the trunk road. The access road shall be maintained as such during the construction period.

**Reason:** *To ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road and to ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the A76 trunk road is not diminished. Further, to ensure that water run-off from the site does not enter the trunk road*

## 25. Road safety

- (1) Wheel washing facilities shall be provided at an appropriate point within the site adjacent to the access from the A76 so as to prevent vehicles depositing debris on the trunk road.



**Reason:** *To ensure that material from the site is not deposited on the trunk road to the detriment of road safety.*

## **26. Abnormal Local Route Trial**

- (1) No development in respect of this section 36 consent shall take place unless a trial run for the delivery of turbine components on a route extent to be agreed (but including the route through the settlement of Sanquhar) has been undertaken to the satisfaction of the Planning Authority (in consultation with Transport Scotland).
- (2) The trial run shall be undertaken in accordance with details to be agreed in writing with the Planning Authority unless the route or need for the trial run is otherwise agreed in writing by the Planning Authority in consultation with Transport Scotland.
- (3) The development shall then only commence upon satisfactory completion of the trial run, should the trial run be required.

**Reason:** *To maintain safety for both the trunk road traffic and the traffic moving to and from the development, and to ensure that the transportation of abnormal loads will not have any detrimental effect on the trunk road network.*

## **27. Road network and safety**

- (1) Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered must be undertaken by a recognised Quality Assured traffic management consultant, to be approved by the trunk road authority before delivery commences.

**Reason:** *To minimise interference with the safety and free flow of the traffic on the trunk road.*

## **28. Access requirements**

- (1) With the exception of tree felling, no development in respect of this section 36 consent shall take place unless the Company has gained approval of the final details of the proposed accesses to the public road in terms of geometry, gradient, drainage arrangements and surfacing materials Transport Scotland as the trunk roads authority. The accesses shall then be constructed as agreed.

**Reason:** *To ensure that no works commence on site until a suitable access is provided, and to ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished.*

## **29. Community Liaison Officer**

- (1) No development in respect of this section 36 consent shall take place unless details of a nominated representative for the development to act as a point of contact for local residents, together with the arrangements for notifying and approving any subsequent change in the nominated representative, have been submitted to and agreed in writing by the Planning Authority.

- (2) The nominated representative shall have responsibility for liaison with the planning authority in connection with any noise complaints made during the construction, operation and decommissioning of the wind farm.

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

### **30. Construction Method Statement**

- (1) No development in respect of this section 36 consent shall take place unless a construction method statement for the construction phase of the project has been prepared, submitted and agreed in writing with the Planning Authority. The said method statement shall include an assessment of significant noise emitting and phase for each stage of work, complying with the following operations and outline the noise mitigation measures proposed, including a programme:-
- (a) The permitted core working hours for construction work, which is audible from the boundary of any noise sensitive receptor, shall only take place between the hours of 0700 - 1900 on Monday to Friday inclusive, 0800 - 1800 on Saturdays and Sundays or local or national public holiday.
  - (b) Outwith core working hours, development at the site shall be limited to turbine erection, maintenance, emergency works, dust suppression and the testing of plant and equipment, or construction work that could potentially affect the amenity of any occupier of a noise sensitive receptor outwith the site. The receipt of any materials or equipment for the construction of the site, by track, other than turbine blades, nacelles and towers, is not allowed outwith the said hours, unless otherwise agreed by the Planning Authority having been given a minimum of two working days' notice of the occurrence of the proposed event.
  - (c) Deliveries to site (excluding abnormal loads) during construction will be limited to 08:00 - 18:00 Monday to Friday and 09:00 - 13:00 Saturday.
  - (d) At the written request of the Planning Authority, and following a complaint to the Planning Authority relating to noise emissions arising from the construction of the wind farm, the wind farm operator shall within 28 days, and at the wind farm operator's expense, employ an Independent Consultant (approved by Dumfries and Galloway Council's Environmental Health Officer) to measure the level of noise emission from the wind farm at the property to which the complaint relates.
  - (e) The wind farm operator shall provide to the Planning Authority the Independent Consultant's assessment and conclusions regarding the said noise complaint, including all calculations, audio recordings, and the raw data upon which those assessments and conclusions are based. Such information shall be provided within 3 months of the date of the written request of Planning Authority unless otherwise extended in writing by the Council.
  - (f) Fixed and mobile plant used within the site during the construction period shall not incorporate bleeping type warning devices that are audible outwith the site boundary unless required for health and safety reasons.
  - (g) The Contractors shall be required to select the quietest type of suitable plant available for all site operations. The work programme on site will also be phased to reduce the combined impacts arising from several noisy operations.
  - (h) Where practicable, noise from fixed plant and equipment will be contained within suitable acoustic enclosures or behind acoustic screens.
  - (i) The Site Contractors shall publicise the programme for the commencement and duration of operations, provide details of the project programme, and provide named contacts for daytime and out of hours.

- (j) The Site Contractors shall conduct all site operations in accordance with accredited documented procedures. This shall include a complaint investigation procedure.
- (k) All Sub-Contractors appointed by the Main Contractor shall be formally required, through contract, to comply with all environmental noise conditions.
- (l) Any plant and equipment required for operation at night (23:00 - 07:00) shall be mains electric powered where practicable. Any night-time lighting rigs, pumps or other equipment shall be powered using mains electricity or suitably silenced and shielded to ensure compliance with WHO night-time noise criteria, assuming open windows.
- (m) A programme of noise monitoring during construction shall be conducted in accordance with a protocol agreed with Council as planning authority.

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

### **31. Road safety**

- (1) Any proposed access gates at the access to the site from the public road shall be located not less than 10 metres behind the public road carriageway and shall open into the site only.

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

### **32. Aviation Lighting**

- (1) No wind turbines shall be erected unless and until a scheme for aviation lighting for the Development has been submitted to and approved in writing by the Planning Authority in consultation with the MoD.
- (2) The turbines shall not be brought into operation unless they have been erected in line with the approved lighting scheme and the requirements of lighting scheme shall thereafter remain operational as such throughout the lifetime of the development.

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

### **33. Electro-fishing and water quality survey**

- (1) No works to the development in relation to the erection of wind turbines shall commence until a baseline electro-fishing and water quality survey has been carried out at such locations as are agreed in writing with the Planning Authority (in consultation with SNH) to determine the presence of any migratory fish and the water quality of watercourses.
- (2) Electro fishing check surveys shall be undertaken at those same locations throughout the construction and operation stages, at intervals to be agreed in writing by the Planning Authority (in consultation with SNH). The results of the surveys shall be submitted to the Planning Authority.
- (3) Should migratory fish or water quality be likely to be adversely affected by the proposed works, measures to avoid those adverse impacts shall be submitted for the written approval of the Planning Authority (in consultation with SNH and the Nith District Salmon Fisheries Board). Thereafter, those measures shall be implemented within a timescale to be approved in writing by the Planning Authority.

**Reason:** *To safeguard and maintain the fish populations of local watercourses.*

### **34. Fencing**

- (1) No development in respect of this permission shall take place unless robust fencing has been erected around the areas agreed in writing with, and to a design approved by, the Planning Authority. This will be carried out under archaeological supervision.
- (2) No works shall take place within the areas enclosed by the fencing unless approved in writing by the Planning Authority. The fence will remain in place until all development is completed to the satisfaction of the Planning Authority.

**Reason:** *To protect and record archaeological features.*

### **35. Ancillary works**

- (1) No development in respect of this section 36 consent shall take place unless detailed plans identifying all off-site accommodation works (to include verge strengthening / carriageway widening and associated works, all supported by swept path analysis) have been submitted to and approved in writing by the Planning Authority (in consultation with the Roads Authority and Transport Scotland).
- (2) Thereafter, all necessary works identified in approved relevant detailed plans shall be completed prior to the commencement of any deliveries to the application site.

**Reason:** *In order to ensure that all off-site accommodation works are identified and considered fit for purpose, in the interests of road safety, prior to the commencement of any works on site.*

### **36. Water Quality Monitoring**

- (1) No development in respect of this section 36 consent shall take place unless the details of a water quality monitoring programme for the constructional stage of the development have been submitted to and agreed in writing by the Planning Authority (in consultation with SEPA). Thereafter, the developer shall undertake to follow the agreed water quality monitoring programme for the lifetime of the development.

**Reason:** *In order to ensure adequate monitoring of watercourse and groundwater quality.*

### **37. Financial Guarantee**

- (1) No development in respect of this section 36 consent shall take place unless the developer has delivered a bond or other form of financial guarantee in terms acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations contained in Condition 7 to the Planning Authority. The financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations.
- (2) The value of the financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations contained in Condition 7. The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no less

than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.

**Reason:** *In order to secure the proper restoration of the site in the event of the developer being unable to do so, in the interests of visual amenity.*

### **38. Planning Monitoring Officer**

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

**Reason:** *To enable the development to be suitably monitored to ensure compliance with the planning permission and the conditions attached to it.*

### **39. Roads monitoring**

Prior to the commencement of development, save for site preparation works, a roads survey of the delivery route on the C125N shall be undertaken in agreement with the Roads Authority to establish the condition of the Road. Within 6 months of the completion of development a further roads survey shall be undertaken in agreement with the Roads Authority to establish the condition of the C125N.

**Reason:** *To inform the general power in section 96 of the Roads (Scotland) Act 1984 allowing roads authorities to recover certain extraordinary maintenance costs from an operator of excessively heavy or other extraordinary vehicles or traffic*

### **40. Television reception**

Prior to the First Commissioning Date a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of the turbines shall be submitted to and approved in writing by the Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at any dwelling, commercial premises or other building, which exists or had planning permission at the date of this permission, where such complaint is notified to the Company by the Relevant Planning Authority within 12 months of the Final Commissioning Date. Where impairment is determined by the qualified television engineer to be attributable to the wind farm, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Relevant Planning Authority.

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

#### **41. Site Inspection Plan**

- (1) Prior to the Date of Final Commissioning, the Company must submit a draft Site Inspection Strategy (SIS), for the written approval of the Planning Authority. This shall set out details for the provision of site inspection and accompanying Site Inspection Reports (SIR) to be carried out at 25 years of operation from the Date of Final Commissioning. At least one month in advance of submitting the SIR, the scope of content shall be agreed with the Planning Authority. The SIR shall include, but not be limited to:
  - (a) Requirements to demonstrate that the infrastructure of the Development is still fit for purpose and operating in accordance with condition 11 Design and operation of wind turbines and condition 43 Noise; and
  - (b) An engineering report which details the condition of tracks, turbine foundations and the wind turbine generators and sets out the requirements and the programme for the implementation for any remedial measures which may be required.
- (2) Thereafter the SIS and SIR shall be implemented in full unless otherwise agreed in advance in writing by the Planning Authority.

**Reason:** *To ensure the condition of the infrastructure associated with the Development is compliant with the EIA report, condition 11 and condition 43 noise and to ensure the Development is monitored at 25 years of operation.*

#### **42. Scottish Water**

No development shall commence until and unless a report detailing the protection and mitigation measures to be taken within a Drinking Water Protected Areas (DWPA) shall be submitted to the Planning Authority for approval in consultation with Scottish Water. The approved mitigations measures shall be implemented in accordance with the approved report.

**Reason:** *In order to ensure adequate protection of DWPA and minimise the impact from any pollution event that may occur.*

#### **43. Noise**

- 1) The rating level of noise immissions from the combined effects of the wind turbines of the Sandy Knowe Wind Farm (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:
  - A) Prior to the Date of First Commissioning, the Company shall submit 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.

- B) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the Company shall, at its expense, employ an independent consultant approved, as per the list referenced at part A of this condition, by the Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property (or a suitable alternative location agreed in writing with the Planning Authority) in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Planning Authority made under this paragraph (B), the Company shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Planning Authority in the format set out in Guidance Note 1(e).
- C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location 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 (if required, the site specific noise limits shall be adjusted to account for the cumulative wind farm noise, at the date of this consent, using Method 3 as outlined in the ITP energised report titled 'Sandy Knowe Wind Farm Section 36 Application Revised Noise Assessment' dated 17/03/2020). The submission of the proposed noise limits to the Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant and details of any adjustments undertaken to account for cumulative noise. The rating level of noise immissions resulting from the combined effects of the wind turbines of Sandy Knowe Wind Farm 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.
- D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the Company shall submit to the Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Where the proposed measurement location is close to the wind turbines, rather than at the complainant's property (to improve the signal to noise ratio), then the Company's submission shall include a method to calculate the noise level from the wind turbines at the complainant's property based on the noise levels measured at the agreed location (the alternative method). Details of the alternative method together with any associated guidance notes deemed necessary, shall be submitted to and agreed in writing by the Planning Authority prior to the commencement of any measurements. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the Planning Authority pursuant to paragraph (C) of this condition

shall be undertaken at the measurement location approved in writing by the Planning Authority.

- E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the Company shall submit to the Planning Authority for written approval a proposed assessment protocol setting out the following:
- i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
  - ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the Planning Authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the Planning Authority and the attached Guidance Notes.

- F) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Planning Authority made under paragraph (B) of this condition unless the time limit is extended in writing by the Planning Authority. 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 immissions.
- G) Where a further assessment of the rating level of noise immissions from the Development is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Planning Authority.
- H) The Company shall continuously log wind speed and direction at the permanent meteorological mast erected in accordance with this consent and shall continuously log power production, nacelle wind speed, nacelle wind direction and nacelle orientation at each wind turbine, all in accordance with Guidance Note 1(d). The data from each turbine and the permanent meteorological mast 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) of the Guidance Notes to the Planning Authority on its request within 14 days of receipt in writing of such a request.



**Note:** For the purposes of this condition a “dwelling” is a building within the use of Class 9 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.

**Table 1 - Between 07:00 and 23:00 - Noise level dB LA90, 10-minute**

Location (easting, northing grid coordinates)	Wind directions at which limit applies (degrees)	Standardised wind speed at 10 m above ground level, m/s									
		4	5	6	7	8	9	10	11	12	
		Sandy Knowe-specific noise limit, dBLA90,10min									
High Cairn (268751, 612361)	250 - <120	39.6	39.3	38.8	37.9	37.5	37.3	37.2	37.2	37.1	
	120 - <250	39.7	39.5	39.1	38.5	38.2	38.0	38.0	38.0	37.9	
Polneul (270095, 612388)	270 - <90	39.7	39.3	38.8	37.7	37.2	36.9	36.9	36.8	36.8	
	90 - <270	39.8	39.5	39.1	38.4	38.0	37.7	37.7	37.7	37.6	
Nether Glenmuckloch (270334, 613240)	280 - <100	39.6	38.8	37.9	35.1	33.5	32.3	32.0	32.1	32.0	
	100 - <280	39.6	39.0	38.2	36.3	35.2	34.4	34.3	34.4	34.3	
Hillend (268205, 608917)	340 - <160	32.6	35.9	39.2	41.1	41.8	40.4	43.8	46.3	48.2	
	160 - <200	32.6	35.9	39.2	41.1	41.8	40.4	42.1	45.4	47.7	
	230 - <340	32.6	35.9	39.2	41.1	41.8	40.4	41.9	45.3	47.7	

**Table 2 - Between 23:00 and 07:00 - Noise level dB LA90, 10-minute**

Location (easting, northing grid coordinates)	Wind directions at which limit applies (degrees)	Standardised wind speed at 10 m above ground level, m/s									
		4	5	6	7	8	9	10	11	12	
		Sandy Knowe-specific noise limit, dBLA90,10min									
High Cairn (268751, 612361)	250 - <120	42.8	42.7	42.4	42.1	41.9	41.8	41.8	41.8	41.8	
	120 - <250	42.8	42.7	42.6	42.3	42.2	42.1	42.1	42.1	42.1	
Polneul (270095, 612388)	270 - <90	42.9	42.7	42.4	42.0	41.8	41.7	41.7	41.7	41.7	
	90 - <270	42.9	42.8	42.6	42.3	42.1	42.0	42.0	42.0	42.0	
Nether Glenmuckloch (270334, 613240)	280 - <100	42.8	42.5	42.1	41.2	40.9	40.7	41.4	41.3	40.6	
	100 - <280	42.8	42.5	42.2	41.5	41.2	41.0	41.4	41.3	41.0	
Hillend (268205, 608917)	340 - <160	32.6	35.9	39.2	41.1	41.8	40.4	40.9	44.1	46.7	
	160 - <200	32.6	35.9	39.2	41.1	41.8	40.4	42.7	42.5	45.9	
	230 - <340	32.6	35.9	39.2	41.1	41.8	40.4	42.5	42.4	45.9	

**Note to Tables 1 & 2:** The geographical coordinates references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those measured at hub height, calculated in accordance with the method given in the Guidance Notes. The wind direction refers to the compass point angle which the wind is coming from (i.e. 180° = southerly).

**Reason:** *To safeguard the noise amenity of local residents in accordance with ETSU- R 97.*

### **Guidance Notes for Noise Condition**

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farms” (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

#### **Note 1**

- (a) Values of the  $L_{A90,10\text{-minute}}$  noise statistic should be measured at the complainant’s property (or an approved alternative representative location as detailed in Note 1(b)), 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 before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 “Electroacoustics – sound calibrators” Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.
- (b) The microphone shall 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 shall 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  $L_{A90,10\text{-minute}}$  measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second (m/s) and arithmetic mean wind direction in metres from north in each successive 10-minutes period at the permanent meteorological mast erected in accordance with the planning permission on the site. Each 10 minute arithmetic average mean wind speed data as measured on the mast at turbine 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 Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). The Company shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle and arithmetic mean power generated during each successive 10-minutes period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

- (e) Data provided to the Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of 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 independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The Company shall submit details of the proposed location of the data logging rain gauge to the Planning Authority prior to the commencement of measurements.

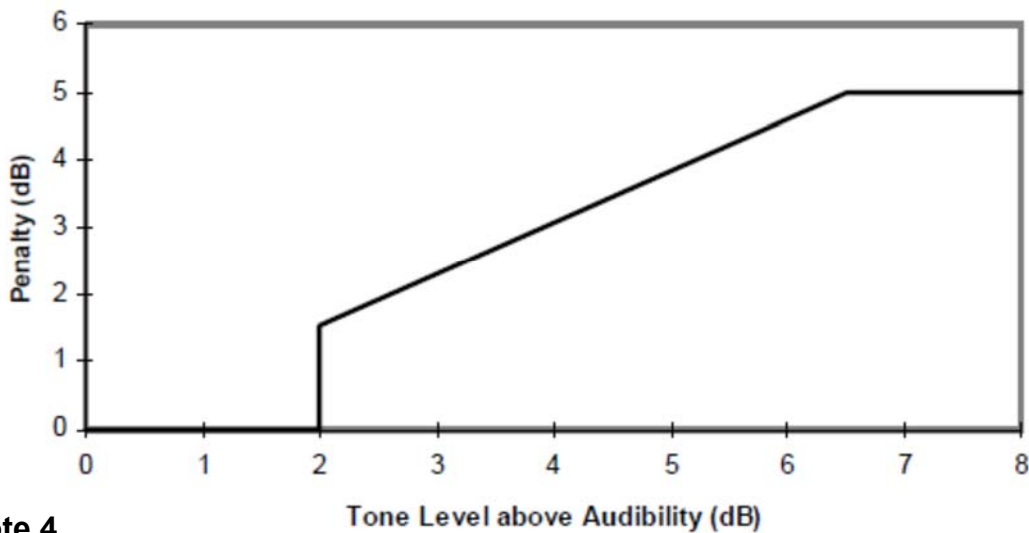
## **Note 2**

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the  $L_{A90,10\text{-minute}}$  noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and 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) shall be fitted to the data points to define the wind farm noise level at each integer speed.

## **Note 3**

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $L_{A90,10\text{-minute}}$  data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.

- (c) For each of the 2-minute samples the tone level above 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 substituted.
- (e) A least squares “best fit” linear regression 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 fitted to values within  $\pm 0.5\text{m/s}$  of 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 Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



**Note 4**

- (a) If a tonal penalty is to be applied in accordance with 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 Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) 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 Note 2.
- (c) If the rating level 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 (C) of the noise condition then no further action is necessary. 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 (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The Company shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise ( $L_3$ ) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- ii. The wind farm noise ( $L_1$ ) at this speed shall then be calculated as follows where  $L_2$  is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise  $L_1$  at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) 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 (C) 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 (C) of the noise condition then the development fails to comply with the conditions.

## Definitions

In this consent and deemed planning permission:-

**“Commencement of the Development”** means the date on which Development shall be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997 (as amended).

**“the Company”** means Sandy Knowe Wind Farm Ltd, a company incorporated under the Companies Acts with company number 06850950, having a registered office at Seebeck House 1 Seebeck Place, Knowlhill, Milton Keynes, Buckinghamshire, MK5 8FR or such other person who from time to time may lawfully have the benefit of this consent.

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

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

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

**“HES”** means Historic Environment Scotland.

**“Planning Authority”** means Dumfries and Galloway Council.

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

**“SNH”** means Scottish Natural Heritage.

**“Site”** means the area of land outlined in red on Figure 1.2 site layout plan of the Environmental Impact Assessment report and Annex 3 of this decision letter.

**“EIA Report”** means Environmental Impact Assessment Report dated August 2018, Additional Information dated October 2019 and Additional Information 2 dated March 2020.

