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**26 June 2020**

Dear Mr Reid

**CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF HIGH CONSTELLATION WIND FARM, LOCATED 4 KILOMETRES SOUTHEAST OF CLACHAN, WITHIN THE PLANNING AUTHORITY AREA OF ARGYLL AND BUTE COUNCIL.**

### **Application**

I refer to the application made on 04 June 2019 under section 36 of the Electricity Act 1989 (“the Act”) made by High Constellation Windfarm Ltd, a company incorporated under the Companies Act with company number 11800500 and having its registered office at 10 West Street, Alderley Edge, Cheshire, SK9 7EG (“the Company”), for the construction and operation of High Constellation Wind Farm, a wind powered electricity generating station comprising of 10 wind turbines with a ground to blade tip height of up to 149.9 metres and a battery storage facility (the “proposed Development”) with a generation capacity exceeding 50 megawatts, approximately 4 kilometres southeast of Clachan within the planning authority area of Argyll & Bute Council (“the Planning Authority”).

**This letter contains the Scottish Ministers’ decision to grant section 36 consent for the development as more particularly described at Annex 1.**

### **Planning Permission**

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 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.**

### **Proposed Development and Site**

The proposed Development is sited in Argyll and Bute on the Kintyre Peninsula approximately 4 kilometres southeast of Clachan, 10 Kilometres north of Carradale and 18 kilometres south of Tarbert. The site of the proposed Development covers approximately 1,317 hectares and consists of extensive areas of rough upland landscape, the predominant land use being for commercial forestry.

No public roads are located within the site although a number of existing forest roads, including the access track for the operational Cour Wind Farm, are located within the site. The Kintyre Way, a long distance path (161 kilometres) which takes a winding route down the length of the Kintyre peninsula, runs along and crosses short sections of access track in the northern section of the site.

The nearest settlement is Clachan, 4 kilometres to the northwest. There are no residential properties within the site and while there are a number of dispersed properties surrounding the site, predominantly to the east along the B842, none are within 1.5 kilometres of a turbine location. The boundary of the proposed Development is adjacent to the Kintyre Goose Roosts Special Protected Area ("SPA") classified for its nonbreeding Greenland white-fronted goose population.

The proposed Development comprises of 10 wind turbines with a ground to blade tip height not exceeding 149.9 metres, with a rotor diameter up to 136 metres and a battery storage facility. The battery storage facility will comprise of up to 30 storage units of 6 metres x 2.45 metres x 2.6 meters (which equates to the size of a standard lorry container). It is estimated that, based on current technology, the battery storage facilities will be capable of generating between 3MWh – 15MWh.

Other key elements of the proposed Development include: two onsite borrow pits; foundations and crane hardstanding areas at each turbine base; a permanent anemometry mast; a substation, control building and welfare kiosk; formation of substation/ control building compound, onsite underground cabling; external electrical infrastructure and vehicle parking; two temporary construction compounds; up to 4.7 kilometres of new access track; upgrading of 4.4 kilometres existing forestry track; and, upgrading of approximately 4 kilometres of existing access track.

### **Consultation, EIA Regulations and other Environmental Considerations**

Under paragraph 2(1) of Schedule 8 to the Act, the relevant planning authority is required to be notified in respect of a section 36 consent application. Argyll and Bute Council were duly notified. 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") in support of the Application describing the proposed Development and giving an analysis of its environmental effects. In accordance with requirements of the EIA Regulations and the requirements of the Electricity (Applications for Consent) Regulations 1990 ("Consents Regulations"), the EIA report and all associated documentation was made available for public inspection. Notices were published in

the Edinburgh Gazette, national and local press and on the Company's application website informing the public of the application and, if they wished to do so, how representations to the Scottish Ministers could be made

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, 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 application 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 Argyll & Bute Council as the relevant Planning Authority as well as to SNH, SEPA and HES.

Scottish Ministers have had regard to the matters set out in Schedule 9 of the Electricity Act 1989 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 Act, before granting any section 36 consent Scottish Ministers are also required to:

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

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 SEPA direct the Company to the Regulations section of the SEPA website for advice on regulatory requirements and good practice advice.

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

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 fish in any waters thereby meeting the requirements of paragraph.

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.

### **Conservation of Habitats and Species Regulations**

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

The Kintyre Goose Roosts SPA lies adjacent to the site boundary of the proposed Development. SNH advised of the connectivity between the proposed Development and the Kintyre Goose Roosts SPA in relation to the qualifying species, non-breeding Greenland white-fronted geese. Consequently, Scottish Ministers are required to consider the effect of the proposed Development on the Kintyre Goose Roosts SPA by carrying out a Habitats Regulations Appraisal (“HRA”). Scottish Ministers can confirm that a HRA has been undertaken. The environmental information to inform the appraisal was presented in the EIA report which accompanied the Application. The HRA has therefore been produced using information already advertised in accordance with the EIA regulations.

The conclusion of the Scottish Ministers, following advice from SNH, is that the proposed Development will not adversely affect the integrity of the Kintyre Goose Roosts SPA.

### **Public Inquiry**

In terms of paragraph 2 of Schedule 8 to the Electricity Act 1989 if the Planning Authority make an objection to the Application 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 relevant planning authority. Following the consultation exercise the Planning Authority did not object, therefore, a public inquiry is not a statutory requirement.

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

Scottish Ministers have considered the objections raised by West Kintyre Community Council and East Kintyre Community Council as well as the 22 public objections received and taking all material considerations and other consultation responses into account, consider that there are no significant issues which have not been adequately considered in the EIA report 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 public inquiry.

### **Summary of the Consultation Responses**

**Argyll and Bute Council (“the Planning Authority”)** does not object to the proposed Development. In their consultation response, the Planning Authority advised that the proposed Development is consistent with the Argyll and Bute Local Development Plan 2015 and its associated policies.

The Planning Authority made a number of recommendations for mitigation, pre-determination matters and conditions to be considered and imposed to any planning permission granted by Scottish Ministers.

The Planning Authority asked that Scottish Ministers take account of the following matters, raised in their response to the consultation on the proposed Development, in their consideration of the proposed Development:

- Consideration of the concerns raised by HES in their consultation response in respect of the impact of the proposed Development on: An Dunan, dun; Cour House and Dun Skeig;
- Consideration of SNH’s response regarding further mitigation to reduce the height of the wind turbines to make them more compatible with Cour wind farm;
- Consideration of the relocation of turbine number 8 into a more shallow area of peat; and
- Consideration of the mitigation measures suggested by the Council’s Consultant Landscape Architect to relocate and/or reduce the height of turbines (in particular T9 and T10) with the aim of mitigating significant adverse effects, especially on close views in the Cour area.

Scottish Ministers have given detailed consideration to the recommendations made by the Planning Authority in this decision letter under the heading “Assessment of Determining Issues”.

The Planning authority also recommended a number of conditions that had been requested by consultees in response to the consultation on the proposed Development.

Scottish Ministers have considered the recommendations made by the Planning Authority and have imposed appropriately worded conditions (see Annex 2 for all conditions) which satisfy the recommendations made by the Planning Authority.

**SEPA** does not object to the proposed Development subject to appropriately worded conditions relating to:

- a Peat Management Plan;
- a Wind Farm Forest Plan;
- a Habitat Management Plan;
- Watercourse Crossings;
- Buffers around Water Bodies;
- Micrositing;
- a Decommissioning and Restoration Plan; and,
- a Construction and Environment Plan which will include measures to mitigate or reduce effects on Groundwater Dependant Terrestrial Ecosystems;

SEPA also require there to be a finalised design of the substation and battery storage which will be part of the proposed Development. SEPA provided detailed advice in relation to the Habitat Management Plan and regulatory requirements and good practice.

Scottish Ministers have imposed appropriately worded conditions (see Annex 2) to address the matters raised by SEPA.

**SNH** does not object to the proposed Development. They advised that although it will result in significant adverse landscape and visual impacts these will be relatively limited.

SNH advised that they agreed with the assessment of ecological impacts within the EIA report and recommended that the mitigation measures proposed therein be incorporated into any consent granted by Scottish Ministers.

SNH also provided further advice regarding protected species in a confidential annex to its response. SNH welcomed the approach outlined within the EIA report regarding habitat management, in particular the restoration of blanket bog and heath habitats. SNH are also in support of the mitigation measures and construction principles described in Section 6 ‘Construction Issues and Mitigation Measures’ of Technical Appendix 9.3: Peat Landslide and Hazard Risk Assessment in the EIA report.

SNH recommended there be a condition for a Habitat Management Plan and that said Plan gives full and appropriate consideration to Golden Eagles, the Kintyre Goose Roosts Special Protected Area, the Loch Garasdale component of the Kintyre Goose

Lochs Site of Specific Scientific Interest and to the restoration of blanket bog and heath habitats. SNH also recommended that habitat restoration work referred to in the EIA report should also be appropriately incorporated in the conditioned Habitat Management Plan.

SNH are of the opinion that that the proposed Development will not adversely affect the integrity of the Kintyre Goose Roosts Special Protected Area and advised that Scottish Ministers are required to complete a Habitats Regulations Appraisal in respect of the effect the proposed Development will have on it.

Scottish Ministers have given consideration to the recommendations made by SNH and have imposed appropriately worded conditions (see Annex 2) to address these recommendations.

**HES** does not object to the proposed Development. They advised that although the proposed Development will have an impact on the following heritage assets, it would not be of such a magnitude to cause them to object:

- Cour House Saddell (Category A Listed Building, LB18360);
- An Dunan, dun 70m SW of Minen (Scheduled Monument, Index no.3184); and
- Dun Skeig, duns and fort (Scheduled Monument Index no. 2491).

Scottish Ministers have taken account of HES response, alongside the Planning Authority's request to explore mitigation measures. Scottish Ministers agree with HES conclusions.

HES raised concern that the cumulative effect of Ronachan and Stewartfield wind farms were not included in the assessments carried out for the EIA report. Scottish Ministers, having consulted with the Planning Authority regarding the status of Ronachan and Stewartfield wind farms at the time the application was submitted, are satisfied that both proposals have been addressed appropriately within the EIA report.

#### Internal Scottish Government advisors

**Marine Scotland** does not object to the proposed Development subject to conditions in respect of fish monitoring and water quality monitoring.

Scottish Ministers have imposed an appropriately worded condition (see Annex 2) which gives effect to Marine Scotland's recommendation.

**Transport Scotland** does not object to the proposed Development subject to a condition for a Construction Traffic Management Plan and additional conditions covering abnormal loads on the trunk road network, appropriate traffic control and management and that there be appropriate wheel cleaning facilities within the site of the proposed Development

Scottish Ministers have imposed appropriately worded conditions (see Annex 2) to address Transport Scotland's requirements.

**Scottish Forestry** raised a number of initial concerns regarding the proposed Development. Following further engagement with the Company, Scottish Forestry

confirmed they are content that their concerns have been or will be addressed through appropriately worded conditions. Scottish Forestry requested that Scottish Ministers include conditions to secure compensatory planting; a long term forestry plan; a felling and restocking plan; and, an operational plan to be included as part of the Construction Environmental Management Plan and the Habitat Management Plan.

Scottish Ministers have imposed appropriately worded conditions (see Annex 2) to address Scottish Forestry's requirements.

#### Advisors to Scottish Government

**Ironside Farrar** recommended minor revisions to the Peat Landslide Hazard Risk Assessment in order to ensure the assessment is sufficiently robust. Following further engagement with the Company and the provision of clarifications, Ironside Farrar are content with the assessment and had no further comments to make.

#### Other Consultees

**Defence Infrastructure Organisation** does not object to the proposed Development. Defence Infrastructure Organisation request that the development be fitted with MOD accredited aviation safety lighting. It requested that they be advised of the following prior to commencement of construction:

- the date construction starts and ends;
- the maximum height of construction equipment; and
- the latitude and longitude of every turbine.

**Highland and Islands Airport** does not object to the proposed Development. Highlands and Islands Airport initially requested that a steady red omnidirectional aviation warning light be fitted at the hub height of the turbines that mark the outer extremities of the site. Following further engagement with the Company, Highlands and Island Airport confirmed that lighting is no longer required.

**North Ayrshire Council**, a neighbouring planning authority, does not object to the proposed Development. North Ayrshire Council considered that the proposed Development has the potential to have significant adverse impacts on the qualities of the North Arran National Scenic Area (NSA) and recommends that full consideration should be given to the significance of these impacts, with consideration of the mitigation suggested by both the Planning Authority and SNH to potentially lessen these impacts to an acceptable level. It was also recommended that further information regarding the dimensions and appearance of the compound containing battery storage in order to consider any potential impacts on the North Arran NSA.

Scottish Ministers have given further consideration to the recommendations made by North Ayrshire Council in this letter under the heading "*Assessment of the Determining Issues*".

**RSPB Scotland** does not object to the proposed Development. RSPB Scotland raised concerns that its potential impacts may have been underestimated. RSPB Scotland welcomed the proposed Habitat Management Plan and requested that this be included as a condition to any consent granted. RSPB Scotland recommended conditions for

the appointment of an Ecological Clerk of Works and for post construction habitats and bird monitoring.

Scottish Ministers have imposed appropriately worded conditions (see Annex 2) to address RSPB Scotland's recommendations.

**West Kintyre Community Council** concurred with the objections made by residents of West Kintyre regarding the landscape, visual and cumulative impact of the proposed Development. Concerns relating to effects on the local tourism economy and local traffic flow during construction were also raised.

**East Kintyre Community Council** objected to the proposed Development because it will have an impact on the visual amenities within East Kintyre and on tourism within the area. East Kintyre Community Council also raised concerns regarding Blue Energy's implementation of Scottish Government Good Practice on Community Benefits.

Scottish Ministers are satisfied that the landscape and visual impacts of the proposed Development are acceptable in the balance of the provision of renewable energy in a location at which there currently is an operational wind farm. Scottish Ministers' consideration of the landscape and visual concerns, local tourism economy and local traffic flow concerns are included under the section titled "Assessment of the Determining Issues" of this decision letter.

Full details of the consultation responses are available on the Energy Consents website at [www.energyconsents.scot](http://www.energyconsents.scot)

Scottish Ministers' consideration of the landscape and visual concerns, local tourism economy and local traffic flow concerns raised by consultees has been undertaken under "Assessment of the Determining Issues" of this decision letter.

**British Horse Society, British Telecom, the Crown Estate Glasgow Prestwick Airport, the Joint Radio Company, NATS Safeguarding, Scottish Rights of Way and Access Society, Scottish Water and Visit Scotland** do not object to the proposed Development.

**Argyll Fisheries Trust, Civil Aviation Authority, the John Muir Trust, Mountaineering Scotland, Scottish Wildlife Trust, Scottish Wild Land Group Tarbert and Skipness Community Council** did not respond to the consultation.

### **Summary of Public Representations**

Scottish Ministers received 37 representations from members of the public in support of the proposed Development and 22 representations from members of the public objecting to the Application.

Representation in support of the proposed Development state the following:

- the proposed Development will utilise existing infrastructure (e.g. roads built for the neighbouring Cour Wind Farm) thereby reducing construction requirements;
- community benefits would outweigh the potential visual impacts and adverse impact on the environment;
- positive contribution to achieving renewable energy targets; and
- the effective use of grid by including battery storage within the proposed Development.

Reasons for objecting included the following:

- the scale and height of the proposed Development;
- the cumulative impact of the proposed Development alongside the existing wind farms in the area would have an adverse impact in terms of landscape and visual which will result in a detrimental impact on tourism and the local economy;
- adverse ornithological impacts;
- adverse impacts on habitats and wildlife;
- adverse impacts on listed buildings and scheduled monuments in the area;
- adverse impacts on residential amenity especially regarding shadow flicker and noise pollution;
- potential adverse effects on private water supplies;
- the proposed Development will generate under 50MW, and should therefore be determined by Argyll & Bute Council; and,
- the community benefit would be inadequate to counter balance the negative impacts on the village.

Scottish Ministers note the concern raised in representations from members of the public that the generating capacity of the proposed Development will not exceed 50MW and should therefore be determined by Argyll & Bute Council and not by the Scottish Ministers. As detailed within the application, in addition to the wind turbines forming the proposed Development, a battery storage element is also proposed. In combination, this brings the total generating capacity of the proposed Development to approximately 55.5MW.

## **The Policy Context**

### **Climate Change and Renewable 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, passed by the Scottish Parliament in 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<sup>2</sup>, by 2045 at the latest. Additionally the Act set out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

The Scottish Government's 2020 Route map for Renewable Energy in Scotland published in June 2011 and updated in September 2015 confirms that the Scottish Government's target for renewable electricity generation is for renewables to generate at least the equivalent of 100% of gross annual consumption by 2020.

The Scottish Government's ambitions for renewables and the delivery of clean electricity in Scotland go beyond the current 2020 target. The Scottish Government has set a 2030 decarbonisation target, to achieve a carbon intensity of below 50 gCO<sub>2</sub>/kWh of electricity generation in Scotland.

Published Energy Trends data showed that in 2019 30.5 terrawatt hours ("TWh") of electricity was generated in Scotland. This is a 15.3% increase to that generated in 2018 and is the equivalent of powering all households in Scotland for over three years.

The renewable electricity generated has meant that, in 2019, significant progress was made towards Scotland's renewable electricity target of 100% by 2020. In 2019 an estimated 90.0% of gross electricity consumption comes from renewable sources. This was up from 76.2% in 2018.

Data as at September 2019 shows that Scotland had 11.7 gigawatts ("GW") of installed renewable electricity generation capacity, with an additional 12.9 GW of capacity either under construction or consented, the majority of which are wind generation projects.

### **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.

### **Scotland's Third National Planning Framework (NPF3)**

NPF3 is the spatial expression of the Scottish Government's economic strategy. It brings together plans and strategies across sectors to provide a coherent vision of how Scotland should evolve over the next 20 to 30 years. It sets out the Scottish Government's commitment to establishing Scotland as a leading location for the development of renewable energy technology.

NPF3 sets out the strategic spatial policy context for decisions and actions by Scottish Government and its agencies, and all planning authorities are required to reflect this policy in their strategic and local development plans. 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 also sets out that onshore wind will continue to make a significant contribution to diversification of energy supplies. In Scotland, there has been significant progress towards low carbon objectives whilst we have continued to protect our special places from significant adverse impacts.

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.

The Scottish Ministers are satisfied that the proposed Development makes a considerable and valuable contribution towards meeting greenhouse gas emissions and renewable electricity targets, as well as the diversification of energy supplies.

### **Scottish Planning Policy (SPP)**

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 Scottish Ministers are satisfied that matters relating to SPP, and in particular paragraph 169, have been addressed in the EIA report and in the responses received to the consultations carried out.

The Scottish Ministers are satisfied the proposed Development will not create any significant effects on National Scenic Areas, National Parks or any other area which has a designation. This consideration is supported by the fact that no objection relating to effects on landscape character were received from any consultee.

The Scottish Ministers have considered the effects that the proposed Development will have on the landscape character of Argyll & Bute and are satisfied that they are acceptable in the context of the benefits that the proposed Development will bring in terms of net economic benefit, contributing to renewable energy and climate change targets, while protecting the historical and natural environment. On balance, Scottish Ministers acknowledge there will be significant effects on the landscape character, however, conclude that the benefits of the development would outweigh these effects. Scottish Ministers are satisfied that the proposed Development contributes to sustainable development in accordance with SPP.

## **Compatibility with Local Development Plan and Supplementary Guidance**

The Planning Authority assessed the proposed Development against Argyll & Bute Local Development Plan 2015 and Supplementary Guidance to the Argyll & Bute Local Development Plan 2015 & 2016 and concluded that on balance, the proposed Development is consistent with both the Local Development Plan and the Guidance.

Scottish Ministers accept and agree with the Planning Authority's view that the proposed Development is supported by their Local Development Plan and Supplementary Guidance and have imposed the relevant conditions as requested by the Planning Authority.

## **The Scottish Ministers Considerations**

### **Main Determining Issues**

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

- the environmental impacts of the proposed Development, in particular the landscape and visual impacts, including cumulative effects;
- the estimated economic benefits which the proposed Development is likely to bring;
- the extent to which the proposed Development accords with and is supported by Scottish Government policy and the terms of the Argyll and Bute local development plan; and
- the renewable energy benefits of the proposed Development.

## **Assessment of the Determining Issues**

### **Landscape and visual Impacts**

As outlined by the Planning Authority's Consultant Landscape Architect the proposed Development will be located within the Upland forest Moor Mosaic Landscape Character Type which is of lower sensitivity to large scale wind energy development because of its generally simpler landform, land cover and expansive scale.

In landscape terms, taking account of the Planning Authority's Spatial Framework, the site in which the proposed Development will be situated has been identified as partially within a Group 2 area. Approximately 40% of the Site is located within an area identified in the spatial framework for wind turbines over 50 metres as being in Group 2 - Areas of Significant Protection as a consequence of the presence of Carbon Rich Soils and Peatland and not any landscape, visual or scenic constraint. The remaining approximate 60% is identified as being in Group 3 – Areas where Wind Farms are likely to be acceptable. Group 2 are areas where further consideration will be required to demonstrate that any significant effects on the qualities of these areas can be subsequently overcome by siting, design or other mitigation.

Policy LDP 6 - Supporting the Sustainable Growth of Renewables of Argyll and Bute's Local Development Plan, Supplementary Guidance 2 (Renewable Energy) and SPP require applications for wind turbine developments to be assessed against any landscape and visual impacts.

The Company provided a full and detailed assessment of the landscape and visual impacts of the proposed Development in the EIA report, which has been considered by the Planning Authority and SNH before responding to Scottish Ministers on the proposed Development.

The Company summarise in the EIA report that the proposed Development would give rise to significant effects on landscape character during the construction and operation of the Development, albeit contained within the localised extent of approximately 5 to 6 km. It would give rise to significant effects on visual amenity out to approximately 11 to 12 km during the construction and operation of the Development. Landscape and visual impacts beyond these ranges would not be significant. Significant cumulative effects would also arise in localised and close range landscape characters and on road-users on the B842 on Kintyre, on recreational water-users on the Kilbrannan Sound and on residents in the settlement of Catacol on Arran.

All effects during the construction of the Development would be short-term and reversible and all effects during the operation of the Development would be long-term and reversible. All effects would be adverse in nature.

### **The Planning Authority's View**

The Planning Authority have no objection to the proposed Development they concluded, following advice from their consultant landscape architect and from SNH, that *"the Landscape and Visual Impact of the proposal is acceptable, subject to consideration of the suggested mitigation measures and condition to secure further details of the battery storage compound. It is recommended that the views of North Ayrshire Council are sought by the Energy Consents Unit prior to reaching a decision on this proposal, not only in regard to any impact on the North Arran NSA from the turbines, but also the battery storage area, which is most likely to have a degree of visibility from Arran. It is also considered that the mitigation recommended by SNH and in particular, the Council's Landscape Consultant regarding further redesign to relocate and/or reduce the height of turbines (in particular T9 and 10) is considered, with the aim of mitigating significant adverse effects, especially on close views in the Cour area."*

### **SNH's view**

SNH advised that the proposed Development will *"result in relatively limited significant adverse landscape and visual impacts which could be reduced to some degree by mitigation. There would be some significant adverse effects on the views and experience from the northwest coast and hills of Arran in the North Arran National Scenic Area (NSA). There would also be some significant adverse landscape and visual effects as detailed below, including part of the east Kintyre coast, and the Kilbrannan Sound"*.

SNH also advised the "Special Qualities" of the North Arran NSA "relate primarily to the physical, natural and cultural heritage attributes and perceptions of the island, its mountains and coast" and the potential for the proposed Development to affect this is "limited". SNH advised that the proposed Development "would not intrude upon the principal views from the east coast across the Kilbrannan Sound towards Arran (e.g. VPs 4, 5 and 9)" and that although it will be seen from the northwest section of the coastal road and there would be "some significant visual effects" the proposed Development "would not be a dominant feature, would be seen in the context of operational wind farms and would not significantly alter the established pattern of wind energy on the spine of Kintyre".

SNH advised that the scale of the proposed Development's turbines will result in significant adverse effects in relation to east Kintyre, especially the Cour area and recommended that turbines 9 and 10, given they are most prominent when seen from lower ground on the east Kintyre coast, be reduced in height to potentially provide a better landscape and visual fit. SNH also recommended that a reduction in height of turbines 4 and 5 are considered given their close proximity to the existing turbines of Cour wind farm.

In relation to the North Arran Wild Land Area ("the WLA") SNH advised "although the proposal is visible from some elevated areas of the North Arran Wild Land Area (WLA), we consider that it would be unlikely to have significant adverse effects on the qualities of the WLA."

### **Other Views**

North Ayrshire Council advised that the proposed Development "has the potential to have significant adverse impacts on the qualities of the North Arran NSA". North Ayrshire Council also advised that "Full consideration should be given to the significance of these impacts and consider if the proposed mitigation from both SNH and Argyll & Bute Council would be sufficient to lessen these impacts to an acceptable level. Further information should also be provided regarding the dimensions and appearance of the compound containing battery storage in order to consider to potential impacts on the NSA".

West Kintyre Community Council and East Kintyre Community Council also raised similar concerns in respect of the landscape and visual impacts of the proposed Development.

### **Conclusions**

Scottish Ministers considered the requested reduction in height of turbines within the proposed Development alongside the information provided within the Landscape and Visual Impact Assessment (LVIA) (Chapter 6 of the EIA report). A site visit was undertaken by Scottish Government officials to consider the LVIA, as well as concerns raised by consultees. The site visit, which facilitated an understanding of the area surrounding the proposed Development, incorporated visits to the following viewpoints:

- Viewpoint 5 - Claonaig Slipway
- Viewpoint 9 - Skipness Castle

- Viewpoint 10 - B8001, west of Gartavaich
- Viewpoint 11 - B842, north of Ravensbay
- Viewpoint 13 - B842, southwest of Cour

Scottish Ministers note that although the visibility of turbines 9 and 10 are more prominent from the Cour area, the turbines have been designed to balance the environmental and technical constraints, whilst still producing an economically viable Development. Travellers along the B842, travelling either north or south, and the within the Cour area will experience their prominence for a very limited amount of time and in most instances, will see both these turbines collectively alongside other turbines in the proposed Development or will experience no visibility of the proposed Development due to the topography of the landscape. The effects will not distract from views that are likely to be focussed out to sea, and therefore should not spoil the overall experience of the panoramic quality of the Kintyre eastern coastline. Scottish Ministers conclude that although the reduction in height of turbines 4 and 5 may reduce the perception of size disparity between these turbines and the existing Cour, these are rarely seen in isolation from other turbines within the proposed Development and, as a result, this reduction would cause size disparity of the whole development to become apparent from a number of viewpoints.

Scottish Ministers acknowledge and agree with the views of both the Planning Authority and SNH that the proposed Development will have some limited significant adverse landscape and visual impacts. It is also acknowledged however that no national or regional landscape designations will be significantly affected by the proposed Development and any significant visual effects will be largely localised, with the main effects being on the eastern Kintyre coastline.

Given the Scottish Government policy context, the economics benefits and contribution to renewable energy targets that the proposed Development would bring, on balance the Scottish Ministers consider that the proposed turbines in the landscape are acceptable, and there is no justifiable basis for seeking a reduction in turbine height or removal of turbines 4,5, 9 or 10.

### **Other Environmental Impacts**

Scottish Ministers note that Visit Scotland in their consideration of the proposed Development requested that an independent tourism impact assessment be carried out. West Kintyre Community Council in their objection raised concerns regarding adverse effect on the vital tourist economy of the area.

The Planning Authority did not object to the proposal on the grounds of impacts on tourism and recreation. Scottish Ministers consider Chapter 14 of the EIA report sufficiently addresses tourism impacts and are satisfied that no significant effects will result from the proposed Development.

### **Economic Benefits**

SPP advises that proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms where these are relevant. Considerations will vary relative to the scale of the proposal and area characteristics but are likely to include, as well as a number of other considerations, net economic

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

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.

Scottish Ministers agree a key factor in attracting tourists to Argyll & Bute is the landscape and scenery. The potential tourism effects of the proposed Development have been considered in detail within Chapter 14 of the EIA report with particular reference to the evidence available at the time of submission of the Application on the potential impact of wind farms on tourism, including a report by BiGGAR Economics Ltd in 2016 on: Wind Farms and Tourism Trends in Scotland. BiGGAR Economics have since provided a follow up Methodological Critique of the Report “Wind farms and Tourism Trends in Scotland” revised version dated October 2017. There is nothing in the critique report to suggest that the position relating to the impact of turbines on tourism has changed.

None of this suggests that wind farms are likely to have a significant detrimental effect on tourism, nor consequently on the economic benefits of tourism.

The EIA report sets out the opportunities for job creation through the construction phase which is estimated to generate 4.5 permanent FTE (full-time equivalent) jobs. Once operational the proposed Development will have both direct and indirect effects on employment. The proposed Development will be regularly maintained by a specialist maintenance team. Overall it is estimated that the operational phase of the proposed Development will generate employment opportunities equivalent to approximately 1 FTE job. It is likely that there will be an opportunity for some local employment generated as an indirect result of the construction of the proposed Development, which could include supply chain spin-offs for local businesses and sub-contracted work relating to the transportation of construction workers and materials. Construction workers making use of local accommodation and other facilities would further benefit the local economy by spend in local hotels, B&Bs, shops and restaurants.

Whilst it is difficult to precisely quantify overall net economic benefits, given direct and indirect effects and timescales, Scottish Ministers are satisfied the proposed Development has the potential for significant positive net economic benefits both to the local community and Argyll and Bute more generally.

## **Policy Support**

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.

The aforementioned NPF3 sets out Scottish Government’s commitment to establishing Scotland as a leading location for the development of renewable energy technology. In Scotland there has been significant progress towards low carbon

objectives whilst we have continued to protect our special places from significant adverse impacts.

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.

Scottish Government's Energy Strategy and Onshore Wind Policy Statement (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.

The Argyll and Bute Local Development Plan provides the local planning framework for the Argyll and Bute Council area, excluding the Loch Lomond and Trossachs National Park area. The Plan provides the general policy context against which planning applications for new development proposals should be assessed supported by maps, which show the range of development opportunities and constraints within the area.

The proposed Development, if built, will contribute to renewable energy targets and towards reducing greenhouse emissions. Economic benefits to the Scottish economy are anticipated alongside short and longer term benefits to the Argyll and Bute planning authority area.

Scottish Ministers acknowledge that there will be some significant landscape and visual impacts, however, Scottish Ministers are satisfied that overall the proposed Development is appropriately sited and designed. The landscape and visual impacts which remain are acceptable in the context of the benefits that the proposed Development will bring. Scottish Ministers are satisfied that other environmental issues can be appropriately addressed by the mitigation measures set out in the EIA report and secured by conditions.

The Scottish Ministers are therefore satisfied that the proposed Development is supported by national policies.

### **Renewable Energy Produced and Contribution to Targets and Carbon Payback**

NPF3 is clear that planning must facilitate the transition to a low carbon economy, and help to deliver the aims of the Scottish Government's Report on Proposals and

Policies. Our spatial strategy facilitates the development of generation technologies that will help to reduce greenhouse gas emissions from the energy sector. Scotland has significant renewable energy resources, both onshore and offshore.

Policy Principles set out in SPP state that the planning system should:

- Support the transformational change to a low carbon economy, consistent with national objectives and targets, including deriving:
  - 30% of overall energy demand from renewable sources by 2020,
  - 11% of heat demand from renewable sources by 2020, and
  - the equivalent of 100% of electricity demand from renewable sources by 2020.
- Support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity – and the development of heat networks.

Scottish Ministers are satisfied that the proposed Development makes a significant contribution towards meeting greenhouse gas emission and renewable electricity targets. The proposed Development will have an indicative generating capacity of 48MW plus 7.5MW of battery storage based on current technology. 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 2020.

### **Carbon Payback**

The carbon payback for the proposed Development has been presented in the EIA report using the approved carbon calculator. In overall terms the proposed Development if built would be expected to have a payback period of 1.5 years of operation (or 5 years on worst case expectations). The CO<sub>2</sub> savings would be approximately 2,321,000 tonnes.

Whilst noting the limitations of any such calculations, the online carbon calculator provides the best available means by which carbon calculations can be provided in a consistent and comparable format.

Scottish Ministers are satisfied that the proposed Development would provide carbon savings, and that these savings would be of an order that weighs in favour of the proposed Development.

## **Conclusions**

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

Scottish Ministers have fully considered the EIA report and the consultation responses in respect of the proposed Development. The significant effects of the proposed Development on the environment are considered to be those on the landscape. Scottish Ministers are satisfied that other environmental issues can be appropriately

addressed by the mitigation measures set out in chapter 17 of the EIA report and secured by conditions attached to the planning permission deemed to be granted.

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

### **Conclusions on Acceptability of the proposed Development**

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, and Energy Strategy 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.

The National Planning Framework 3 (NPF3) sets out the Scottish Government's commitment to establishing Scotland as a leading location for the development of renewable energy technology. NPF3 describes how, in our more remote areas, this will bring new employment, reverse population decline and stimulate demand for development and services, and also that onshore wind will continue to make a significant contribution to diversification of energy supplies. In Scotland there has been significant progress towards low carbon objectives whilst we have continued to protect our special places from significant adverse impacts.

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. The aims of these policies require to be considered and balanced when reaching a decision on the Application.

In terms of Subject Policy: A Low Carbon Place, the merits of an individual proposal for a wind farm development are to be considered against a range of impacts. A non-exhaustive list of such considerations is given in paragraph 169. This paragraph sets out considerations which are to be taken into account when considering proposals for energy infrastructure development, including wind farms. These considerations include, along with the economic benefits and scale of contribution to renewable energy generation targets, the landscape and visual impacts of the proposed Development and impacts on natural heritage. Scottish Ministers have had regard to those factors when considering this application.

The proposed Development, if built, will contribute to renewable energy targets and towards reducing greenhouse emissions. Economic benefits to the Scottish economy are anticipated alongside short and longer term benefits to the Argyll and Bute planning authority area. Scottish Ministers acknowledge that there will be some significant landscape and visual impacts. Scottish Ministers are satisfied, that overall, the proposed Development is appropriately sited and designed.

The landscape and visual impacts which remain are acceptable in the context of the benefits that the proposed Development will bring. Scottish Ministers are satisfied that other environmental issues can be appropriately addressed by the mitigation

measures set out in the EIA report and secured by relevant conditions attached to the planning permission deemed to be granted by Scottish Ministers.

### **Duration of Deemed Planning Permission**

Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Scottish Ministers to direct that a longer period is allowed before planning permission lapses.

Scottish Ministers consider that due to anticipated delays to construction timescales as a consequence of the Covid 19 pandemic in addition to the normal constraints, scale and complexity of constructing such developments and the timeframes associated with the commissioning of grid infrastructure to connect them, a 6 year time scale for the commencement of development is appropriate in this case.

### **Scottish Ministers Determination**

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

Subject to the conditions set out in Part 2 of Annex 2, 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 Annex 1.

The consent hereby granted will last for a period of 30 years from the earlier of: i) the date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; or ii) the date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.

As a consequence of the potential delays the Covid 19 pandemic may have on predicted construction timescales the Scottish Ministers consider it is reasonable to add an additional year to typical timescales. The Scottish Ministers therefore direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply with regard to that planning permission and that planning permission is to lapse on the expiry of a period of 6 years from the date of this direction if there has been no development within that period.”

In accordance with the EIA Regulations, the Company must publicise this determination on a website maintained for the purpose of making information publicly available and 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 and the consent have been sent to the Planning Authority. This letter has also been published on the Scottish Government Energy Consents website [www.energyconsents.scot](http://www.energyconsents.scot)

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

<https://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 sincerely

[Redacted]

**WILLIAM BLACK**

Head of Energy Consents

For and on behalf of the Scottish Ministers

A member of the staff of the Scottish Government

**Description of Development**

The Development comprises a wind powered electricity generating station by the name of High Constellation Wind Farm, with a generating capacity exceeding 50 MW, located approximately 4 kilometres southeast of Clachan, in the Argyll and Bute Council planning area as specified in the Application and accompanying Environmental Impact Assessment report submitted on 04 June 2019.

The components of the wind farm and related ancillary development will comprise:

- Ten turbines with a maximum tip height of 149.9 m and rotor diameters of up to 136 m;
- Associated foundations and crane hardstandings at each wind turbine location;
- Access tracks linking the turbine locations, comprising of a combination of new and upgraded tracks;
- Substation building incorporating electrical switchgear and wind farm control elements;
- Electricity storage facility consisting of containerised battery units;
- Temporary construction compound;
- Up to two borrow pits for aggregate extraction;
- Network of underground cabling;
- A permanent anemometry mast; and,
- Site access from existing junction off the A83

## Part 1

**The consent granted in accordance with section 36 of the Electricity Act 1989 is subject to the following conditions:**

### 1. Duration of consent

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

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

### 2. Commencement of Development

(1) Development shall be commenced no later than six (6) years from the date of this consent, or such other period as the Scottish Ministers may hereafter direct in writing.

(2) Written confirmation of the intended date of Commencement of Development shall be provided to both the Planning Authority and the Scottish Ministers as soon as is practicable after deciding on such a date.

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

### 3. Non-assignment of Consent

(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 local Planning Authority 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

In the event of any breach of health and safety, or breach of 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, with confirmation of remedial measures taken and/or to be taken to rectify the breach provided at that time, or as soon as

practicable thereafter.

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

## Part 2

**The planning permission deemed to be granted under section 57 of the Town and Country Planning (Scotland) Act 1997 for the Development described in Annex 1 is subject to the following conditions.**

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

The Development shall be implemented in accordance with the details specified in the Application and accompanying Environmental Impact Assessment Report dated 04 June 2019. The Company and subsequent operators shall at all times construct and operate the Development hereby permitted in accordance with the mitigation measures identified in the Environmental Impact Assessment Report and shall not omit any mitigation measures within the Environmental Impact Assessment Report.

**Reason:** *To ensure that the Development is implemented in accordance with the approved details.*

### **6. Financial Guarantee**

- (1) No development shall commence unless and until a bond or other form of financial guarantee as security in respect of the cost of performance of all decommissioning, restoration and aftercare obligations referred to in Condition 8 submitted to the Planning Authority by the Company has been agreed to in writing by the Planning Authority.
- (2) The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in Condition 8.
- (3) The financial guarantee shall be maintained in favour of the Planning Authority from the Commencement of Development until the date of completion of all decommissioning, restoration and aftercare obligations referred to in Condition 8.
- (4) The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review. Following each review and at least 28 days prior to the expiry of the existing financial guarantee the Company shall submit for the written approval of the Planning Authority a replacement guarantee in favour of and in terms acceptable to the Planning Authority for the value agreed.

**Reason:** *To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed*

*planning permission in the event of default by the Company.*

## **7. Redundant Wind Turbines**

- (1) Unless otherwise agreed in writing by the Planning Authority, if one or more wind turbines fails to generate electricity for a continuous period of twelve months a scheme setting out how the relevant wind turbine(s) and associated infrastructure will be brought back into productive or will be removed from the site and the ground restored shall be submitted for the written approval of the Planning Authority no later than one month after the date of expiry of the twelve month period.
- (2) The approved scheme shall be implemented within six months of the date of its approval, to the satisfaction of the Planning Authority.

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

## **8. Site Decommissioning, Restoration and Aftercare**

- (1) The wind turbines, substation and battery storage compound shall be decommissioned and cease to generate electricity by no later than the date falling thirty (30) years from the Date of Final Commissioning. The total period for restoration of the Site in accordance with this condition shall not exceed three years from the date 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 development shall commence unless and until a draft decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the Planning Authority (in consultation with SNH and SEPA).
- (3) No later than 3 years prior to decommissioning of the Development, or the expiry of the section 36 consent (whichever is earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved draft decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the Planning Authority in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include (but is not limited to):
  - a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
  - b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
  - c) a dust management plan;
  - d) details of measures to be taken to prevent loose or deleterious material

being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;

- e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- f) details of measures for soil storage and management;
- g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h) details of measures for sewage disposal and treatment;
- i) temporary site illumination;
- j) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- k) a traffic management plan (“TMP”) which provides for the arrangements in respect of traffic associated with the decommissioning of the Development which mirrors the relevant provisions approved in the TMP for the construction of the Development;
- l) details of watercourse crossings; and
- m) a species protection plan based on surveys for protected species (including birds) carried out no longer than eighteen months prior to submission of the plan.

- (4) The Development shall be decommissioned, the site restored and aftercare undertaken in accordance with the approved plan, unless and until otherwise agreed in writing in advance with the Planning Authority (in consultation with SNH and SEPA).

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

## **9. Wind Turbine Locations and Micro-siting**

- (1) All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown on plan reference in Annex 4 save for the ability to vary without further recourse to the Planning Authority, the indicated position of any turbine, track, buildings or associated infrastructure by up to 50 metres.
- (2) Unless otherwise agreed with the Planning Authority in consultation with SNH and SEPA, any such micro-siting, permitted by part (1) of this condition, shall not encroach within a 50 metre buffer around all water bodies except in the vicinity of watercourse crossings.
- (3) Any such micro-siting shall be carried out under the supervision of the Ecological Clerk of Works (“ECoW”) required to be employed pursuant to Condition 29 of this permission and shall be informed by the outcome of the Peat Management Plan required pursuant to Condition 11 and shall avoid areas of deep peat.
- (4) No later than one month after the Date of Final 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's approval (if applicable).

**Reason:** *For the avoidance of doubt and to take account of local ground conditions, for the protection of amenity.*

## **10. Construction and Environmental Management Plan**

(1) No development shall commence unless and until a Construction and Environmental Management Plan ("CEMP") containing site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to, and approved in writing by, the Planning Authority (in consultation with SNH, SEPA and Scottish Forestry). This will be in respect of (but is not limited to) the following:

- (a) Method statement and risk assessment for all construction;
- (b) A detailed Water Construction Environmental Management Plan ("WCEMP") as outlined at Appendix A9.1 of the EIA Report;
- (c) Pollution prevention plan and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- (d) Dust management, including cleaning of the junction between the site access and the trunk road;
- (e) Arrangements for on-site delivery and storage of fuel and other chemicals;
- (f) Details of foul drainage arrangements;
- (g) Details of measures to ensure noise of vibration nuisance is acceptably controlled;
- (h) Details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning facilities, and measures to clean the site entrances and the adjacent local road network;
- (i) Site specific waste management plan (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
- (j) Ecological monitoring over construction period including all necessary pre- construction surveys and a species protection plan to clearly identify measures to minimise risk to any protected mammal species during construction;
- (k) Details of the methods to be adopted to reduce the effects of noise occurring during the construction period to the lowest practicable level;
- (l) Post-construction restoration/reinstatement of the working areas;
- (m) Details of temporary site illumination;
- (n) Details of proposed watercourse crossings and engineering works in water environment vicinities;
- (o) A drainage management strategy, demonstrating how all surface and waste water arising during and after development is to be managed and prevented from polluting any watercourses or sources;
- (p) Details of proposed measures during cable installation to prevent the creation of drainage runs in cable trenches; and

(q) An operational plan for harvesting, restocking and establishment of forestry.

(2) The CEMP shall be adhered to throughout the construction and site restoration phases unless otherwise agreed in writing by the Planning Authority.

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

## **11. Peat Management Plan**

(1) No development shall commence until a detailed Peat Management Plan (“PMP”), addressing all areas to be disturbed by construction, has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The PMP shall include:

- (a) Further peat probing information in areas of new infrastructure;
- (b) Details of layout and management measures taken to reduce the volume of peat disturbance (including final expected volumes, depth and location of any peat disturbed);
- (c) Updated disturbance and re-use calculations within the site (breaking the peat down into acrotelmic and catotelmic), including a plan showing volumes, location and usage;
- (d) Details of any disposal of peat proposed, including volumes, detailed disposal proposals and details of how peat usage has been limited to undisturbed ground; and
- (e) Details of storage and handling of excavated peat, including a plan showing proposed storage areas.

(2) All works on site must be undertaken in accordance with the approved PMP unless otherwise agreed in advance in writing by the Planning Authority.

**Reason:** *In the interests of ensuring the conservation of peat resources.*

## **12. Shadow Flicker**

(1) No development shall commence unless and until a scheme for the avoidance or mitigation of any shadow flicker at residential properties situated at a distance which is the same as ten rotor diameters of any wind turbine forming part of the Development, which lawfully exist or for which planning permission has been granted at the date of the section 36 consent, has been submitted to, and approved in writing by, the Planning Authority.

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

**Reason:** *To offset impacts of shadow flicker on residential and commercial property amenity.*

### **13. Bird Disturbance Management Plan**

No construction works, vegetation clearance, tree felling, or decommissioning shall take place during the bird breeding season (April to July inclusive) unless and until a Bird Disturbance Management Plan (“BDMP”), has been submitted to, and approved in writing by, the Planning Authority. The BDMP shall include, but is not limited to, detailed consideration of noise and visual disturbance.

**Reason:** *To ensure that birds and their nests are not disturbed or displaced during the breeding season in the interest of protecting the biodiversity value of the site.*

### **14. Design of sub-station and battery storage compound**

(1) No construction of the substation and battery storage facilities shall commence until final details of the external appearance, dimensions, and surface materials of the substation and battery storage buildings, associated compounds, security fencing, external lighting, parking areas and the likely visibility of the substation and battery storage building from the B842 have been submitted to and approved in writing by the Planning Authority in consultation with SNH, SEPA and North Ayrshire Council.

(2) The sub-station and battery storage compound (including associated infrastructure) shall be constructed in accordance with the approved details.

**Reason:** *To ensure that the environmental impacts of the sub-station and battery storage compound forming part of the Development conform to the impacts assessed in the Environmental Impact Assessment Report and in the interests of the visual amenity of the area.*

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

(1) No development shall commence unless and until full details of the wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the Planning Authority.

(2) 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 Development is decommissioned.

(3) All wind turbine blades shall rotate in the same direction.

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

### **16. Water Quality and Fish Monitoring Programme**

(1) No development shall commence until a Water Quality and Fish Monitoring Programme (“WQFMP”) has been submitted and approved by the Planning

Authority in consultation with Marine Scotland. The WQFMP must take account of the Scottish Government's Marine Scotland Science's response and must include:

- (a) A minimum of 12 months pre-construction water quality monitoring shall be carried out at locations to be agreed and set out in the WQFMP. Thereafter, water quality monitoring will continue during construction of the Development and for up to 12 months after the Date of Final Commissioning; and
  - (b) Mitigation measures detailed in the Environmental Impact Assessment Report.
- (2) Thereafter the WQFMP must be implemented in full and in accordance with the timescales set out in the plan. No changes to the WQFMP shall take place unless they are with prior written approval of the Planning Authority.

**Reason:** *To ensure compliance with all commitments made in the Environmental Impact Assessment Report.*

### **17. Aviation Safety**

No development shall commence until the Company has provided the Planning Authority, Ministry of Defence, Defence Geographic Centre and NATS with the following information, and has provided evidence to the Planning Authority of having done so:

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

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

### **18. Aviation Lighting**

- (1) No wind turbine forming part of the Development shall be erected until the Company has submitted a scheme for aviation lighting for the Development to the Planning Authority for written approval. The scheme shall include details of Red Aviation Warning Lighting or infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety, unless otherwise agreed in advance and in writing by the Planning Authority.
- (2) No turbines shall be erected on site until the scheme has been approved in writing. The Development shall thereafter be operated fully in accordance with the approved scheme.

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

## **19. Traffic Management Plan**

- (1) No development shall commence, including deliveries to the site, unless and until a Traffic Management Plan (“TMP”) has been submitted to, and approved in writing by, the Planning Authority and in consultation with Transport Scotland. The TMP shall include (but is not limited to):
  - (a) the proposed routing for all construction related traffic and any abnormal loads associated with the Development;
  - (b) the accommodation measures required including the removal of street furniture, junction widening and traffic management;
  - (c) details of materials, plant, equipment and labour required during the construction period; and
  - (d) details of any temporary diversions of access routes and associate signage.
- (2) The TMP shall detail that all vehicular traffic is to be from the A83 TARBET – CAMPBELTOWN TRUNK ROAD and that no construction traffic will use the B842 CLAONAIG – SOUTHEND ROAD.
- (3) The approved traffic management plan shall be implemented in full, unless and until otherwise agreed in advance in writing with the Planning Authority.

**Reason:** *To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a consequence of traffic moving to and from the development.*

## **20. Route Access Report**

Prior to commencement of turbine component deliveries to site a Route Access Report including swept path analysis must be undertaken to ensure that exceptional loads can be transported through the trunk road network safely. The complete report shall detail any accommodation measures required including the temporary removal of street furniture, junction widening, traffic management etc. and show that the transportation will not have any detrimental effect on structures within the route path.

**Reason:** *To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a result of the traffic moving to and from the development*

## **21. Temporary Road Signage and Traffic Control Measures**

During the delivery period of the wind turbine construction materials, any additional signing or temporary traffic control measures deemed necessary due to the size or length of any loads being delivered or removed must be undertaken by a recognised “QA traffic management consultant” to be approved by the Planning Authority in consultation with Transport Scotland before delivery commences.

**Reason:** *To ensure that the transportation will not have any detrimental effect on the road and structures along the road.*

## **22. Habitat Preparation Works**

No development shall commence unless and until a programme of Habitat Preparation Works, detailing the extent and area of pre-construction felling activities has been submitted to, and approved in writing by the Planning Authority in consultation with Scottish Forestry. The approved Habitat Preparation Works shall thereafter be implemented in full.

**Reason:** *To ensure that all felling works are carried out at a time that provides mitigation measures contained in the EIA Report with regard to the bird breeding season*

## **23. Habitat Management Plan**

- (1) No development, other than Habitat Preparation Works, shall commence unless and until a Habitat Management Plan (“HMP”) has been submitted to, and approved in writing by the Planning Authority in consultation with SNH, SEPA, RSPB and Scottish Forestry. The HMP shall include details outlined in Appendix A8.3 of the EIA report.
- (2) The HMP shall set out proposed habitat management of the site during the period of construction, operation, decommissioning, restoration and aftercare, and shall include mitigation measures for eagles, divers, peatland restoration and native woodland creation.
- (3) The HMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the HMP objectives. In particular, the approved HMP shall be updated to reflect ground condition surveys undertaken following construction and prior to the Date of Final Commissioning and submitted for the written approval of the Planning Authority in consultation with SNH, SEPA, RSPB and Scottish Forestry.
- (4) The habitat restoration work outlined within the plan will be completed at least two growing seasons before the Commencement of Development.
- (5) The approved HMP under part (1) or amended HMP under part (3) shall be implemented in full throughout the life time of the Development, including decommissioning.

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

## **24. Habitat Management Group**

No development shall commence unless and until a Habitat Management Group (“HMG”) is established to oversee the preparation and delivery of the HMP and to review and assess the results from ongoing monitoring. The HMG shall include a representative of the Planning Authority and a representative from the Trust managing the Estate on which the Development is located and shall have powers to make reasonable changes to the HMP necessary to deliver its agreed objectives.

**Reason:** *To safeguard environmental impacts, ecology, species and habitats and*

*maintain effective planning control.*

## **25. Post Construction Monitoring**

No development shall commence unless and until an appropriate programme of post-construction monitoring of bird populations on the wind farm site and habitat monitoring on the area identified for mitigation under condition 23 is submitted to and approved in writing by the Planning Authority. The state of the habitat and the response of the various species to habitat and other management should be quantified, assessed and reported to a HMG at regular intervals.

**Reason:** *To ensure the predicted impacts on important bird populations and success of proposed mitigation, as outlined in the EIA Report can be monitored.*

## **26. Groundwater Dependant Terrestrial Ecosystem Protection Plan**

(1) No development shall commence unless and until a Groundwater Dependant Terrestrial Ecosystem (GWDTE) protection plan has been submitted to, and approved in writing by the Planning Authority in consultation with SEPA. The GWDTE protection plan shall include (but is not limited to):

- (a) Details of the location of Turbine 4 (and associated infrastructure) showing at least a 10 metre buffer between any excavation works and M23a/ M6b (March/ Marshy Greenland habitat) as shown on Figure 7.3d of the EIA Report; and,
- (b) Details of at least a 10 metre buffer between any excavation works for infrastructure outlined within the laydown area shown on Figure 7.3e of the EIA Report and M6d (Acid/ Neutral Flush Habitat).

(2) Habitat areas referenced above should be physically marked on site to ensure it is easily avoidable. Any required micro-siting shall be employed pursuant to Condition 9 of this permission.

**Reason:** *To minimise impacts on unavoidable GWDTE and to avoid impacts on other more ecologically important GWDTE.*

## **27. Construction Hours**

(1) Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07:30 to 19:00 on Monday to Friday inclusive and 08:00 to 16:00 on Saturdays, with no construction work taking place on a Sunday or on a Bank Holiday or Public Holiday. Outwith these specified hours, development on the site shall be limited to turbine delivery and erection, commissioning, maintenance, dust suppression, and pouring of concrete foundations (provided that the developer retrospectively notifies the Planning Authority of the works within 24 hours if prior notification is not possible). In addition, access for security reasons, emergency responses or to effect any necessary environmental controls is permitted outwith these hours.

(2) Movements of heavy goods vehicles (HGVs) to and from the site during construction of the Development shall be limited to 07:00 hours to 19:00 hours

Monday to Friday and 08:00 to 16:00 hours on Saturdays and no vehicular access during these periods shall take place on Sundays or Bank Holidays, unless previously approved in writing by the Planning Authority.

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

## **28. 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.*

## **29. Ecological Clerk of Works**

(1) No development shall commence until the Planning Authority has approved in writing the terms of appointment by the Company of an independent Ecological Clerk of Works (ECoW) in consultation with SNH and SEPA. The terms of appointment shall;

- (a) Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the EIA Report and other information lodged in support of the application, the Construction and Environmental Management Plan, and other plans;
- (b) Require the EcoW to report to the Company’s 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; and
- (d) Require the ECoW to report to the Planning Authority any serious environmental incidences resulting as a consequence of non-compliance with the ECoW Works at the earliest practical opportunity.

(2) The EcoW shall be appointed on the approved terms throughout the period from the Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of conditions 8.

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

### **30. Environmental Clerk of Works Decommissioning**

No later than 12 months prior to the decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the Development to the Planning Authority for approval in consultation with SNH and SEPA. The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

**Reason:** *To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.*

### **31. Forestry – Compensatory Planting**

- (1) No development shall commence until a Woodland Replanting Scheme has been submitted to, and approved by the Planning Authority in consultation with Scottish Ministers.
- (2) The Woodland Planting Scheme shall provide for the replanting of 31.73 hectares of woodland, or such other amount as may be agreed with the Planning Authority in consultation with Scottish Ministers.
- (3) The approved Woodland Planting Scheme shall thereafter be implemented in full.

**Reason:** *To secure compensatory planting for the loss of woodland arising from the Development.*

### **32. Long Term Forest Plan**

- (1) No development shall commence until a finalised Long Term Forest Plan for the Forestry Study Area (as shown on Figure 13.1 in Volume 2 of the EIA Report) has been submitted to and approved in writing by the Planning Authority in consultation with Scottish Ministers.
- (2) The approved Long Term Forest Plan shall thereafter be implemented in full [unless otherwise agreed in advance and in writing by the Planning Authority in consultation with Scottish Ministers.

**Reason:** *To ensure Forestry Works approved by the consent are carried out in accordance with UK Forestry Standard.*

### **33. Felling and Restocking Plan**

- (1) No development shall commence unless and until a Felling and Restocking Plan is submitted and approved in writing by the Planning Authority in consultation with Scottish Ministers. The plan shall be in accordance with the “Wind Farm Felling

and Species Plan” as detailed in chapter 13 of the EIA Report and Figures 13.3 and 13.4.

- (2) The approved Felling and Restocking Plan shall be implemented in full [unless otherwise agreed in advance and in writing by the Planning Authority in consultation with Scottish Ministers.

**Reason:** *To ensure the consented felling and restocking of the woodland associated with the Forestry Works approved by the consent is carried out in accordance with UK Forestry Standard.*

### **34. Site Inspection Strategy**

- (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 inspections 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 conditions 14, 15 and condition 35; 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 14, 15 and condition 35 and is to ensure the Development is being monitored at regular intervals throughout its operation.*

### **35. Noise**

- (1) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty) when determined in accordance with the attached Tables and Guidance Notes appended to this condition, shall not exceed 35 dB LA90,10mn at any dwelling which is lawfully existing or has planning permission at the date of this permission, and

- (a) Prior to the installation of any turbines the developer shall submit a report for approval by the Planning Authority which demonstrates compliance with the noise limits in the above condition. The report shall include details of any proposed noise reduction measures and shall be

prepared with reference to the Institute of Acoustics Good practice Guide to the Application of ETSU-R-97 and associated supplementary guidance notes.

- (b) The Company shall continuously log power production, wind speed and wind direction. These data shall be retained for a period of not less than 24 months. The Company shall provide this information to the Planning Authority within 14 days of receipt in writing of a request to do so.
- (c) Within 21 days from the receipt of a written request from the Planning Authority or following a complaint to the Planning Authority from the occupant of a dwelling, the wind turbine operator shall, at the wind turbine operator's expense, employ an independent consultant approved by the Planning Authority to assess the level of noise immissions from the wind turbines at the complainant's property in accordance with procedures to be agreed with the Planning Authority.
- (d) The wind turbine operator shall provide the Planning Authority the independent consultant's assessment and conclusions regarding the said noise complaint (referenced at part (c) above) including all calculations, audio recordings and raw data upon which those assessments and conclusions are based. Such information shall be provided within 2 months of the date of a written request from the Planning Authority, unless otherwise extended in writing by the Planning Authority. The wind turbine operator shall take such remedial action required to the satisfaction of the Planning Authority.
- (e) Where a further assessment of the rating level of noise immissions from the wind farm is required, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (c) above unless the time limit has been extended in writing by the Planning Authority.

**Reason:** *To minimise the adverse impact of noise generated by the operations on the local community.*

#### **Guidance Notes for Operational 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 Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

## Guidance Note 1

- a) Values of the LA90,10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 2014 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two- layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the Company shall submit for the written approval of the Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- c) The LA90,10 minute measurements should be synchronised with measurements of the 10- minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2.

All 10- minute periods shall commence on the hour and in 10- minute increments thereafter.

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

### **Guidance Note 2**

- a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)
- b) Valid data points are those measured in the conditions specified in the agreed procedures under paragraph (c) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions, the independent consultant shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- c) For those data points considered valid in accordance with Guidance Note 2(b), values of the  $L_{A90,10 \text{ minute}}$  noise measurements and corresponding values of the 10- minute standardised wind speed, as derived using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

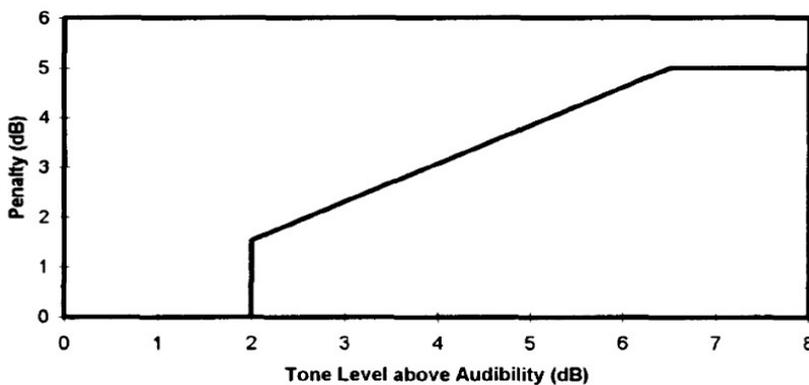
### **Guidance Note 3**

- a) Where, in accordance with the agreed procedures under paragraph (c) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.
- b) For each 10 minute interval for which  $L_{A90,10 \text{ minute}}$  data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be

performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

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

The tonal penalty is derived from the average tone level above audibility according to the figure below:



#### Guidance Note 4

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

- b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.
- c) In the event that the rating level is above the limit(s) set out in the Table attached to the noise conditions, 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 necessary wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - e) Repeating the steps in Guidance Note 2, with the required number of turbines shut down in accordance with Guidance note 4(d) in order to determine the background noise (L3) at each integer wind speed within the range in which the rating level is above the limit(s) according to Guidance Note 4(c) above.
  - f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Table attached to the conditions then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Table attached to the conditions then the development fails to comply with the condition.

## Definitions

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

**“the Company”** means, High Constellation Windfarm Ltd, a company incorporated under the Companies Act with company number 11800500 and having its registered office at 10 West Street, Alderley Edge, Cheshire, SK9 7EG or such other person who from time to time may lawfully have the benefit of this consent.

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

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

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

**“Planning Authority”** means Argyll and Bute Council.

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

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

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

**“Habitat Preparation Works”** means (i) any preparatory works, surveys, investigations and reports required for the purpose of satisfying or discharging any pre-commencement obligations under the Planning Conditions (ii) alterations to tracks for the creation of access and temporary storage to facilitate felling and (iii) the provision of temporary contractors’ facilities within the site that are necessary for the aforementioned (i) and (ii) above.

**“Public Holiday”** means;

New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January. 2nd

January, if it is not a Sunday or, if it is a Sunday, 3rd January.

Good Friday.

Easter Monday.

The first Monday in May. The

first Monday in August.

The third Monday in September.

30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day.

Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December.

Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.