

*Pencloe Wind Farm s.36c Application
Planning Statement*

June 2019

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1 Introduction

1.1 Background

Jones Lang LaSalle (JLL) has been commissioned by Pencloe Wind Energy Ltd. (the “Applicant”) to provide planning and development advice with regard to the proposed Pencloe Wind Farm (hereafter referred to as the “proposed development”), s.36c application, which is submitted under the terms of the Electricity Act 1989 (as amended).

An Environmental Impact Assessment (EIA) has been undertaken for the proposed development and an EIA Report has been submitted in support of the application for s.36 consent.

This Planning Statement contains an assessment of the proposed development against relevant policy considerations, which include energy policy at the international and national levels, national planning policy, and the provisions of the East Ayrshire Council Local Development Plan (LDP).

1.2 Planning History

On 6 December 2018, the Scottish Ministers granted s.36 consent for the Pencloe Wind Farm, at that time comprising 19 wind turbines up to 125 m in height and associated infrastructure (hereafter referred to as the “consented development”).

The consent granted is subject to five Electricity Act conditions and 36 Deemed Planning Conditions. The development is to commence within five years of the date of the decision and Annex 1 to the Decision Notice describes the development as follows:

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

1.3 The Proposed Development

The proposed development is fully described within EIA Report Chapter 4 and within the Application Letter. The proposed development has been informed by a detailed viability assessment. Since the consented development

was conceived a significantly greater installed capacity can now be achieved from taller wind turbine generators than was possible when the original development was conceived. The proposed development is as follows:

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

For the avoidance of doubt the Applicant and application site for the proposed development remains as that for the consented development.

The application site is now fully owned by Forestry and Land Scotland and they have been notified of this s.36 application submission in accordance with the agreed land option terms and the Variation Regulations.

1.4 Format

- Chapter 2 describes the Electricity Act consenting regime and relevant determination considerations;
- Chapter 3 provides an assessment of the renewable energy policy framework that applies to the proposed development;
- Chapter 4 provides an assessment the national planning policy position that applies to the proposed development;
- Chapter 5 provides an assessment of the EAC Development Plan policy position that applies to the proposed development;
- Chapter 6 provides a summary of the proposed developments benefits; and
- Chapter 7 provides overall conclusions and recommendations.

2 The Consenting Regime

2.1 Introduction

This Chapter describes the consenting regime that applies to the determination of the s.36c application, with reference to the status of the East Ayrshire Council Local Development Plan and other material considerations that are relevant to the decision to be taken.

2.2 The S.36c Application

The s.36c Application comprises similar development components as in the consented development. The same number of turbines are proposed with a maximum tip height increase of 24.9 m per turbine. Access track infrastructure has been redesigned, which results in less land take, and turbines 6 and 15 have been relocated due to wind resource reasons.

2.3 The Electricity Act

A decision on the Application under the 1989 Act is the principal decision to be made in this case. In the event that a decision is taken to grant a s.36 consent, the Applicant expects that decision to be accompanied by a 'Deemed Planning Direction'.

Paragraph 3 of Schedule 9 to the Electricity Act 1989 is relevant. Paragraph 3 states:

(1) "In formulating any relevant proposals, a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity

(a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeology interest; and

(b) shall do what he 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.

(2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the [Scottish Ministers] shall have regard to:

- the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and*
- the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph."*

2.4 The Electricity Generating Stations Variation of Consent Regulations

The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 apply to applications under the terms of s.36c of the Electricity Act (as amended). The Regulations require a variation application includes:

- Description of development and its location identified by map (See Application Letter and Figure 1.1);
- An explanation as to why the s.36 consent should be varied (it should be varied as a greater electrical capacity can be delivered by way of the same number of wind turbines within the envelope of the contracted grid connection) and with no material change to the likely environmental effects predicted for the consented development (See Application Letter);
- A copy of the proposed s.36 variations (See Application Letter);
- Copies of maps and plans not referred to in the consented development s.36 consent but require to be referred to in the s.36 variation or varied Deemed Planning Permission (See replacement Figure 1.1);
- Particulars of the s.36 consent (See Application Letter);
- A copy of the s.57 Direction (See Application Letter);
- Explanation as to why the s.57 Direction should be varied (see Application Letter)¹; and
- Provision of draft proposed s.57 Direction (See Application Letter).

2.5 The Role of the Development Plan

In considering the overall legal framework within which the proposed development requires to be assessed, it is submitted that the statutory Development Plan is a consideration which should be considered in the round with all other relevant considerations; however, section 25 (s.25) of the Town & Country Planning (Scotland) Act 1997 is not engaged.

Chapter 2 of the Beaully Denny Section 37 Inquiry Report² Volume 1 entitled ‘Statutory Context’ sets out the Reporters’ findings and related conclusions in relation to the 1989 and 1997 Acts. The Reporters make it clear at paragraph 2.6.8 of the Report that:

“it is our understanding that section 57(3) does not operate to extend section 25 to a decision to make a direction under section 57(2). The decision to make a direction under section 57(2) is separate from a decision to grant consent under section 37 of Electricity Act 1989. When making such a decision the Scottish Ministers would be expected to take into account all relevant matters. As with any planning decision the development plan will be a relevant matter, but it will be one of a number of important material considerations to be taken into account”.

¹ The s.57 Direction requires to be varied to meet the varied terms proposed for the s.36 consent, including referring to Figure 1.1 within conditions

² Public Inquiry into the Section 37 Applications for the proposed Beaully to Denny 400kV steel tower double circuit overhead electricity transmission line, DPEA Ref: IEC/1/36. <http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=qJ265>

The Reporters went on at paragraph 2.6.9 to state that the determination of the Beaully Denny application under section 37 of the Electricity Act 1989 and any deemed permission under section 57(2) of the 1997 Act:

“will involve a range of considerations, including the terms of Schedule 9 of the 1989 Act and other relevant statutory provisions, national policies, the relevant provisions of the development plans, the technical and economic justification for the scheme, and its potential environmental effects”.

In setting out these conclusions, the Reporters stated (paragraph 2.6.10) that:

“we note that our position regarding the role of the development plan in a decision under section 37 of The Electricity Act is consistent with the approach adopted by the decision maker in the Northern Ireland inter-connection case”

In the Beaully Denny Report, Volume 3, Chapter 10 entitled ‘Development Plan and other Relevant Planning Policies’ the Reporters set out their findings and related conclusions at paragraph 10.5.1 et seq and state at paragraph 10.5.1 that:

“our position on the relevance or otherwise of this case to the Town and Country Planning (Scotland) Act 1997 set out in chapter 2 (statutory context) we regard the development plan as one of a number of important material considerations to be taken into account in the determination of the application, but we do not consider that Section 25 would apply to any deemed planning permission under Section 57 (2) of the 1997 Act”. (underlining added).

Furthermore, in the Baillie Wind Farm Section 36 decision (August 2009)³, the Reporter stated that:

“The Scottish Ministers are also not required by statute to apply Section 25 of the Planning Act to their determination as to whether to direct the planning permission shall be deemed to be granted”. (underlining added).

This approach to dealing with the status of the Development Plan in Electricity Act cases has been consistently taken by both Reporters and Ministers, most recently in the Dorenell⁴ Section 36 decision.

The Dorenell decision was subject to Judicial Review proceedings in respect of which the court’s judgement was issued in June 2012. The judge concluded that s.25 of the 1997 Act does not apply to an Electricity Act Application. Reference is made to the Opinion of Lord Malcolm in the decision of the Outer House, Court of Session dated 13th June 2012⁵

2.6 The Requirement for EIA

Schedule 2 (3) of the EIA Regulations states that for projects already consented, to determine whether EIA is required for a further application regard has to be had to:

“any change to or extension (including a change in the manner or period of operation) of development of a description listed in schedule 1 or in paragraphs (1) or (2) of this schedule where that development is already authorised, executed, or in the process of being executed, and the change or extension may have significant adverse effects on the environment.”

³ Report of the Public Inquiry into the Section 36 Application for the proposed Baillie Wind Farm, (August 2009) DPEA Ref: IEC/3/105/3 <http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=qJ490>

⁴ See the Dorenell s.36 Inquiry Report at paragraph 7.3, page 58 for the full reference the Reporter made to the matter of section 25 of the 1997 Act and the reasoning underpinning his conclusion that the section did not apply to the application for section 36 consent. The Reporter did not accept the case presented to the Inquiry by Mr Kelly. (<http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=qJ11044>)

⁵ [2012] CSOH 98 (<http://www.scotcourts.gov.uk/opinions/2012CSOH98.html>)

The proposed and consented development both constitute a 'generating station' as per paragraph (1) of Schedule 2. The proposed development has been assessed within the EIA Report and it is determined that there will be no additional significant environmental effects associated with the proposed change to the consented development. Part 9 'Variation Applications' of the Regulations is also of relevance and regard has been had to this in preparing the EIA Report.

2.7 Guidance Note: Applications for Variation of Section 36 Consents (2019)

The above guidance notes were published by the Scottish Government in May 2019 and they provide guidance on the process for varying consents which have been granted by Scottish Ministers under s.36 of the Electricity Act 1989.

Guidance is provided on the scope of the variation process in terms of the type of changes that can be accommodated through the variation consenting route as well as the requirement for an EIA Report to accompany applications for consent. The guidance notes that the variation process should not be used to agree changes to a development that are either fundamental or substantial.

In terms of the proposed development, EIA has been undertaken and an EIA Report is submitted in support of the proposed development. Regarding the matter of whether the proposed development would result in a fundamental or substantial change to the consented development, the EIA Report submitted demonstrates that this would not be the case.

3 Energy Policy and Legislation

3.1 Introduction

This Chapter explains the need case for the proposed development in terms of international, UK and Scottish Government renewable energy policy. This policy framework constitutes an important consideration that is material to the determination of the s.36 application.

The purpose of this Chapter is to present an assessment of those policy matters that are material to the determination of this s.36 application. With regards Energy Policy as a topic, the Inquiry Report⁶ sets relevant very relevant context for the proposed development. It states: -

“In conclusion therefore, we find that the contribution this proposal would make to challenging Scottish Government renewable energy and greenhouse gas reduction targets provides it with strong policy support. The fact there is a pool of consented renewable energy development that has yet to be implemented does not diminish this and, in any event the targets are not to be regarded as caps.”

Accordingly, the consented development decision found that the renewable energy policy framework was supportive and due to the proposed development being able to make an enhanced contribution to renewable energy and climate change targets a revised position is provided. This Chapter focuses on:

- The Climate Change Act and Emerging Bill; and
- The recently published Climate Change Plan, Scottish Energy Strategy and Onshore Wind Policy Statement (2017);
- The Climate Change Plan, The Third Report on Proposals and Policies 2018-2032 February 2018; and
- Progress to meeting renewable energy targets.

3.2 Scottish Climate Change Legislation

The Climate Change (Scotland) Act 2009 sets targets for reducing greenhouse gas emissions by at least 80% by 2050, with an interim target of reducing emissions by at least 42% by 2020. Section 44 of the Act places a duty on every public body to act:

- in the way best calculated to contribute to the delivery of emissions targets in the Act;
- in the way best calculated to help deliver the Scottish Government’s climate change adaptation programme; and
- in a way that it considers is most sustainable.

The Climate Change (Scotland) Bill was introduced to Parliament on 23 May 2018. The Bill seeks to amend the Climate Change (Scotland) Act 2009 and recent amendments have been lodged to set a legally binding target of net-zero greenhouse gas emissions by 2045 at the latest with Scotland becoming carbon neutral by 2040. This was in response to the advice received by the Scottish Government from the Committee on Climate Change in

⁶ The Reporters Report into the Public Inquiry held for the consented development

light of the IPCC Special Report 2019. The statement from Climate Change Secretary Roseanna Cunningham to the Scottish Parliament on 14 May 2019 is provided in Appendix 1, which is the latest ministerial statement on Energy Policy and climate change.

The Bill is not yet enacted, and should these ambitious targets remain then it is expected there will be a further significant shift in energy policy to assist in meeting the revised targets (see below).

3.3 Progress Against the Scottish 2020 Renewable Electricity Target

The ‘2020 Routemap for Renewable Energy in Scotland’ published in 2011 states that the 2020 target of delivering the equivalent of 100% of Scottish electricity consumption from renewables will demand a significant and sustained improvement over the deployment levels seen historically. The 2020 100% electricity target equates to around 16GW of installed renewables capacity.

Figures released from the Scottish Government⁷ show that as of Quarter 4 2018, Scotland had 10.9 GW of installed (operational) renewable electricity generation capacity, with an additional 8.3 GW of capacity either under construction or consented. Figure 4.2 below illustrates Scotland’s renewable capacity by stage in the planning process.

Figure 4.2: Renewable Capacity in Scotland by Planning Stage, as of September 2017

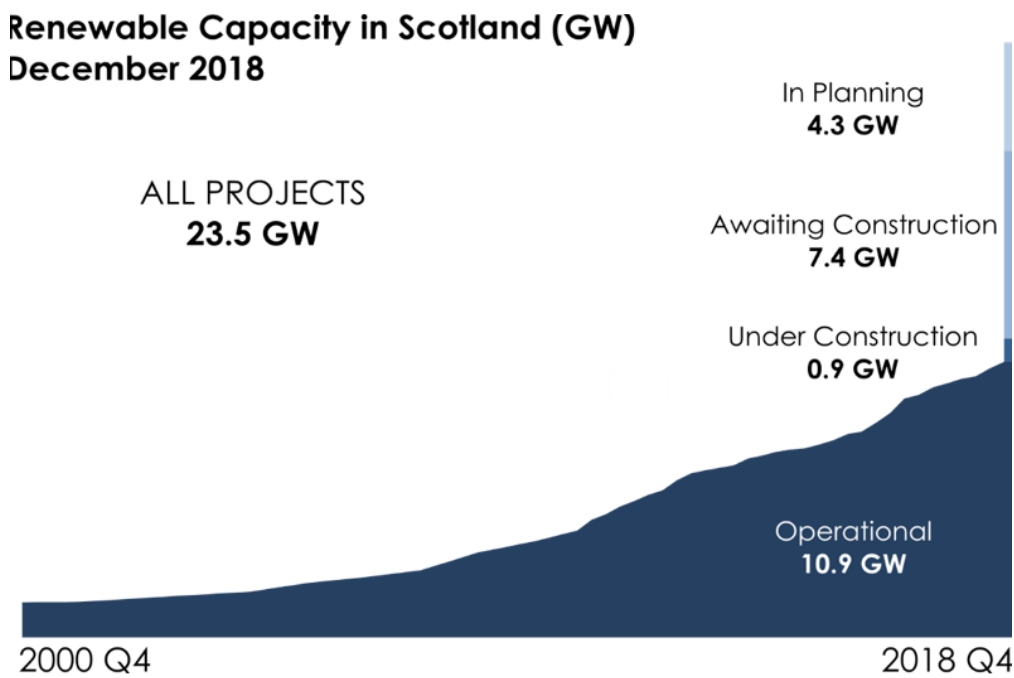


Figure 4.2 illustrates that there remains a significant shortfall against the Scottish 2020 renewable electricity generation target as the ‘operational’ and ‘under construction’ figures together only amount to 11.8GW. The proposed development would make a valuable contribution to what remains an unmet and uncapped target. It may be that some parties take the view that given progress so far to attaining the Scottish renewable electricity

⁷ The Scottish Government ‘Renewable Energy Planning Statistics’ (December, 2017)

generation target for 2020, that the weight to be given to the benefits of renewable energy developments should now be less than it has been in the past. A number of recent wind farm Appeal and Scottish Minister decisions have strongly reinforced the point that this should not be the case. It is also the case that not all ‘awaiting construction’ developments will ever be built, owing to many developments being designed in a world of subsidy now not being financially viable in a no subsidy support environment.

3.4 Scottish Energy Strategy: The future of energy in Scotland December 2017 (SES)

The SES sets a 2050 vision for energy in Scotland as *“a flourishing, competitive local and national energy sector, delivering secure, affordable, clean energy for Scotland’s households, communities and businesses”*. The vision is guided by three core principles, namely:

- A whole system view;
- An inclusive energy transition; and
- A smarter local energy model.

The 2050 vision is expressed around six priorities including:

“Renewable and low carbon solutions – we will continue to champion and explore the potential of Scotland’s huge renewable energy resource, and its ability to meet our local and national heat, transport and electricity needs – helping to achieve our ambitious emissions reduction targets.”

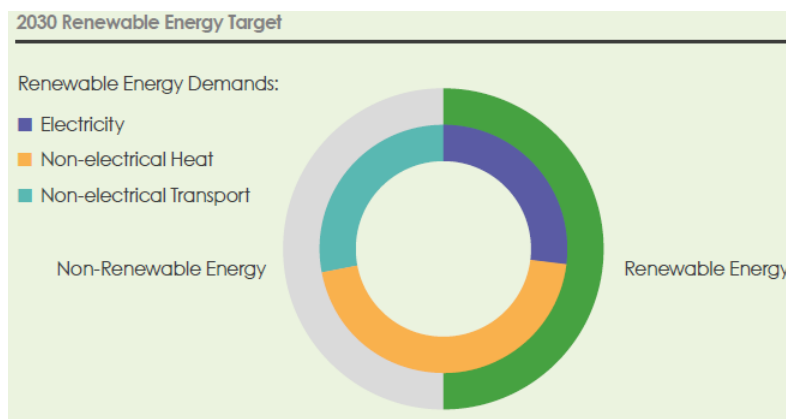
The strategy also contains new whole system targets for 2030 as follows: -

- The equivalent of 50% of the energy for Scotland’s heat, transport and electricity consumption to be supplied from renewable sources; and
- An increase by 30% in the productivity of energy use across the Scottish economy.

The longer-term target is further articulated on page 34 where it is stated: *“Scotland’s long-term climate change targets will require the near complete decarbonisation of our energy system by 2050, with renewable energy meeting a significant share of our needs.”*

The new 50% target is illustrated in Figure 1 below.

Figure 1: The Make Up of the new 2030 Scottish Renewable Energy Target



Source: Scottish Energy Strategy (2017), page 35.

The text supporting Figure 1 states “*Scottish Government analysis underpinning this target, shows that renewable electricity – which has already outperformed our interim 2015 target of 50% – could rise to over 140% of Scottish electricity consumption, ensuring its contribution to the wider renewable energy target for 2030. This assumes a considerably higher market penetration of renewable electricity than today – requiring in the region of 17 GW of installed capacity in 2030 (compared to 9.5 GW in June 2017).*”

This increase in renewable generation will require an almost doubling of current capacity.

Scotland in 2050 – Two Energy System Scenarios

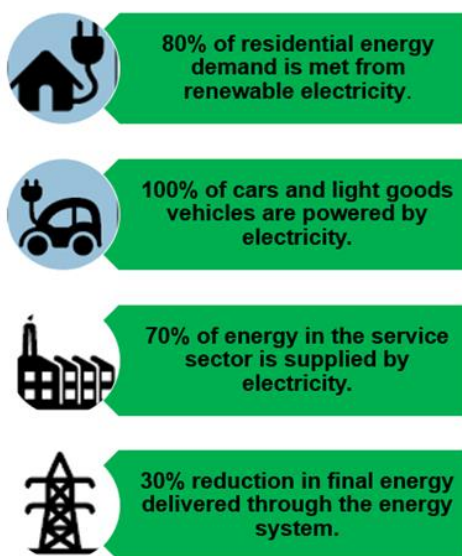
The SES sets out two illustrative scenarios for the whole energy system in 2050 consistent with the Government’s climate change targets (page 24-25). These illustrate how low carbon electricity and hydrogen could be used to meet demand across the industry, services, residential and transport sectors. The SES stresses that these are illustrative and designed to assist understanding of what infrastructure and behaviours might be required under different future scenarios.

It is set out that the energy system in 2050 will probably include aspects of both scenarios and it is recognised that given the likely pace of technological change across the energy sector over the next three decades, that this will have a huge bearing on the energy system. Both scenarios represent radical changes to the energy system and would require sustained investment, high levels of public acceptance and support across wider society.

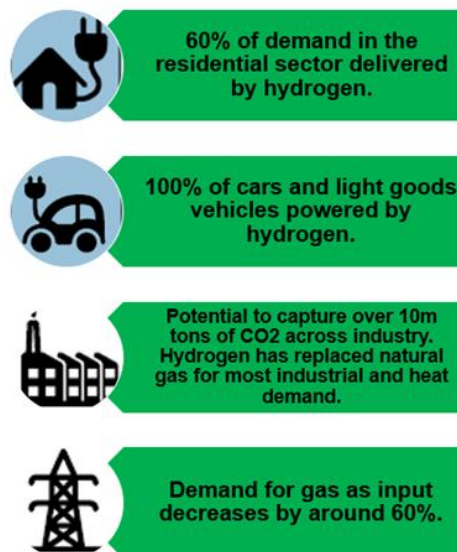
Given the strength of the renewable sector in Scotland it is not surprising that the SES sets out that renewable and low carbon energy will provide the foundation of the future energy system and it is also recognised that this sector and approach offers a huge opportunity for economic and industrial growth.

Figure 2: Scenarios for 2050 in the Scottish Energy Strategy

Scottish Energy Strategy: Scenario 1 Targets – An Electric Future in 2050



Scottish Energy Strategy: Scenario 2 Targets – A Hydrogen Future in 2050



Source: JLL, with targets taken from Scottish Energy Strategy (2017), pages 26-29.

Renewable electricity will play a fundamental role for the primary energy generation under all scenarios. In the ‘Hydrogen’ scenario the currently demonstrated viable hydrogen source is through electrolysis using (renewable) electricity. The proposed development would make a valuable contribution to both scenarios and a hybrid approach.

Scottish Energy Strategy – Onshore Wind

The SES refers to “Renewable and Low Carbon Solutions” as a strategic priority (page 41) and states “*we will continue to champion and explore the potential of Scotland’s huge renewable energy resource, its ability to meet our local and national heat, transport and electricity needs – helping to achieve our ambitious emissions reduction targets*”.

Onshore wind is identified as a key technology and the SES states “*we will push for UK wide policy support for onshore wind, and take action of our own to prioritise and deliver a route to market – combined with a land use planning approach which continues to support development while protecting our landscapes*”.

The Government has highlighted the importance of the need for onshore wind to have a route to market and the importance of this consideration is clearly emphasised in the final SES.

The SES goes on to set out what is termed the “Opportunity” for onshore wind and there is explicit recognition that onshore wind is amongst the lowest cost forms of power generation of any kind which will allow it to contribute to one of six priorities, which is “*to protect consumers from excessive or avoidable costs*” (Page 8). It is also recognised as “*a vital component of the huge industrial opportunity that renewables creates for Scotland*”. Reference is made to the employment levels and economic activity derived from onshore wind and the SES sets out that the Government is “*determined to build on these strengths*”.

The SES sets out the Government’s clear position on onshore wind namely:

“our energy and climate change goals mean that onshore wind must continue to play a vital role in Scotland’s future – helping to decarbonise our electricity, heat and transport systems, boosting our economy, and meeting local and national demand.”

“That means continuing to support development in the right places, and – increasing the extension and replacement of existing sites with new and larger turbines, all based on an appropriate, case by case assessment of their effects and impacts and it means developers and communities working together and continuing to strike the right balance between environmental impacts, local support, benefits, and – where possible economic benefits driving from community ownership”. (underlining added)

The SES adds:

“this can be done in a way which is compatible with Scotland’s magnificent landscapes, including our areas of wild land. This means that the relevant planning and consenting processes will remain vitally important. A major review of the Scottish planning system is well underway, and will continue as now to fully reflect the important role of renewable energy and energy infrastructure, in the right places”.

The SES goes on to cross refer to further detail in relation to onshore wind as contained within the OWPS which as noted, has been published alongside the SES. The SES therefore, in addition to setting new stretching renewable energy and electricity targets, gives unequivocal strong policy support for the further development of onshore wind. In essence, there is a renewed and enhanced impetus being imparted, rather than just a continuation of previous policy support.

Page 69 references “near term actions” for onshore wind including:

- *“Build on the positive and practical provision for onshore wind in our planning system under the next National Planning Framework and Scottish Planning Policy; and*
- *Implement the new Onshore Wind Policy Statement, which underlines the continued importance of this established low cost resource”.*

On the basis of the near-term actions for onshore wind in the SES (see above), it can be anticipated that these new national planning policy documents, with their enhanced status, will reflect this strong support for onshore wind now set out in the SES and OWPS.

3.5 The Onshore Wind Policy Statement (2017)

The OWPS sets out the up to date national policy position in relation to onshore wind. The Ministerial Foreword sets out that *“there is no question that onshore wind is a vital component of the huge industrial opportunity that renewables more generally create for Scotland”.*

It adds *“our energy and climate change goals mean that onshore wind will continue to play a vital role in Scotland’s future – helping to substantively decarbonise our electricity supplies, heat and transport systems, thereby boosting our economy.”*

Key relevant provisions of the statement are set out below.

Chapter 1 is entitled ‘Route to Market’ and it sets out (paragraph 2) that onshore wind, as a mature and established technology, is now amongst the lowest cost forms of generating electricity, renewable or otherwise. It adds *“we expect onshore wind to remain at the heart of a clean, reliable and low carbon energy future in Scotland”.*

Establishing a route to market is essential to enable wider deployment and an increased contribution from onshore wind. In a subsidy free context, it will be the larger scale developments that can capture a good wind resource, and which have cost effective grid connection arrangements which will make a valuable early contribution to targets.

Paragraph 3 continues: *“In order for onshore wind to play its vital role in meeting Scotland’s energy needs, and a material role in growing our economy, its contribution must continue to grow. Onshore wind generation will remain crucial in terms of our goals for a decarbonised energy system, helping to meet the greater demand from our heat and transport sectors, as well as making further progress towards the ambitious renewable targets which the Scottish Government has set”.*

The statement therefore makes it very clear that onshore wind is expected to make a significant contribution to Scotland’s energy needs including renewable targets into the long term.

Paragraph 4 of Chapter 1 states that given the recognised contribution that onshore is expected to make to Scotland’s future energy and renewable targets *“this means that Scotland will continue to need more onshore wind development and capacity, in locations across our landscapes where it can be accommodated”.* This statement not surprisingly therefore continues the current approach as set out in Scottish Planning Policy (SPP) that, whilst there is a very strong need case for further onshore wind development, environmental considerations

are factors to be taken into account in the operation of the planning system. This principle is reflected throughout the OWPS.

Paragraph 8 of Chapter 1 emphasises the industrial opportunity presented by a growing onshore wind sector and it states that *“the extent to which we can continue to capture these benefits, remains a top priority for Scottish Ministers”*.

The document makes a number of references to the industrial operations (tower manufacture) of CS Wind in Campbeltown and states *“serves as a reminder of Scotland’s ability to serve these markets – we are determined to build upon that, and to continue to attract investment in jobs to Scotland”*. The role of onshore wind in sustaining and further growing the supply chain for the sector is therefore a very important consideration and this is recognised in SPP at paragraph 169.

Importantly and given the recognition that onshore wind is amongst the lowest cost forms of generating electricity, paragraph 13 makes it clear that the Government’s position is that they wish to *“ensure that consumers are able to benefit from the low-cost contribution onshore wind can make to a decarbonised energy future – but at no additional cost to their energy bills”*.

One of the key questions posed in the draft OWPS was whether the matter of efficiency should be a material consideration in the section 36 application process. The Government decided not to pursue this matter but at paragraph 32 sets out *“they continue to invite applications to explain clearly how environmental impacts have been balanced against energy yield during design iteration, and reported as part of the information provided in support of applications”*.

The Applicant has demonstrated that their carefully considered design approach has sought to achieve a well-designed development with acceptable impacts whilst at the same time – is able to generate a valuable contribution to renewable energy and electricity targets. The proposed development will generate a similar amount of energy as the consented development would generate but with a 18 % reduction in excavated area.

Paragraph 23 states that the Scottish Ministers *“acknowledge that onshore wind technology and equipment manufacturers in the market are moving towards larger and more powerful (i.e. higher capacity) turbines and that these by necessity – will mean taller towers and blade tip heights”*. In this regard it is relevant that this is what has informed the proposed development.

Chapter 3 of the OWPS addresses ‘a strategic approach to development’ and states that whilst this was a key matter posed in the draft OWPS in terms of whether a new strategic approach to wind farm site development should be taken in Scotland, Scottish Ministers have taken the view that the current system described in the consultation as “business as usual” continues to represent an effective and efficient process for considering applications for developments in excess of 50MW.

3.6 The Climate Change Plan, The Third Report on Proposals and Policies 2018-2032 February 2018,

The Climate Change Plan, published in February 2018, (The CCP) is the most recent expression of Scottish Government Policy on climate change. Within the introduction at page 9 it is noted that:

“Climate change is one of the greatest global threats we face. Scotland must play its part to achieve the ambitions set out in the Paris Agreement, which mandates concerted, global action to deal with the threat.”

At page 25 of the CCP, the contribution of onshore wind to electricity generation is recognised alongside its role in driving innovation. It states:-

“In 2016, 42.9% of our electricity was generated by renewables, predominantly onshore wind. The expansion in onshore wind is comparable to the rollout of hydro power in the post-war period, which transformed for the better the lives of so many. This growth continues to drive innovation and adaptation in the management and control of power on the grid. This innovation, both technological and regulatory, will play a crucial role in accommodating the continuing growth of embedded generation, and a wider transformation in how we use the grid to heat and cool our buildings and power our transport systems.”

The final paragraph of page 34 of the CCP details the continued need to find room for large scale infrastructure.

“Where we get our low emission energy from is also critical and we will continue to need to find room for large scale infrastructure such as wind and solar farms, as well as more locally base equipment, such as heat networks and energy centres.”

The CCP states the Scottish Government’s Ambitions in the Electricity Sector on page 68 where Island wind is specifically identified as being one of the range of technologies that will contribute to the ambition of having a largely decarbonised by 2032.

“A range of renewable technologies will deliver clean, affordable electricity, including onshore, offshore and island wind, hydro, solar, marine and bioenergy.”[emphasis added].

The CCP cross references, The UK Government’s Clean Growth Strategy (October 2017) at page 78, and the commitment of *“up to £557 million for further Pot 2 CfD auctions from 2019.”* This is stated to provide an opportunity to support deployment of less established renewable technologies in Scotland including Island wind:

“The UK Government’s Clean Growth Strategy (October 2017) has committed up to £557 million for further Pot 2 CfD auctions from 2019. This will provide an opportunity to support the deployment of less established renewable technologies in Scotland. These include offshore wind, island wind (subject to State Aid approval), marine technologies, advanced conversion technologies, anaerobic digestion and biomass with combined heat and power, although the Scottish Government knows that minimal ring-fenced funds could have been set aside for marine and other less well established technologies that may struggle to compete with offshore wind.”

Policy Outcome 1 of the CCP on page 69 states:

“Policy outcome1: From 2020 onwards, Scotland’s electricity grid intensity will be below 50 grams of carbon dioxide per kilowatt hour. The system will be powered by a high penetration of renewables, aided by a range of flexible and responsive technologies.

There are two policies, five policy development milestones and five proposals from the Energy Strategy which will contribute to the delivery of policy outcome 1.”

Under Policy development milestone 1, on page 72, (as set out below), it is stated that *“the Scottish Government will continue to make the case to the UK Government for a stable, supportive regulatory regime that provides appropriate support for investment in renewable energy. This will include the need for a route to market for lowest cost renewable technologies, including onshore wind.”*

3.7 Conclusion on Renewable Energy Policy

The Scottish Government has published a new Energy Strategy that is integrated with a new Climate Change Plan and onshore wind policy statement. The Government said that this will “*reaffirm the Government’s overarching commitment to supplying clean energy, driving a host of economic, social and environmental improvements and promoting sustainable, inclusive growth*”.

The proposed development would aid the realisation of energy policy objectives and would make a valuable contribution to the respective unmet EU, UK and the Scottish 2020 and 2030 renewable energy and electricity targets, as outlined above. This contribution would be as significant at around 85.5 MW with a 48 % increase in energy yield.

The proposed development can draw significant support from the renewable energy policy framework, which seeks to maximise efficiency and provides support for repowering.

There is a continued strong policy drive to continue to develop renewable energy and to combat the effects of climate change.

Furthermore, with the closure of Longannet coal-fired power station in 2016, which had an installed capacity of 2,400 MW, it is important that additional electricity generating developments are consented in the interests of maintaining energy security.

The proposed development, with an installed capacity in the order of 85.5MW, would make a valuable contribution to Government policy objectives and unmet targets thereby implementing Government policy which encourages more electricity generation from renewable sources. As the Scottish Government makes clear in the Roadmap Update of September 2015, onshore wind is seen as being “pivotal” to the attainment of the Government’s 2020 targets and beyond.

A helpful position on energy policy was summed up concisely by the Reporter in the recent Corlic Hill Wind Farm Appeal Decision (17 May 2016) where in setting out overall conclusions he stated at paragraph 195 of the Decision Letter:

“the most significant positive aspect of Appeal proposal is the contribution it would make to the delivery of low carbon energy. The output of the proposed wind farm is estimated at between 16 and 24 megawatts, which represents a valuable contribution to Scottish, UK and international targets for greenhouse gas emission reduction and the use of renewable energy. It would also potential assist in providing greater of security of supply in the Scottish energy market by potentially displacing imported energy. These benefits are clearly recognised in SPP. Indeed, one of its four planning outcomes, which set out how the planning system should support the Government’s vision, is a reduction in carbon emissions. I have given this benefit of the scheme significant weight”.

Importantly, and post the Corlic Hill appeal decision, for the first time (January 2017), the Scottish Government has published integrated climate change and energy policy statements.

In short, when the SES, OWPS, Climate Change Plan and all related updated challenging targets are taken into account, and when these policy statements are considered in the round, with the language used, read always in their proper context, it is considered that this suite of documents has materially strengthened the needs case for the consenting of further renewable energy development.

In the Pencloe Wind Farm s.36 decision (6th December 2018), the Reporter set out in the Inquiry Report his conclusions on Scottish Government energy policy with regard to onshore wind (paragraph 9.7):

“I see no sign that the Scottish Government is slackening the pace; rather, the latest policy statements on energy and onshore wind indicate that the effort is being intensified. The latest target of generating 50% of energy from renewable sources by 2030 is a deliberately challenging one, which may require around 17GW of installed capacity by that date. The newly adopted Scottish Energy Strategy and the accompanying Onshore Wind Policy Statement are explicit that onshore wind will continue to play a vital role in that regard.

The Scottish Government’s latest energy strategy expects onshore wind to help decarbonise Scotland’s electricity, heat and transport systems, boost the economy, and meet demand”.

Should the current targets within the Climate Change Bill remain (see above) then a significantly more ambitious renewable energy and planning policy framework will be required in order to meet those targets. In Climate Change Secretary Roseanna Cunningham's statement to the Scottish Parliament on 14 May 2019, it was recognised that to meet climate change objectives *“requires a transformative change”*. An example given as to what can assist in achieving that transformative change is *“the next National Planning Framework and review of the Scottish Planning Policy will include considerable focus on how the planning system can support our climate change goals.”* and *“...To deliver the transformational change that is required, we need structural changes across the board: to our planning, procurement, and financial policies, processes and assessments. And as I’ve already said, that is exactly what we will do.”*

Accordingly, it can be expected that the future energy policy framework will be more ambitious with regards its support for sustainable energy technologies and will also be more engrained with national planning policy.

It is submitted that the proposed development, by way of its increased renewable energy generation yield and reduced carbon payback period, when compared to the consented development, is wholly consistent with current energy policy. It is concluded that the proposed development can draw significant support from the energy policy framework.

4 National Planning Policy

4.1 Introduction

This Chapter of the Planning Statement summarises the national planning policy position that is relevant to the determination of the s.36c application for the proposed development. The National Policy position remains as that which informed the consented development s.36 decision.

4.1 The National Planning Framework 3

The National Planning Framework 3 (NPF3) was published on 23 June 2014. NPF3 is a long-term strategy for Scotland and is the spatial expression of the Government's Economic Strategy and plans for development and investment in infrastructure. Together, NPF3 and SPP (referred to below) applied at the strategic and local levels, are intended to help the planning system deliver the Government's vision and outcomes for Scotland and to contribute to the Government's central purpose. Indeed, Page 1 of NPF3 highlights how national planning policy responds to the Scottish Governments overall purpose.

High level support for renewable energy development is provided through the "vision", which is referred to as inter alia:

- A successful, sustainable place – *"we have a growing low carbon economy which provides opportunities..."*
- A low carbon place - *"we have seized the opportunities arising from our ambition to be a world leader in low carbon generation, both onshore and offshore..."*
- A natural resilient place - *"natural and cultural assets are respected; they are improving in condition and represent a sustainable economic, environmental and social resource for the nation..."*

Further support is provided in Chapter 3 'A Low Carbon Place' which sets out the role that Planning will play in delivering the commitments set out in 'Low Carbon Scotland: The Scottish Government's Proposals and Policies.' It states:

"the priorities identified in this spatial strategy set a clear direction of travel which is consistent with our world leading climate legislation".

The introduction to Chapter 3 states that the Government's ambition *"is to achieve at least an 80% reduction of greenhouse gas emissions by 2020"*.

The introductory section acknowledges that, at present, the energy sector accounts for a significant share of the country's greenhouse gas emissions.

Paragraph 3.7 states that whilst there is strong public support for wind energy as part of the renewable energy mix, opinions about onshore wind in particular locations can vary. It adds that the technology is *"...recognised as an opportunity to improve the long term resilience of rural communities"*.

Paragraph 3.8 makes reference to targets and states that by 2020, the aim is to reduce total energy demand by 12%. In order to achieve this, and to maintain energy supplies, further diversification of supplies will be required.

It adds that the Government’s aim is to meet at least 30% of overall energy demand from renewables by 2020 – this includes generating the equivalent of at least 100% of gross consumption from renewables, with an interim target of 50% by 2015. Note: current energy policy sets more ambitious targets.

Paragraph 3.9 states:

“Our Electricity Policy Statement sets out how our energy targets will be met. We are making good progress in diversifying Scotland’s energy generation capacity, and lowering the carbon emissions associated with it, but more action is needed. Maintaining security of supplies and addressing fuel poverty remain key objectives. We want to continue to capitalise on our wind resource and for Scotland to be a world leader of offshore renewable energy. In time we expect the pace of onshore wind energy development to be overtaken by a growing focus on our significant marine energy opportunities including wind, wave and tidal energy”.

Paragraph 3.23 states that *“onshore wind will continue to make a significant contribution to diversification of energy supplies”.*

In conclusion, it is clear that onshore wind development is recognised as a key technology in the energy mix which will contribute to Scotland becoming ‘a low carbon place’ which in turn will be a key part of the ‘vision’ for Scotland (as set out at paragraph 1.2 of NPF3). Furthermore, the Government has made it unequivocally clear that it wants to continue to *“capitalise on our wind resource”*. The proposed development would contribute to the unmet 2020 target set out in NPF3.

The NPF3 also sets out where wind energy development will be unacceptable, on the basis of protecting the most significant national landscape related assets. NPF3 presumes against wind farms located within National Parks and National Scenic Areas. NPF3 also recognises the value and sensitivity of Wild Land Areas to onshore wind energy development. It is a very relevant consideration that the proposed development is not located within or adjacent to a National Scenic Area, National Park or Wild Land Area. Therefore, in a strategic locational sense, the proposed development is not sited within or adjacent to the areas that have the most protection within the NPF 3.

4.2 Scottish Planning Policy

On 23 June 2014, the Scottish Ministers published SPP. The purpose of the SPP is to set out national planning policies which reflect Scottish Government Ministers’ priorities for the operation of the planning system and for the development and use of land. The SPP is a statement of Scottish Government policy on how nationally important land use planning matters should be addressed.

Paragraph (iii) states that as a statement of Ministers’ priorities, the content of the SPP is a material consideration that carries significant weight.

Relationship of SPP to National Outcomes

Paragraph 9 of the SPP refers to ‘Outcomes’ as they relate to the Scottish Government’s ‘Purpose’ *“of creating a more successful country, with opportunities for all of Scotland to flourish through increasing sustainable economic growth....”*

Paragraph 10 adds that the Scottish Government’s 16 national outcomes articulate in more detail on how the Purpose is to be achieved. It adds that the pursuit of these outcomes provides the impetus for other national

plans, policies and strategies and many of the principles and policies set out in them are reflected in both SPP and NPF3.

Paragraph 13 of SPP introduces four planning outcomes which explain *“how planning should support the vision” for the planning system in Scotland. Three of these outcomes are particularly relevant namely:*

- *Outcome 1: a successful sustainable place – supporting sustainable economic growth and ... the creation of well designed, sustainable places;*
- *Outcome 2: a low carbon place – reducing our carbon emissions and adapting to climate change; and*
- *Outcome 3: a natural, resilient place – helping to protect and enhance our natural and cultural assets, and facilitating their sustainable use”.*

Outcome 2 ‘A Low Carbon Place’ explains that NPF3 will facilitate the transition to a low carbon economy, particularly by supporting diversification of the energy sector. Paragraph 18 refers to the Climate Change (Scotland) Act 2009 which has set a target of reducing greenhouse gas emissions by at least 80% by 2050, with an interim target of reducing emissions by at least 42% by 2020. SPP explains that Section 44 of the 2009 Act places a duty on public bodies to act in the best way to contribute to the delivery of emissions targets as set out in the Act, and to help deliver the Scottish Government’s climate change adaption programme. Note: these targets have been significantly strengthened in the Climate Change Bill 2019.

Principal Policies of SPP

SPP contains two Principal Policies, namely ‘sustainability’ and ‘placemaking’. Sustainability is addressed at Page 9. SPP states at paragraph 24 that:

“the Scottish Government’s central purpose is to focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth”.

Paragraph 25 adds that the Scottish Government’s commitment to the concept of sustainable development is reflected in its Purpose.

Paragraph 27 cross refers to the Government’s Economic Strategy which it states *“indicates that sustainable economic growth is the key to unlocking Scotland’s potential... and to achieving a low carbon economy...”*. It also makes reference to the need to maintain a high-quality environment and to pass on *“a sustainable legacy for future generations”*.

Presumption in Favour of Development that contributes to Sustainable Development

A new ‘Policy Principle’ in the SPP is the statement at Paragraph 27 which is as follows:

“This SPP introduces a presumption in favour of development that contributes to sustainable development”.

Paragraph 28 continues and states:

“the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal 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”.

Paragraph 29 of SPP then sets out that policies and decisions should be guided by a number of principles. Those of relevance include the following:

- Giving due weight to net economic benefit;
- Supporting good design;
- Supporting delivery of infrastructure, for example ... energy;
- Supporting climate change mitigation and adaptation including taking account of flood risk;
- Having regard to the principles for sustainable land use as set out in the Land Use Strategy;
- Protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- Protecting, enhancing and promoting access to natural heritage including ... landscape and the wider environment; and
- Protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

The introduction of the presumption in favour of development that contributes to sustainable development has important consequences for development management practice. Paragraphs 32 and 33 of SPP explain how this Policy Principle is ‘operationalised’ in development management.

Paragraph 32 states that *“the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making”*. SPP directs decision makers as follows:

“proposals that accord with up-to-date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising.... ”

As stated later in Chapter 5, the proposed development is considered to be in accordance with the Development Plan, which is an important consideration in the context of this application.

SPP Subject Policies – A Low Carbon Place

SPP addresses ‘A Low Carbon Place’ as a ‘subject policy’ on page 36 and refers to ‘delivering electricity’.

Paragraph 152 refers to the NPF context and states that NPF3 is clear that planning must facilitate the transition to a low carbon economy and help to deliver the aims of the Scottish Government. It is stated that Scotland has significant renewable energy resources, both onshore and offshore.

Paragraph 153 states that terrestrial planning “facilitates” development of renewable energy technologies and guides new infrastructure to appropriate locations. It adds that *“efficient supply of low carbon and ... generation of ... electricity from renewable energy sources are vital to reducing greenhouse gas emissions ...”*. It explains that renewable energy also presents a significant opportunity for associated development, investment and growth of the related supply chain.

In terms of ‘Policy Principles’, Paragraph 154 states that the planning system should:

- Support the transformational change to a low carbon economy, consistent with national objectives and targets, including deriving:
 - 30% of overall energy demand from renewable sources by 2020;
 - 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;
- Guide development to appropriate locations and advise on the issues that will be taken into account when specific proposals are being assessed.

SPP also cross refers to “key documents” and those of relevance include:

- The Electricity Generation Policy Statement (EGPS);
- The 2020 Routemap for Renewable Energy in Scotland; and
- Low Carbon Scotland: Meeting Our Emissions Reductions Targets 2013 – 2027.

The proposed development is consistent with the ‘low carbon place’ subject policy and would contribute to the attainment of its objective. Indeed, the carbon payback period calculated for the proposed development is 1.5 years compared to 2 years predicted for the consented development. Accordingly, the proposed development has an improved relationship with this part of SPP.

Onshore Wind

Onshore wind is specifically addressed at Paragraph 161 et seq of SPP. Detailed guidance is provided for Planning Authorities with regard to the preparation of Spatial Frameworks for onshore wind development, and it makes it clear that proposals for onshore wind turbine development should continue to be determined whilst Spatial Frameworks and local policies are being prepared and updated. It makes it clear at (paragraph 166) that moratoria on onshore wind development are not appropriate.

In terms of Spatial Framework guidance, a “*community separation for consideration of visual impact*” is set out as “*an area not exceeding 2km around cities, towns and villages identified on the local development plan with an identified settlement envelope or edge*”.

As with the previous SPP, this separation distance has a purpose of guiding the preparation of Spatial Frameworks and is not a requirement for a ‘set back’ to settlements, or in relation to individual properties for wind farms in terms of development management.

Development Management for Energy Infrastructure Developments

Paragraph 169 of SPP sets out that “*proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms*” and that *considerations will vary relative to the scale of the proposal and area characteristics but are likely to include*” a number of matters. These are set out at Table 1 of SPP (page 39) (as replicated below).

Table 1: Spatial Frameworks

<p>Group 1: Areas where wind farms will not be acceptable:</p> <p>National Parks and National Scenic Areas.</p>		
<p>Group 2: Areas of significant protection:</p> <p>Recognising the need for significant protection, in these areas wind farms may be appropriate in some circumstances. Further consideration will be required to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.</p>		
<p>National and international designations:</p> <ul style="list-style-type: none"> • World Heritage Sites; • Natura 2000 and Ramsar sites; • Sites of Special Scientific Interest; • National Nature Reserves; • Sites identified in the Inventory of Gardens and Designed Landscapes; • Sites identified in the Inventory of Historic Battlefields. 	<p>Other nationally important mapped environmental interests:</p> <ul style="list-style-type: none"> • areas of wild land as shown on the 2014 SNH map of wild land areas; • carbon rich soils, deep peat and priority peatland habitat. 	<p>Community separation for consideration of visual impact:</p> <ul style="list-style-type: none"> • an area not exceeding 2km around cities, towns and villages identified on the local development plan with an identified settlement envelope or edge. The extent of the area will be determined by the planning authority based on landform and other features which restrict views out from the settlement.
<p>Group 3: Areas with potential for wind farm development:</p> <p>Beyond groups 1 and 2, wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.</p>		

It is clear from Table 1 above that the proposed development is not constrained by any of the factors set out in either Group 1 or 2 (this is the exception of peat). In this context, the proposed development turbines are all within Group 3, where “wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria”. The Reporter, as set out within paragraph 9.14 of the Inquiry Report agrees that the consented development is Group 3 and it is the Applicants position that the proposed development should also be regarded as Group 3.

In terms of development management, paragraph 169 of SPP states that considerations for energy infrastructure “...will vary relative to the scale of proposal and area characteristics but are likely to include:

- net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities;
- the scale of contribution to renewable energy generation targets;
- effect on greenhouse gas emissions;
- cumulative impacts – planning authorities should be clear about the likely cumulative impacts arising from all of the considerations below;

- *impacts on communities and individual dwellings, including visual impact, residential amenity, noise and shadow flicker;*
- *landscape and visual impacts, including effects on wild land;*
- *effects on the natural heritage, including birds;*
- *impacts on carbon rich soils, using the carbon calculator;*
- *public access, including impact on long distance walking and cycling routes and scenic routes identified in the NPF;*
- *impacts on the historic environment, including scheduled monuments, listed buildings and their settings;*
- *impacts on tourism and recreation;*
- *impacts on aviation and defence interests and seismological recording;*
- *impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;*
- *impacts on road traffic;*
- *impacts on adjacent trunk roads;*
- *effects on hydrology, the water environment and flood risk;*
- *the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;*
- *the need for a robust planning obligation to ensure that operators achieve site restoration.”*

As set out in the EIA Report, and in light of the development plan assessment in Chapter 5, the proposed development would be acceptable in terms of the above considerations and can draw significant support from the paragraph 169 policy tests.

The proposed development is found acceptable with regard the above policy tests in its own right. The proposed development can only be considered positively with the SPP policy tests as the relationship with the policy tests remains the same as that for the Consented Development. This is with the exception of the first two bullet points with which the proposed development will have a more beneficial relationship due to the proposed development resulting in an enhanced contribution to renewable energy targets and greenhouse gas emissions when compared with the consented Development.

It is a significant consideration that the proposed development demonstrates a positive relationship with the policy criteria set out at paragraph 169 of SPP.

Paragraph 170 of SPP states that areas identified with wind farms should be suitable for use in perpetuity. It further adds that consents may be time limited, but nevertheless *“wind farms should . . . be sited and designed to ensure impacts are minimised and to protect an acceptable level of amenity for adjacent communities”*.

4.3 Conclusions

The proposed development is well aligned with national planning policy, meeting the onshore wind locational policy objectives of NPF 3 and SPP.

SPP sets out continued support for onshore wind in a similar manner to the previous SPP. Furthermore, it sets out a clear presumption in favour of development that contributes to sustainable development as well as those which accord with the Development Plan. The proposed development can draw significant support from SPP, as it is both sustainable and is found to accord with the relevant provisions of the Development Plan.

Furthermore, at paragraph 9.33 of the Inquiry Report it is stated:-

“Drawing matters together I conclude that the proposed Pencloe windfarm is supported by national energy and planning policies.....Pencloe is located within an area with recognised potential for wind farm development, and the proposal meets the locational guidance in national planning policy.”

Accordingly, the same must be found for the proposed development due to it having a greater installed electrical capacity to the consented development, with a 48% increase in energy yield, a reduced carbon payback period and no material change to its predicted adverse environmental effects (See EIA Report).

5 East Ayrshire Local Development Plan

5.1 Introduction

At the time of the consented development s. 36 Decision the Development Plan within East Ayrshire comprised: -

- The East Ayrshire Development Plan (2017).

The original Section 36 Decision is dated 6 December 2018 and page 6 of the Decision Letter notes the Local Development Plan (LDP) as well as the weight the Reporter, within the Inquiry Report, attached to the LDP.

The Scottish Ministers concluded that the consented development accorded with the relevant provisions of the LDP as per the Reporters conclusions. The Ministers also note that Policy RE3 and Schedule 1 are the critical provisions of the LDP.

5.2 The East Ayrshire LDP

The potentially relevant policies within the East Ayrshire Council LDP are set out in table 6.1 below.

Table 6.1: Potentially Relevant EAC LDP Policies

Topic	East Ayrshire LDP Policies
Renewable Energy and Sustainability	Policy RE3 – Wind Energy Proposals over 50 m in height
	Policy RE5 – Financial Guarantees
Landscape and Visual	Policy ENV7 – Wild Land and Sensitive Landscape Areas;
	Policy ENV8 – Protecting and Enhancing the Landscape
Peat	Policy ENV10 – Carbon Rich Soils
Cultural Heritage and Archaeology	Policy ENV2 – Scheduled Monuments and Archaeological Resources
Ecology	Policy ENV6 – Nature Conservation;
	Policy ENV9 – Trees, Woodland and Forestry
Geology, Hydrogeology and Hydrology	Policy ENV11 – Flood Prevention
Transport	Policy T1 – Transportation Requirements for new development
	Policy T4 – Development and Protection of Core Paths and Natural
Amenity	Policy ENV12 – Water, air, light and noise pollution;
	Policy RES11 – Residential Amenity

On the basis that both the Scottish Ministers and the Reporter found Policy RE3 and Schedule 1 of the LDP to be the main determining provisions of the Development Plan, the proceeding assessment of the Development Plan focuses on the assessment of those provisions.

Policy RE3: Wind Energy proposals over 50m in height states:

“All wind energy proposals over 50m in height, including extensions and proposals for repowering, will be assessed using the spatial framework for wind development shown on Map 12 and all relevant Renewable Energy and other LDP policies.

The Council will afford significant protection to Group 2 areas shown on Map 12. Development may be appropriate in some circumstances within these areas in cases where it can be demonstrated that any significant adverse effects on the environmental characteristics of these areas can be substantially overcome by siting, design or other mitigation and where the proposal is acceptable in terms of all applicable renewable energy criteria set out in Schedule 1.

Within those areas shown on the Spatial Framework (Map 12) as Group 3 - Areas with Potential for Wind Energy Development, proposals for wind energy over 50m in height will be supported where it can be demonstrated that they are acceptable in terms of all applicable Renewable Energy Assessment Criteria set out in Schedule 1.”

The Schedule 1 policy criteria largely reflect those set out within SPP and the LDP policy test is one of establishing acceptability. In considering the acceptability of the proposed development the Inquiry Report and the Scottish Ministers decision letter must be the starting point. Both the Inquiry Report and the Scottish Ministers decision letter are unequivocal that the consented development is acceptable and draws support from both the Development Plan and national policy. Accordingly, the appropriate approach to the assessment of Policy RE3 is to establish whether the effects (both adverse and positive) of the proposed development differ substantially from those associated with the consented development. If not, the proposed development must be found acceptable and in accordance with Policy RE3. Should the effects be found to be substantially different then acceptability must be determined by way of weighing the positive and adverse effects of the proposed development in the planning balance. Also of relevance is paragraph 9.14 of the Inquiry Report, which acknowledges that the site is Group 3. The minor revisions to the proposed development layout do not change the Group 3 status of the site.

An assessment of the Appendix 1 policy criteria is undertaken below. The text in bold font replicates the policy criteria and the text below provides the Applicants assessment. The assessment is undertaken on a comparative basis, comparing the proposed and consented developments.

Landscape and visual impacts:

Significant landscape and visual impacts remain and Chapter 7 of the EIA Report concludes that *“no substantive or material changes to the findings of the original LVIA or FEI are predicted”*. Accordingly, the effects of the proposed and consented development are not found to be materially different.

Cumulative impacts - likely cumulative impacts arising from all of the considerations below, recognising that in some areas the cumulative impact of existing and consented energy development may limit the capacity for further development;

Cumulative impact conclusions do not substantially change for all environmental topics considered within the EIA Report.

Impacts on carbon rich soils, deep peat and peatland habitats; using the carbon calculator;

The carbon calculator results are set out within Chapter 16 of the EIA Report 'Climate Change'. It is concluded that the carbon payback period of the proposed development will reduce by 0.5 years to 1.5 years compared to 2 years for the consented development.

Effects on the natural heritage, including birds. Renewable energy proposals will only be approved where the Council has ascertained that they would not have an adverse effect on the integrity of a Natura 2000 site;

Chapter 9 'Ornithology' concludes that the proposed development will have a slightly lower collision risk for bird species. No changes to residual environmental effects are predicted for the proposed development.

Impacts on wild land;

No impacts are predicted.

Impacts on all aspects of the historic environment;

No changes have been predicted when compared to the consented development.

Effects on hydrology, the water environment, flood risk and groundwater dependent terrestrial ecosystems;

The predicted loss and disturbance of Annex 1 heath, bog and flush habitats has been slightly reduced and will still be greatly outweighed by the benefits arising from the implementation of the Habitat Management Plan. There will be no significant residual effects on other habitats or non-avian faunal species resulting from the proposed development.

The alterations to the layout generally improve the avoidance of peat, continue to avoid watercourses and their associated buffers and no change is predicted to groundwater dependent terrestrial ecosystems.

Accordingly, some slight ecological benefit is predicted for the proposed development when compared to the consented development.

Re-use of excavated peat, forest removal and forest waste;

The Outline Peat Management Plan is based on the peat depth, characteristics and distribution investigations undertaken across the development area and the windfarm infrastructure layout, a surplus of peat is not expected to be generated by the proposed development. All estimated excavated peat is planned for reuse for restoration work during the construction, post-construction, and decommissioning phases of the windfarm.

A forestry removal and replanting plan is also proposed, prepared in consultation with Forestry and Land Scotland. No material change in effects upon forestry is predicted when the consented and Proposed developments are compared.

Impacts on forestry and woodlands, with reference to the Ayrshire and Arran Forestry and Woodland Strategy (2013);

A forestry felling plan and replacement planting plan has been prepared in consultation with Forestry and Land Scotland. It has been identified that there is no requirement for compensatory planting. Accordingly, no material change to the effects associated with the consented development is predicted.

Effect on greenhouse gas emissions;

The proposed development would contribute further to the reduction in greenhouse gas emissions when compared to the consented development owing to the reduced carbon payback period and enhanced electrical generating capacity.

Impacts on communities and individual dwellings, including visual impact, residential amenity, noise and shadow flicker;

There would be no change to the potential impact of the proposed development on communities. Shadow flicker will not have any effects on dwellings. In terms of transport and specifically potential impacts on users of the Afton Road, no changes are proposed to traffic management measures. Chapter 7 of the EIA Report also predicts no substantive changes to the visual impacts of the proposed development.

Impacts on tourism and recreation;

No changes are predicted. The Reporter concluded within the Inquiry report for the consented development that it is not expected there would be any negative impact on tourism or to the economic value of this sector to the economy.

Public access, including impact on long distance walking and cycling routes and scenic routes identified in National Planning Framework 3;

No changes are predicted.

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

No changes are predicted.

Impacts on aviation and defence interests and seismological recording;

As set out in Chapter 15 Aviation and Defence' of the EIA Report, discussions are ongoing with NATS and Glasgow Prestwick Airport regarding mitigation agreements. Subject to appropriate agreements being reached it is concluded that there would be no unacceptable effects on aviation and defence interests.

Impacts on road traffic including during construction and decommissioning;

No material changes are proposed to traffic management measures and accordingly no impacts are predicted additional to those predicted for the consented development.

Impacts on adjacent trunk roads;

No material changes are proposed to traffic management measures and accordingly no impacts are predicted additional to those predicted for the consented development.

Impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;

No effects are predicted.

The appropriate siting and design of turbines and ancillary works;

As set out the proposed development infrastructure design results in some slight improvements to habitat loss, ornithological collision risk, a reduction in the requirement for aggregate and the carbon payback period. No changes are predicted to the significant landscape and visual effects likely to arise from the consented development.

The need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;

No changes are proposed to the conditions of the consented development that deal with decommissioning.

The need for a robust planning obligation to ensure that operators achieve site restoration;

The consented development did not require a planning obligation for site restoration (see paragraph 7.59 of the Inquiry Report). Accordingly, no planning obligation should be required for the proposed development.

The scale of contribution to renewable energy generation targets;

The proposed development would have an installed capacity of around 85.5 MW. The consented development would have an installed capacity of 62.7 MW. The proposed development increases the installed capacity by around 22.8 MW, which is a 36 % increase in capacity. The predicted energy yield of the proposed development is also expected to increase significantly (by 48 %) when compared to the consented development. Accordingly, the proposed development will make a greater contribution to renewable energy generation targets.

Opportunities for energy storage.

The opportunities for energy storage are greater with the consented development as, depending on turbine procurement, there may be a small amount of unused grid capacity available allowing for the integration of battery storage at a later date.

5.3 Conclusions

It is the Applicants position, as evidenced within the EIA Report, that the effects of the proposed development are not substantially different to those associated with the consented development. As can be seen from the above, the proposed development will result in some benefit when compared to the consented development. It is concluded that the proposed development accords with Policy RE3 in that all environmental effects are found acceptable.

6 Benefits of the Proposed Development

The benefits of the proposed development when compared with the consented development are important material considerations that should inform the s.36 variation decision. As noted above, and within the EIA Report, no additional significant effects are identified for the proposed development as were predicted for the consented development. The benefits of the proposed development are summarised below:

- The increase in energy yield would be in the order of **48 %** when compared to the predicted energy yield of the consented development;
- The increase in generation capacity would be in the order of **22.8 MW**, which is around 36 %, when compared to the capacity of the consented development;
- The likely significant effects of the proposed development, as set out in the EIA Report, are largely the same as the consented development;
- The proposed development with a capacity of 85.5 MW would more fully utilise the grid capacity that is available (a total of 96 MW is available) compared to the 62.7 MW capacity of the consented development;
- The proposed development will require around **20 %** less aggregate for construction compared to the consented development;
- The area required to be excavated for proposed development infrastructure is around **18 %** lower than that which would be required to implement the consented development;
- the carbon payback period of the proposed development will reduce by 0.5 years to **1.5** years when the proposed development is compared to the consented development;
- There will be a slightly lower collision risk for bird species for the proposed development than predicted for the consented development;
- The alterations to the layout generally improve upon the avoidance of peat, watercourses and their associated buffers;
- There is some potential for the integration of battery storage owing to there likely being a few MWs of the contracted grid capacity that is not used by the wind turbine generators; and
- There is an enhanced policy relationship with national planning and energy policy owing to the reduced carbon payback period and there would be a greater contribution to renewable energy and climate change targets owing to the increase in capacity and the energy yield predicted.

7 Conclusions and Recommendations

7.1 Introduction

This chapter sets out overall conclusions. As explained in the introduction (Chapter 1 of this Planning Statement), the statutory Development Plan is an important consideration. However, there is no legislative test within the Electricity Act that requires a development to accord with the relevant provisions of the Development Plan. It is a relevant consideration, among many others, to which it is expected that the decision maker will have regard.

Other key considerations include:

- The consented development and its likely environmental effects;
- National energy policy and the Climate Change Bill; and
- National Planning Policy.

7.2 The Development Plan

In having regard to the Development Plan it must be recognised that the Statutory Development Plan at the point of the original s.36 Decision is the same plan as is the Development Plan at the time of writing. The cumulative baseline has not changed significantly since the original s.36 Decision and the environmental effects of the proposed development are not materially different to the consented development. The proposed development must then be found to accord with the LDP on this basis.

7.3 The Electricity Act 1989

As identified in Chapter 1, the development requires to be considered under the terms of the 1989 Act. Paragraph 3(2) of Schedule 9 to the 1989 Act, provides a specific statutory requirement on the Scottish Ministers to have regard to the following when considering development proposals:

“The desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeology interest; and.....The extent to which the developer has complied with its duty to do 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”.

Through the EIA process, which has been undertaken in accordance with good practice, many possible environmental effects have been avoided or reduced. It is considered that the work undertaken for the EIA has confirmed that the proposed development is environmentally acceptable. It is further considered that the Applicant has fulfilled the obligations under Schedule 9 of the Electricity Act in this regard.

7.4 Other Considerations

Material considerations, by definition, can be far reaching and involve a variety of considerations. However, only key material considerations of relevance to the development have been examined. Of particular relevance are the renewable energy targets (including those in the Climate Change Bill) and policies with regard to climate change. Such targets and policies provide the basis of the need case for the development.

The development will aid the realisation of renewable electricity generation targets and will make a significant contribution to the Scottish and UK 2020, 2030 and 2050 targets. The proposed development will make a greater contribution to targets than the contribution of the consented development.

National planning policy has also been considered. SPP is particularly supportive of the proposed development with regards to its policy position on renewable energy generation, climate change action, employment creation, land use diversification and economic benefit.

National planning policies regarding the built environment and natural and cultural heritage have also been considered and the development is considered to be supported by these policies in the context of it having been designed and sited to avoid areas of greatest sensitivity and to minimise environmental effects.

In conclusion, the material considerations set out are found to be supportive of the proposed development.

7.5 Overall Conclusions

The overall conclusion reached is that that the proposed development satisfies the terms of the 1989 Act and is also supported by the terms of national planning and energy policy and the Development Plan. It is therefore recommended that consent should be granted under s.36c of the Electricity Act 1989 (as amended).



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