
NORTH AYRSHIRE COUNCIL

30 September 2020

Local Review Body

Title: Notice of Review: 20/00232/PP – North East of Wee Minnemoer, Millport, Isle of Cumbrae

Purpose: To submit, for consideration of the Local Review Body, a Notice of Review by the applicant requesting a variation of conditions 6 and 10 of planning permission 16/00124/PP.

Recommendation: That the Local Review Body considers the Notice of Review.

1. Executive Summary

- 1.1 The Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2006, provides for certain categories of planning application for "local" developments to be determined by appointed officers under delegated powers. Where such an application is refused, granted subject to conditions or not determined within the prescribed period of 2 months, the applicant may submit a Notice of Review to require the Planning Authority to review the case. Notices of Review in relation to refusals must be submitted within 3 months of the date of the Decision Notice.

2. Background

- 2.1 A Notice of Review was submitted in respect of Planning Application **20/00232/PP** - Variation of conditions 6 and 10 of planning permission 16/00124/PP for the installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure at North East of Wee Minnemoer, Millport, Isle of Cumbrae.
- 2.2 The application was refused by officers for the reasons detailed in the Decision Notice.
- 2.3 The following related documents are set out in the appendices to the report: -
- Appendix 1 - Notice of Review documentation;
 - Appendix 2 - Report of Handling;
 - Appendix 3 - Location Plan; and
 - Appendix 4 - Planning Decision Notice; and

3. Proposals

- 3.1 The Local Review Body is invited to consider the Notice of Review.

4. Implications/Socio-economic Duty

Financial

4.1 None arising from the recommendation of this report.

Human Resources

4.2 None arising from the recommendation of this report.

Legal

4.3 The Notice of Review requires to be considered in terms of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2006, and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

Equality/Socio-economic

4.4 None arising from the recommendation of this report.

Environmental and Sustainability

4.5 None arising from the recommendation of this report.

Key Priorities

4.6 None arising from the recommendation of this report.

Community Benefits

4.7 None arising from the recommendation of this report.

5. Consultation

5.1 Interested parties (both objectors to the planning application and statutory consultees) were invited to submit representations in terms of the Notice of Review and none were received.

Craig Hatton
Chief Executive

For further information please contact **Hayley Clancy, Committee Services Officer**, on **01294 324136**.

Background Papers

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NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)
IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)
(SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Please read and follow the guidance notes provided when completing this form.
Failure to supply all the relevant information could invalidate your notice of review.

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Mark this box to confirm all contact should be
through this representative: ☒

* Do you agree to correspondence regarding your review being sent by e-mail?

Yes ☒ No ☐

Planning authority

Planning authority's application reference number

Site address

Description of proposed development

Date of application Date of decision (if any)

Note: This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- | | |
|--|-------------------------------------|
| 1. Application for planning permission (including householder application) | <input type="checkbox"/> |
| 2. Application for planning permission in principle | <input type="checkbox"/> |
| 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition) | <input checked="" type="checkbox"/> |
| 4. Application for approval of matters specified in conditions | <input type="checkbox"/> |

Reasons for seeking review

- | | |
|---|-------------------------------------|
| 1. Refusal of application by appointed officer | <input checked="" type="checkbox"/> |
| 2. Failure by appointed officer to determine the application within the period allowed for determination of the application | <input type="checkbox"/> |
| 3. Conditions imposed on consent by appointed officer | <input type="checkbox"/> |

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- | | |
|---|-------------------------------------|
| 1. Further written submissions | <input type="checkbox"/> |
| 2. One or more hearing sessions | <input type="checkbox"/> |
| 3. Site inspection | <input type="checkbox"/> |
| 4. Assessment of review documents only, with no further procedure | <input checked="" type="checkbox"/> |

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|--------------------------|-------------------------------------|
| 1. Can the site be viewed entirely from public land? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

The site is on farmland which is sometimes used for grazing. For safety reasons it would be best if any site visits were to be arranged with the farmer via the Applicant's agent.

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

Please see attached supporting statement

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes ☐ No ☒

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

Please see the attached supporting statement

Note: The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- ☒ Full completion of all parts of this form
- ☒ Statement of your reasons for requiring a review
- ☒ All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

[]

Date

11 August 2020

Comsol Energy Limited

North Ayrshire Council

Photovoltaic Solar Farm

Site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae

Refusal of Application for Planning Permission (reference 20/00232/PP)

Notice of Review

Supporting Statement

1 Background

- 1.1 Comsol Energy Limited ("the Applicant") proposes to develop a photovoltaic solar farm with an output of up to 5MW on a site to the north east of Wee Minnemoer, Millport, Isle of Cumbrae ("the Development").
- 1.2 Planning permission for the Development (reference 16/00124/PP) was originally granted by the Council on 29 March 2017 (the "Planning Permission"). A copy of the Decision Notice for the Planning Permission is submitted as Document 1.1 as per the list of documents in paragraph 5 below.
- 1.3 The Applicant made an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 (reference 20/00232/PP) seeking planning permission for the Development without compliance with conditions 6 and 10 of the Planning Permission ("the Section 42 Application"). The Section 42 Application proposed amended versions of conditions 6 and 10.
- 1.4 The Section 42 Application was considered and determined on behalf of the Planning Authority under delegated powers. By decision notice dated 14 May 2020 (Document 3.1), planning permission was refused.
- 1.5 The Applicant seeks a review of the refusal of the Section 42 Application. This supporting statement sets out the Applicant's reasons for seeking a review, the matters which the Applicant considers are relevant to determine the review, and a note of the documents which the Applicant relies on and wishes to be considered by the Local Review Body.

2 Condition 6 of Planning Permission

- 2.1 Condition 6 of the Planning Permission is in the following terms:

"That, within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site."

Applicant's Concern with Existing Condition

- 2.2 The condition as currently worded requires decommissioning (and thereafter restoration) of the site in two circumstances. Firstly, if there were to be a permanent cessation of construction works prior to the project coming in to operational use. Secondly, if following the project coming in to operational use there were to be a cessation of electricity generation. Following the occurrence of either of these events, all photovoltaic panels and associated structures etc. would require to be removed from the site within a period of 6 months. Thereafter, the site would require to be fully restored.
- 2.3 The second potential trigger for decommissioning and restoration of the site is "*cessation of electricity generation*". This wording differs from the wording for the first potential trigger which requires "**permanent** cessation of construction works.") Used on its own the word 'cessation' is ambiguous and can mean both a permanent stop and a temporary stop.
- 2.4 The use of the qualifying adjective 'permanent' in connection with cessation of construction works removes such ambiguity in that context. A temporary cessation of construction works due for example to adverse weather conditions would clearly not trigger the requirement to decommission/restore. The absence of the word 'permanent' in relation to generation of electricity leaves the meaning of 'cessation' unclear in that context and leaves open the possibility that a temporary halt in generation of electricity could trigger the requirement to decommission/restore. In fact, the absence of the word 'permanent' in relation to cessation of generation of electricity, when such term is used in relation to cessation of construction works, perhaps makes it more likely that the condition could be interpreted to cover temporary halts in the generation of electricity.
- 2.5 Once the Development comes into operational use, it would be expected to generate electricity on a continual basis (during hours of adequate sunlight) for the whole life of the development, except for periods of planned outages, grid related outages, or unexpected outages. Planned outages would most likely arise during inspection, maintenance, repair or replacement of the photovoltaic panels or ancillary equipment. Grid related outages could arise where the operator of the grid into which the electricity generated would flow is for various reasons unable to accept additional electricity production due to capacity issues. Unexpected outages could arise for a number of reasons including damage to the transformers, damage to the photovoltaic panels, or damage to the cable to the grid. Depending on their nature, outages could last for hours, days, weeks or in extreme circumstances even months. Over the life of the Development, which is very likely to be in excess of 20 years, it is prudent to assume there could be periods running to weeks or in extreme circumstances even months when electricity isn't being generated.
- 2.6 A renewable energy project of this nature will involve very significant capital investment by the developer/operator and others. It will also involve significant debt funding by banks or other financial institutions. The energy output will likely be sold under a power purchase agreement with a term of 20 years or more to a utility company or a large scale corporate entity. All of these and other stakeholders will require certainty that once it has been constructed the project will remain operational for its scheduled life. This will be investigated by each stakeholder through a process of detailed due diligence. One of the key areas of focus of due diligence is to ensure that there is nothing in the planning permission or elsewhere which could result in the project being brought to a premature end.
- 2.7 As the existing wording of condition 6 refers to 'cessation of electricity generation' (as opposed to 'permanent cessation of electricity generation'), there is a risk that temporary cessation of generation could trigger the requirement to decommission thereby bringing the project to a premature end. In the event of a bona fide temporary cessation of generation of electricity for a period of days or a few weeks, the risk of enforcement action being taken under condition 6 may be relatively low. There is however considered to be a greater risk in relation to potential temporary cessation events lasting for multiple weeks or even months. As discussed in paragraph 2.22 below, that risk has if anything been heightened by the refusal of the Section 42 application and the reasoning given for the refusal.
- 2.8 In addition to the risk of the project being brought to a premature end by a temporary cessation in generation, the wording of the existing condition could prevent the project from

even proceeding. The risk here is that potential investors in the project, potential lenders to the project and potential counterparts in power purchase agreements may not be prepared to proceed due to the uncertainty created by the existing wording of the condition. Such stakeholders require certainty that the development they are investing in, lending to, or contracting with will be capable of lawfully operating for the whole of the scheduled operational life of the project. The existing wording of condition 6 would potentially be treated as a red flag in due diligence undertaken by such stakeholders. The objective of the revised wording of condition 6 proposed by the Section 42 Application was to remove the uncertainty created by the current wording of condition 6 so as to avoid such potential difficulties in the future.

Amended Condition Originally Proposed by Applicant

- 2.9 The Section 42 originally proposed amended wording to condition 6 as follows (shown for convenience as tracked changes against the existing condition):

That, within six months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceases for a continuous period of 12 months unless the developer demonstrates to the satisfaction of the Council that such cessation is for bona fide technical or other reason and that there is a bona fide intention and realistic expectations of recommencement of electricity generation within a further 12 month period), or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

- 2.10 There was e-mail correspondence between the submission of and the determination of the Section 42 Application between the case officer, Mr Iain Davies, and the Applicant's agent, Mr Peter Ferguson of Harper Macleod LLP. That correspondence string is lodged as Document 2.6. In his e-mail of 08.31 on 20 April 2020 (included as part of Document 2.6) Mr Davies stated, "*I intend to recommend the application be refused. It is not considered that there is any justification for the proposed amendments. In terms of Condition 6, the proposed amendment is considered to impact on visual amenity and the Special Landscape Area in that it effectively lengthens the period in which the site will remain unrestored following cessation of electricity generation. In terms of Condition 10, the proposed amendment is considered to impact on road safety. The Council was, and remains, satisfied that the original conditions meet all the relevant tests of the Scottish Government's Circular 4/1998.*"
- 2.11 The Applicant's agent, Peter Ferguson of Harper Macleod, responded substantively to Mr Davies by e-mail of 13.35 on 21 April 2020 (part of Document 2.6). That response firstly explained the Applicant's difficulties with the existing wording of condition 6 in similar terms to the explanation provided in paragraphs 2.2 to 2.8 above. The response then explained it is common practice in the context of renewable energy developments for both planning authorities and the Scottish Ministers when drafting conditions dealing with decommissioning of projects following cessation of generation to specify the period of cessation. An example was provided of the Section 36 granted by the Scottish Ministers for the Airigh Wind Farm (the decision notice for which is lodged as **Document 2.5**) where the condition was worded as follows:

24. Redundant 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 use or 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 the Development site, in the interests of safety, amenity and environmental protection.

- 2.12 The Applicant's proposed replacement condition was not identical to the Airigh condition, but each involved (1) an initial period of 12 months during which electricity wasn't being generated and (2) the possibility of recommencement of generation of electricity after the 12 month period.

Alternative Amended Condition Proposed by Applicant

- 2.13 Mr Ferguson's said e-mail of 21 April 2020 reiterated that the Applicant remained of the view that it would be appropriate to approve the amended version of condition 6 as originally applied for (i.e. the version set out in paragraph 2.9), but offered the following two alternative versions (with explanations) to address any remaining concerns the case officer may have had concerning the Applicant's original proposal extending the timescales during which the site could potentially remain unrestored:

- 2.14 **6. That, within six months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons)), or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons)), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.**

"Such a condition would address my client's primary concern about temporary cessations in generation of electricity triggering the requirement to decommission/restore by specifying that only permanent cessation will be the trigger (thereby bringing this in line with permanent cessation of construction works.) It provides a workable default explanation of what is meant by permanent cessation (both generation of electricity and construction works) with the ability for bona fide temporary extensions beyond 3 months to be approved by the planning authority. I trust that a condition such as this would address any concerns you had regarding the possibility of adverse impacts on the Special Landscape Area as a consequence of lengthening of the period in which the site would remain unrestored. "

- 2.15 **6. That, within ~~six~~ three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons)), or within ~~six~~ three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to**

occur if construction works cease for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

"By reducing the period for completion of the initial decommissioning from 6 months to 3 months (which is achievable albeit more challenging), even if the cessation of generation/construction works was permanent, allowing for the 3 month period before which this would be deemed a permanent cessation under the condition, the total period allowed under the condition from generation of electricity/construction works stopping to decommissioning of the equipment (which would be the main concern regarding any impacts on the SLA) would not be increased from the 6 month period specified in the existing condition."

- 2.16 The alternative version outlined in paragraph 2.15 is the version on which the Section 42 Application was ultimately assessed and determined, and unless otherwise specified is the version commented on in the remainder of this supporting statement. That version was devised by the Applicant to meet the following two objectives: (1) removing the uncertainty arising from the existing wording of the condition; while (2) ensuring that the overall timescale for decommissioning and restoration would be no longer than the timescale allowed under the existing version of condition 6. It sought to achieve the second objective by:

- 2.16.1 making permanent cessation of generation the trigger for decommissioning/restoration;
- 2.16.2 deeming a cessation of generation for a continuous period of 3 months to be a permanent cessation (unless the limited exception described at para 3.19 below applied);
- 2.16.3 requiring decommissioning to be completed within 3 months of permanent cessation.

The net effect of these arrangements would ensure that the total period to completion of decommissioning was no more than the 6 month period specified in the existing version of the condition.

For completeness and consistency, the Applicant's proposed version of the condition treated cessation of construction work on the same basis as cessation of generation of electricity (and therefore removed any uncertainty as to what is meant by 'permanent cessation' in that context.)

- 2.17 As explained, the Applicant's concern with the existing wording of condition 6 is the uncertainty regarding whether it covers temporary cessation of generation. At face value, one way of addressing that concern would have been to change the condition by simply adding the qualifying adjective 'permanent' before the words 'generation of electricity. Such a change would have put cessation of generation of electricity on the same footing as cessation of construction works. While that would have addressed some of the Applicant's concerns with the existing wording, and would have been preferable to the Applicant than the existing condition, that approach would have left open the question of what is meant by 'permanent'. Whether or not the condition referred to 'permanent cessation of generation' there could be a problem for the planning authority in the event of there being a lengthy halt in generation. If the planning authority wished to take enforcement action but the operator maintained that the halt was only temporary, the onus would be on the planning authority to demonstrate there had been permanent cessation. As the purpose of seeking a change to

condition 6 was to remove uncertainty, the Applicant wished to avoid replacing one form of uncertainty for another and had no desire to create potential enforcement difficulties for the planning authority. It was for that reason the applicant proposed that cessation of generation for a period of 3 months would, subject to a limited exception, be deemed to be permanent cessation.

- 2.18 While a period of 3 months would cover the vast majority of likely outages during which electricity would temporarily not be generated, the Applicant was mindful that in exceptional circumstances it is conceivable that there could be an outage for longer than that. For example, if the sub-sea grid connection between Cumbrae and the mainland were to be damaged it could potentially take longer than 3 months for it to be repaired or a replacement installed. For this reason, the alternative wording proposed by the Applicant provided a very limited exception (to the deeming of a 3 month cessation as permanent). The exception would only apply where within the original 3 month cessation period the planning authority agreed on the basis of information provided by Applicant that cessation beyond the 3 month period was in fact a temporary cessation required for bona fide technical or other reasons. The key point is that this exception could only apply if the planning authority specifically agreed to it. In effect, the proposed arrangement puts the onus of the operator to demonstrate that any cessation of generation beyond 3 months is temporary and required for bona fide reasons.

Comments on Report of Handling

- 2.19 A copy of the case officer's Report of Handling is submitted as Document 3.2. The analysis section contains the following comment (unfortunately the paragraphs are not numbered) by the case officer on the Applicant's proposed wording:

*"Whilst the time period before restoration could potentially be 6 months (3 months of cessation and 3 months to restore), **the introduction of the caveats relating to technical or other reasons which could delay restoration is held to have potential to harm the area.** To have a redundant facility sited within the countryside and a Special Landscape Area, with no definitive period for restoration, is considered to harm the visual amenity of the area, and would impact on the qualities of the Special Landscape Area. Amending Condition 6 in this manner would therefore be contrary to Policies 29, 15 and Strategic Policy 2 of the LDP."*

The Case Officer starts by acknowledging that the total period before restoration could be 6 months (the same period as referred to in the existing condition).

The wording highlighted in bold above suggests the case officer may not have appreciated that any cessation over 3 months could only be treated as temporary if the planning authority specifically agreed. Alternatively, the case officer may have misunderstood the effect of requiring the approval of the planning authority. It is common practice for planning conditions to require certain things to be considered and approved by the planning authority. Many of the conditions of the Planning Permission require certain things to be approved by the planning authority. Indeed, conditions 7 and 10 include wording ('unless otherwise agreed in writing by North Ayrshire Council') which potentially allow departure from the requirements of conditions where the planning authority so agree. It is therefore incorrect to characterise something which requires the specific approval of the planning authority as a *'...caveat...which could delay restoration [and] is held to have potential to harm the area.'*

- 2.20 Under the Applicant's proposed alternative version of condition 6, it is very clear what should happen in the event of a cessation of generation. If the planning authority agreed that a cessation of generation in excess of 3 months was a temporary cessation required for bona fide technical or other reasons, there would clearly be no need to require the operator to decommission the site and undertake restoration. As such, there would be no delay in decommissioning/restoration and no harm to the area. If the planning authority did not agree otherwise, a cessation of more than 3 months would be deemed a permanent cessation and the requirement to decommission and restore would be triggered. In that scenario, the total period to decommissioning could be no more than 6 months from the

beginning of the period of cessation of generation (and as such be no longer in total than the period allowed under the existing condition 6.)

2.21 In fact, it is very likely that the total period from the beginning of cessation of generation to completion of decommissioning would be considerably *shorter* under the Applicant's proposed condition compared to the existing version. Under the proposed condition, any cessation of generation would automatically start the clock and at the end of 3 months, unless otherwise agreed by the planning authority, there would be deemed permanent cessation. By contrast, the existing condition leaves entirely open the questions of (1) whether it is only permanent cessation of generation or permanent and temporary cessation which triggers the requirement to decommission and (2) if so, what is meant by permanent and temporary for these purposes. This uncertainty could mean that the 6 month period to decommission may not even begin until many months or even years after generation of electricity stops. As discussed in paragraph 2.17, under the existing condition the onus would be on the planning authority to demonstrate permanent cessation for the purposes of taking enforcement action. By contrast, the Applicant's proposed condition provides a default definition for permanent cessation (3 months) and puts the onus on the Applicant to demonstrate that any cessation in excess of 3 months is actually temporary and for bona fide reasons.

2.22 Despite the detailed explanations provided by the Applicant that the main concern with condition 6 was ambiguity as to whether it could be interpreted to cover temporary cessation of generation, it is striking that the case officer's Report of Handling does not attempt to clarify this issue. The closest the case officer comes to addressing this is the following comment in the Report of Handling:

"It is noted that it is at the discretion of the Council, as Planning Authority, as to whether or not to enforce a planning condition. The Council can delay or otherwise put on hold compliance with a planning condition, where it is considered expedient and in the public interest to do so and does not require an amended condition in order to do so."

This may have been an attempt to reassure the applicant that enforcement action would be unlikely to be taken in the event of a bona fide temporary cessation of generation of electricity. The difficulty is that exercising discretion as to whether to take enforcement action only takes place once there is deemed to be a breach of planning control. That suggests the Case Officer may be interpreting the existing condition 6 to cover temporary as well as permanent cessation of generation. The Applicant had originally anticipated that condition 6 was not actually intended to cover temporary cessation and the possibility of temporary cessation being covered was just an unintended consequence of the wording used. The absence of clarification by the case officer and the above comments in relation to discretion of enforcement have, if anything, heightened the risks of the existing wording originally perceived by the Applicant, and made the case for an amended version of condition 6 even more compelling.

Circular 4/1998 – The Use of Conditions in Planning Permissions

2.23 The Report of Handling includes the following paragraph:

"It is also considered that the proposed amended wording of Condition 6 fails the tests set out in Circular 4/1998. Adding caveats introducing the prospect of recommencement is considered to add uncertainty to the condition and is therefore imprecise. Although the applicant has suggested it, it could also be considered that 3 months is an unreasonably short period for the restoration works. The applicant is under no obligation to develop or operate the site and a short time period could leave a developer/operator in an unreasonable position when restoration is required."

2.24 The first part of that paragraph asserts that the Developer's proposed condition fails the test of precision under Circular 4/1998 (**Document 4.1**) on the basis it includes 'caveats' which introduce uncertainty. As explained in paragraph 2.19, providing that a 3 month period will

be deemed to be a permanent cessation and providing for a limited exception to that which can only apply if the planning authority agrees cannot be fairly characterised as a 'caveat'. Moreover, as described in paragraph 2.20 the Applicant's proposed condition provides a clear and unambiguous mechanism with clear timescales which would apply automatically and immediately from the beginning of any cessation of generation. The proposed alternative condition therefore fully meets the test of precision imposed under the Circular. As there is a precise description of the circumstances in which cessation of generation triggers the requirement to commence decommissioning, the proposed condition also meets the Circular test of being enforceable.

- 2.25 By contrast, the existing condition is imprecise. It is not clear whether the requirement to commence decommissioning would be triggered only by permanent cessation or whether it could be triggered by temporary cessation. Moreover, there is no explanation of what would be considered permanent or temporary for these purposes. As explained in paragraph 2.17, this imprecision would potentially create difficulties in enforcement for the planning authority. The existing condition does not therefore meet the Circular tests of precision or enforceability.
- 2.26 The second part of the paragraph from the Report of Handling mentioned at paragraph 2.23 suggests that a period of 3 months might be unreasonably short to undertake decommissioning (the comment refers to restoration but it must mean decommissioning). The implication of this comment is that the proposed condition would not meet the 'reasonable in all other respects' test imposed by the Circular. In response the Applicant would explain that unlike other renewable energy developments such as wind turbines which have substantial foundations, the equipment used for photovoltaic solar farm developments is mostly located above ground and relatively straightforward to remove and as such the Developer is satisfied that a period of 3 months would be sufficient in all seasons to complete decommissioning of equipment (with any restoration works following thereon as provide in the condition.) The proposed condition is therefore reasonable.
- 2.27 As discussed above, the uncertainty regarding whether the condition applies to permanent/temporary cessation of generation and the meaning of permanent/temporary for these purposes on its own fails the both the precision and enforceability tests. If the existing condition were to be interpreted as actually applying to temporary cessation of generation, it would also fail the test of necessity and the 'reasonable in all other respects' test under the Circular. The stated purpose of condition 6 is *"To reflect the temporary nature of the development and ensure that the site is restored to its previous condition."* The intention is therefore to ensure that the site is fully decommissioned and restored at the end of the project's productive operational life. The purpose of the condition would not be served by requiring the project to be decommissioned prematurely following a bona fide temporary cessation of generation. It would neither be necessary for the project to be decommissioned nor would it be reasonable for the project to be decommissioned as a result of a temporary cessation.

Local Development Plan Policy

- 2.28 In the analysis section of the Report of Handling the relevant Local Development Plan policies are described as follows:

"Policy 29 of the LDP states that energy infrastructure development, including solar, will be supported where they will have no unacceptable adverse environmental impacts taking into consideration factors including: avoiding unacceptable adverse impacts on landscape designations; impact on public safety including roads and decommissioning. Policy 15 of the LDP states that development in a Special Landscape Area will only be supported where it would not have an unacceptable impact on their special character, qualities and setting. Strategic Policy 2 states that all development should meet the qualities of a successful place including considering the future use of the site, the surrounding landscape and the connectedness of the site for people."

2.29 The Report of Handling goes on to conclude:

"However, the proposed changes to these conditions would undermine the reasons for the conditions; namely the protection of the landscape, given the temporary nature of the development, and road safety. The proposal is contrary to Strategic Policy 2, Policy 15 and Policy 29 of the LDP. There are no material considerations to the contrary."

2.30 **Strategic Policy 2** – As the principle of the development has already been established by the grant of the Planning Permission, not all of Strategic Policy 2 directly applicable to the Section 42 Application.

A relevant part of the policy is the bolded element of the statement that *"all development should meet the qualities of a successful place **including considering the future use of the site**, the surrounding landscape and the connectedness of the site for people."* This requirement would be more than met by the Applicant's proposed condition as it provides a clear and robust mechanism for decommissioning and restoration of the site once the use of the site as a PV solar farm permanently ceases (or is deemed to have permanently ceased.)

Another relevant part of the policy is the following:

Resource Efficient

*The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat networks, **solar gain, renewable energy** and waste recycling as well as use of green and blue networks.*

As advised in paragraph 2.8, there is a concern that the existing wording of condition 6 could prevent the Development from proceeding. The Applicant's proposed version of condition 6 would therefore resolve that difficulty and meet the resource efficiency objectives of Strategic Policy 2.

2.31 **Policy 15** – Again, as the principle of the development has already been established by the grant of the Planning Permission, not all of Policy 15 is directly applicable to the Section 42 Application. Any potential future unacceptable impacts on the Special Landscape Area would be avoided by the Applicant's proposed as it provides a clear and robust mechanism for decommissioning and restoration of the site once the use of the site as a PV solar farm permanently ceases (or is deemed to have permanently ceased.)

2.32 **Policy 29** – Again, as the principle of the development has already been established by the grant of the Planning Permission, not all of Policy 29 is directly applicable to the Section 42 Application.

While policy 29 is referred to in full at the beginning of the Report of Handling, the following key element of it is omitted from the analysis section: *"Proposals should include **redundancy plans** which will demonstrate how apparatus will be timeously removed as reasonably soon as the approved scheme ceases operation. There may be a requirement for financial bonds to ensure that decommissioning can be achieved."* It can be taken from the reference to 'redundancy plans' that the policy is concerned with removing redundant equipment. Equipment which has only ceased generating temporarily and for bona fide reasons could not be considered redundant. This part of policy 29 therefore supports the Applicant's position that the existing condition is ambiguous in this regard and supports the case for condition 6 being amended as proposed by the Applicant.

Policy 29 starts by outlining the Council's support in principle for energy infrastructure, "We will support development proposals for energy infrastructure development, including wind, solar, tidal, cropping and other renewable sources, where they will contribute positively to our transition to a low carbon economy and have no unacceptable adverse environmental impacts, taking into consideration (including cumulatively) the following:" As advised in paragraph 2.8, there is a concern that the existing wording of condition 6 could prevent the Development from proceeding. The Applicant's proposed version of condition 6 would therefore resolve that difficulty and meet the objective of transitioning to a low carbon economy of Policy 29.

- 2.33 In the Applicant's view, the amended condition 6 proposed by the Applicant complies fully with Strategic Policy 2, Policy 15 and Policy 29 of the Local Development Plan and indeed with the Local Development Plan as a whole. As there are no material considerations to the contrary, it is respectfully submitted that the Review should be allowed in relation to condition 6 and that planning permission should be granted.

Potential Alternative Version of Condition 6

- 2.34 In an e-mail of 17:55 on 1 May 2020 (part of Document 2.6) the Applicant's agent Mr Ferguson addressed the case officer's apparent concern with the potential for a cessation in excess of 3 months being agreed by the planning authority to be a temporary cessation for bona fide reasons:

"The above iteration of the condition would be the applicant's strong preference as it would provide operational flexibility and would provide comfort to the funders of the project. If however a potential for temporary cessation beyond 3 months was still of concern despite the fact that the planning authority would need to agree to it, and as a result you would not support this iteration as a condition to be applied to the grant of planning permission, in those circumstances only I would propose the following alternative iteration:

That, within six three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months), or within six three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

This iteration would not be optimal from the developer's perspective for the reasons described, but it is nevertheless objectively significantly better than the existing version of condition 6 for both planning authority and developer."

The 'above iteration of the condition' referred to by Mr Ferguson is the version set out at paragraph 2.15, which is the version on which the Section 42 Application was ultimately determined and is the version mainly discussed in this statement. The 'following alternative iteration' referred to in Mr Ferguson's e-mail of 1 May 2020 and included above was made on a provisional basis (only in the event of the planning officer not being willing to support the amended version set out at paragraph 2.15). That alternative version removed the potential exception of the planning authority agreeing that a cessation of more than 3 months should not be treated as a permanent cessation.

Despite the case officer characterising (in the Report of Handling) the potential exception as a '...caveat...which could delay restoration [and] is held to have potential to harm the area.', and that being the key apparent reason for refusal, the case officer did not consider the alternative version of condition 6 referred to in paragraph 2.32. Had he done so, which he

should have, most if not all of the reasons given for refusal in the Report of Handling would have been addressed.

Determination of Section 42 Applications

- 2.35 Section 42(2) of the Town and Country Planning (Scotland Act) sets out the options open to a planning authority when dealing with Section 42 applications as follows:

(2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The only relevant basis for refusing a Section 42 application is if it is decided (Section 42(2)(b) that planning permission should be granted subject to the same conditions as the previous permission. In light of the following comment from the very end of the analysis section of the Report of Handling, the decision to refuse planning permission in this case was clearly based on Section 42(2)(b):

"If planning permission for the whole development was to be granted again it should be subject to the same conditions that the previous permission was subject to i.e. all those attached to permission 16/00124/PP. This application should be refused."

- 2.36 As discussed in paragraphs 2.23 to 2.37, the existing version of condition 6 fails the tests of precision and enforceability imposed by Circular 4/1998 in relation to the uncertainty as to whether it applies to temporary cessation of generation. If the condition were to be interpreted as covering temporary cessation, it would also fail the Circular tests of necessity and reasonableness. The refusal of the Section 42 Application does not therefore meet the requirements of Section 42(2)(b) as it would not be appropriate to grant fresh planning permission subject to conditions which fail the Circular tests.
- 2.37 In these circumstances, if the amended condition proposed by the applicant complies with the Local Development Plan and meets the requirements of Circular 4/1998, planning permission should be granted subject to that condition in terms of Section 42(2)(a). Please note however that it would also be open to the Local Review Body under Section 42(2)(a) to impose an alternative condition to the one sought by the Applicant if it was considered that such an alternative condition would be better than the Applicant's proposed version.

Conclusion

- 2.38 In the Applicant's view, the amended condition 6 proposed by the Applicant (detailed at paragraph 2.15) complies fully with Strategic Policy 2, Policy 15 and Policy 29 of the Local Development Plan. That condition also fully meets the tests imposed by Circular 4/1998. As there are no material considerations to the contrary, it is respectfully submitted that the Review should be allowed in relation to condition 6 and that planning permission should be granted on that basis.
- 2.39 If however the Local Review Body were to share the case officer's concern about the proposed wording which would allow the planning authority to agree that a cessation of

generation of over 3 months should not be deemed a permanent cessation, it would be open to the Local Review Body to allow the review and grant planning permission on the basis of the alternative version of condition 6 referred to in paragraph 2.34, or indeed subject to another iteration of the condition proposed by the Local Review Body.

3 Condition 10

3.1 The Section 42 Application sought to amend condition 10 as follows:

That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the commencement of the solar farm development U36 Inner Circle Road being used by heavy goods vehicles in connection with the solar farm development.

3.2 The objective of the proposed change was to allow non-HGV vehicles to be used to carry out initial works on site, such as ground investigations, prior to the road improvements being undertaken. It was hoped that such flexibility would reduce the overall construction period of the project by allowing such initial works to start earlier than would otherwise have been the case.

3.3 The Applicant had anticipated the requirement for road improvements was driven only by HGV use of the road arising from the Development and that the proposal to allow non HGVs to use the existing road would not have raised safety concerns. In light of the consultation response on the Section 42 Application from the Council's Active Travel and Transport team (Document 3.3) ("***The infrastructure work and additional passing places are to accommodate all construction vehicles not just heavy good vehicles***") the Applicant's agent Mr Ferguson e-mailed Mr Davies at 13:35 on 21 April (part of Document 2.6) as follows:

"In light of the consultation response from your Active Travel and Transport colleagues, my clients acknowledge that the amended wording of this condition (requiring the passing places to be constructed prior to HGVs using the U36 in connection with the development) as originally proposed would not be appropriate.

While the proposed amended condition refers specifically to HGVs, the supporting statement makes clear that my clients appreciate the existing constraints with the U36 and accept that the passing places will require to be completed before use of the road by any significant construction traffic. The objective of the proposed amended condition was to facilitate preliminary works, such as ground investigations, which are likely to be required before commencement of the main construction activities. Such ground investigations would only involve a landrover/pickup vehicle with a trailer. While such ground investigations would normally be permissible as permitted development under the GPDO, condition 8 removes PD for all development.

The proposed condition sought to facilitate such works by excluding HGVs. It is however recognised that this sets the bar too high and that this could allow vehicles below the threshold for HGVs which would not necessarily be appropriate on the existing road.

If it would be possible to amend the wording of condition 10 to limit preliminary works to site investigation works only involving a landrover/pickup vehicle with a trailer that would be welcome, but if even that that is not considered appropriate then my clients would understand why you may not be able to support the proposed condition 10."

3.4 While that response in effect conceded it would not be appropriate to change condition 10 as originally proposed, in retrospect it would have been cleaner if the Applicant had at that stage specifically withdrawn the request to change condition 10 so as to avoid the need for

the case officer to address this. For the purposes of narrowing the issues to be considered by the Local Review Body in this Review, the Applicant does not seek to challenge the refusal of the Section 42 Application to the extent that it relates to condition 10.

4 Section 75 Agreement and New Condition regarding Decommissioning Bond

4.1 An agreement under Section 75 of the 1997 Act was entered into in connection with the 2017 Planning Permission. The Section 75 agreement deals only with the requirement for a 'restoration bond' to ensure the site is properly decommissioned and restored.

4.2 In the covering letter which accompanied the Section 42 Application (Document 2.4) the Applicant's agent pointed out that the existing Section 75 agreement would not automatically apply to a new permission granted pursuant to the Section 42 application and canvassed the Council's views as to how best to formalise the requirement for a restoration bond in the event the Council was minded to support the Section 42 application. Options discussed were: (1) an additional planning condition; (2) a fresh section 75 agreement and (3) a variation under Section 75A to the existing Section 75 agreement.

4.3 This issue is addressed by the case officer in the Report of Handling as follows:

Response: If permission is granted, effectively a new planning permission not subject to the S.75 Agreement would be issued. The Council could seek a new S.75 Agreement. However, advice from the Scottish Government issued since the original permission is that such agreements should be avoided if at all possible and planning conditions used instead. If a new permission was granted, the Council could add further conditions to address the reasons for the S.75 Agreement i.e. restoration bonds.

4.4 The Applicant agrees that an additional condition would be the most efficient way to proceed and would welcome the Council's proposed condition. A starting point for this might be the condition referred to in the Applicant's agent's covering letter of 13 March 2020, adjusted to suit the Development.

4.5 For the avoidance of doubt, if the Local Review Body didn't consider that a condition was appropriate to address the requirement for a decommissioning/restoration bond, the Applicant would be willing in principle to enter into a further Section 75 agreement in similar terms to the version entered into in connection with the Planning Permission.

5 List of Documents

Please note that documents indicated with an * below are not specifically referred to in this supporting statement and are included for completeness in view of the advisory note below the Checklist in the Notice of Review Form.

1. Documents relating to Planning Permission 16/00124/PP

Document 1.1 - Decision Notice dated 29 March 2017

Document 1.2 – Approved Location Plan*

Document 1.3 – Approved Location Site Layout Plan*

Document 1.4 – Approved Development Cross Sections Plan*

2. Applicant's Documents relating to Section 42 Application 20/00232/PP

Document 2.1 – Application Form*

Document 2.2 – Location Plan*

Document 2.3 - Supporting Statement*

Document 2.4 – Letter from Agent dated 13 March 2020 regarding need for Section 75 Agreement

Document 2.5 – Decision Notice by the Scottish Government dated 20 March 2020 re Airigh Windfarm

Document 2.6 – Post Application/Pre Determination e-mail correspondence between Case Officer, Iain Davies, and Applicant's Agent, Peter Ferguson of Harper Macleod LLP.

3. Planning Authority's Documents relating to Section 42 Application 20/00232/PP

Document 3.1 – Decision Notice (refusing planning permission) dated 14 May 2020

Document 3.2 – Report of Handling

Document 3.3 - Consultation Response from North Ayrshire Council Roads dated 23 March 2020

4. General Documents relating to Section 42 Application 20/00232/PP

Document 4.1 – Circular 4/1998 - The Use of Conditions in Planning Permissions

Document 4.2 – North Ayrshire Council Local Development Plan 2019



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

KAREN YEOMANS : Executive Director – (Economy & Communities)

No N/16/00124/PP

CONDITIONAL PLANNING PERMISSION

Type of Application: Local Application

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997,
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013

To : Comsol Energy Limited
c/o Ramsoll Environ Fao Malcolm Sangster
7 Castle Street
Edinburgh
EH3 7JY

With reference to your application received on 16 February 2016 for planning permission under the above mentioned Acts and Orders for :-

Installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure

at Site To The North East Of Wee Minnemoer
Millport
Isle Of Cumbrae

North Ayrshire Council in exercise of their powers under the above-mentioned Acts and Orders hereby grant planning permission, in accordance with the plan(s) docquetted as relative hereto and the particulars given in the application, subject to the following conditions and associated reasons :-

- | | | |
|-----------|----|--|
| Condition | 1. | That, prior to the commencement of the development, hereby approved, the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority, details of the proposed design, location and external finishes for the supporting infrastructure, including control room, inverter cabin, customer cabin, access road and tracks, turning areas and parking. The approved external finishes shall be installed and maintained in perpetuity to the satisfaction of North Ayrshire Council as Planning Authority. |
| Reason | 1. | To ensure the design and appearance of the supporting infrastructure reflects the rural character of the area. |
| Condition | 2. | That, details of the security fence and CCTV system shall be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of any works. Thereafter, the approved fencing shall be implemented prior to the coming into use of the solar farm and thereafter maintained, all to the satisfaction of North Ayrshire Council as Planning Authority. |
| Reason | 2. | To ensure the design and appearance of the fencing reflects the rural character of the area. |
| Condition | 3. | That, the rated noise level as defined in BS 4142:2014 of the proposed plant and ancillary equipment shall not exceed the existing background noise level by 5Db(A) or more at the curtilage of nearby noise sensitive premises, to the satisfaction of North Ayrshire Council as Planning Authority. |

Reason	3.	To meet the requirements of Environmental Health.
Condition	4.	That, prior to the commencement of the development, full details of the connection to the national grid, including the requirement for any on site or off site infrastructure shall be submitted for the written approval of North Ayrshire Council as Planning Authority.
Reason	4.	To ensure that a sufficient and appropriately designed grid connection can be achieved.
Condition	5.	That, the developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to North Ayrshire Council as Planning Authority, during all ground disturbance. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record, recover and report items of interest and finds. A method statement for the watching brief will be submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by North Ayrshire Council as Planning Authority prior to commencement of the watching brief. The name of the archaeological organisation retained by the developer shall be given to North Ayrshire Council as Planning Authority and to the West of Scotland Archaeology Service in writing not less than 14 days before development commences.
Reason	5.	In recognition of the archaeological significance of the site.
Condition	6.	That, within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site.
Reason	6.	To reflect the temporary nature of the development and ensure that the site is restored to its previous condition.
Condition	7.	That, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority, the applicant shall construct and operate the development in accordance with the provisions of the application, the supporting reports (planning statement, traffic and access statement, landscape and visual assessment, environmental report, ecological appraisal and archaeological report) and submitted plans and shall fully implement the mitigation measures contained within the submission to the satisfaction of North Ayrshire Council as Planning Authority. For clarification, details of the boundary planting along the western and north-western boundaries of the site shall be submitted for the prior written approval of North Ayrshire Council as Planning Authority.
Reason	7.	To secure the proper completion of the development in the interest of amenity.
Condition	8.	Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking or re-enacting that Order) the express approval of North Ayrshire Council as Planning Authority shall be required in respect of any development including the erection, extension, rearrangement or alteration at the site of fixed plant or machinery, buildings, structures, or private ways.
Reason	8.	To protect the character and appearance of the rural landscape.
Condition	9.	That, a road condition survey in conjunction with a North Ayrshire Council Roads Inspector shall be carried out prior to the work commencing on site and after the work is completed. The development shall be completed in strict accordance with the approved Traffic and Access Statement to the satisfaction of North Ayrshire Council as Planning Authority.
Reason	9.	To meet the requirements of North Ayrshire Council as Roads Authority.
Condition	10.	That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the commencement of the solar farm development.
Reason	10.	To meet the requirements of North Ayrshire Council as Roads Authority.

Site To The North East Of Wee Minnemoer Millport Isle Of Cumbræ
No N/16/00124/PP

Reason(s) for approval 1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.

Dated this : 29 March 2017

.....
for the North Ayrshire Council

Site To The North East Of Wee Minnemoer Millport Isle Of Cumbræ
No N/16/00124/PP

Drawings relating to decision

Drawing Title	Drawing Reference	Drawing Version
Block Plan / Site Plan	FIGURE 1	
Location Plan	IP1006-A-03	
Sections	IP1006-B-02	

(See accompanying notes.) (The applicant's attention is particularly drawn to note 5 (limit of duration of planning permission))

Site To The North East Of Wee Minnemoer Millport Isle Of Cumbræ
No N/16/00124/PP

The applicant is advised to consult the following authorities prior to the commencement of the development hereby approved :-

1. Scottish Water, Asset Demand Planning Team Floor 2 North, The Bridge, Buchanan Gate Business Park, Stepps, G33 6FBD with regard to water and sewerage connections.



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

NOTIFICATION OF INITIATION OF DEVELOPMENT

Please return notice when you intend to commence development

29 March 2017

TO:

Enforcement Officer
Planning Services
Cunninghame House
Irvine
North Ayrshire
KA12 8EE

Our Ref: N/16/00124/PP

Decision: Approved subject to Conditions

Decision Date: 29 March 2017

DETAILS OF APPLICANT AND/OR DEVELOPER	DETAILS OF OWNER	DETAILS OF AGENT IF APPLICABLE
		Ramsoll Environ Fao Malcolm Sangster

Description of Development: Installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure

Location of Development: Site To The North East Of Wee Minnemoer Millport Isle Of Cumbrae

Date when work commences: _____

Signed: _____

Applicant/Agent* _____

* Delete where applicable

Please read the following and retain for your information.

1. Work must be carried out in accordance with the relevant docquetted plans and any conditions on the decision notice.
2. A grant of Planning Permission does not authorise work under the Building (Scotland) Act 2003.
3. A separate Building Warrant may be required. Please contact (01294) 324348 to ascertain the need for a warrant.
4. Should the docquetted plans not correspond with what you intend to construct/build, you must seek the Authority of the Council before proceeding.
5. If the development you intend to undertake is either a national or major development and of a type specified in Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 you will be required to display a site notice.

ECONOMY & COMMUNITIES

Executive Director: Karen Yeomans
Cunninghame House, Irvine KA12 8EE
Tel: 01294 310000 Fax: 01294 324309
www.north-ayrshire.gov.uk



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Please return notice when you have completed the development

29 March 2017

TO:

Enforcement Officer
Planning Services
Cunninghame House
Irvine
North Ayrshire
KA12 8EE

Our Ref: N/16/00124/PP

Decision: Approved subject to Conditions

Decision Date: 29 March 2017

DETAILS OF APPLICANT AND/OR DEVELOPER	DETAILS OF OWNER	DETAILS OF AGENT IF APPLICABLE
		Ramsoll Environ Fao Malcolm Sangster

Description of Development: Installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure

Location of Development: Site To The North East Of Wee Minnemoer Millport Isle Of Cumbrae

Date when works complete: _____

Signed: _____

Applicant/Agent* _____

*Delete where applicable

Please read the following and retain for your information.

1. Work must have been carried out in accordance with the relevant docquetted plans and any conditions on the decision notice.
2. A grant of Planning Permission does not authorise work under the Building (Scotland) Act 2003.
3. A separate Building Warrant may be required. Please contact (01294) 324348 to ascertain the need for a warrant.
4. Should the docquetted plans not correspond with what you intend to construct/build, you must seek the Authority of the Council before proceeding.
5. If the development you intend to undertake is either a national or major development and of a type specified in Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 you will be required to display a site notice.



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997,
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013 – REGULATION 28

KAREN YEOMANS : Executive Director – (Economy & Communities)

FORM 1

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may appeal to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of appeal should be addressed to the Directorate of Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, FALKIRK FK1 1XR

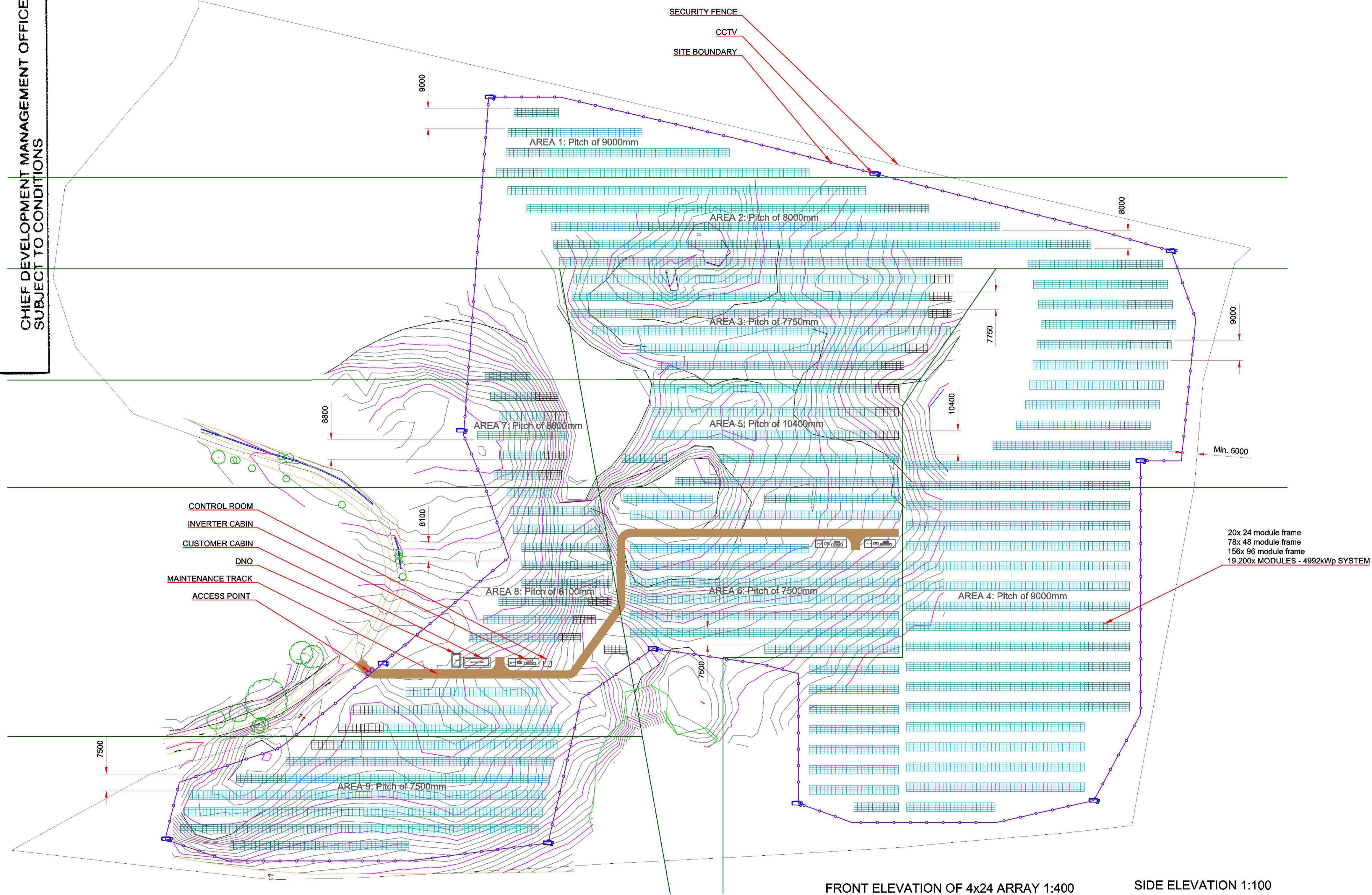
2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

APPROVED

James H Miller

CHIEF DEVELOPMENT MANAGEMENT OFFICER
SUBJECT TO CONDITIONS



Notes:

Legend:

- Site boundary
- Perimeter fence
- Maintenance track
- Inverter housing
- CCTV

Proposed location:



System size: 4992kWp
Modules: Renesola 260W
Dimensions: 1640x992x40
Structure: 4 rows in landscape
Slope: 20°
Orientation: Due South
Inverter: TBC
Fence area: 9.17 ha
Fence length: 1545 m
Total area: 14.74 ha

Client:

Location: Isle of Cumbrae,
KA28 0HQ
55°46'12.32"N 4°55'5.44"W

Title: PV Layout

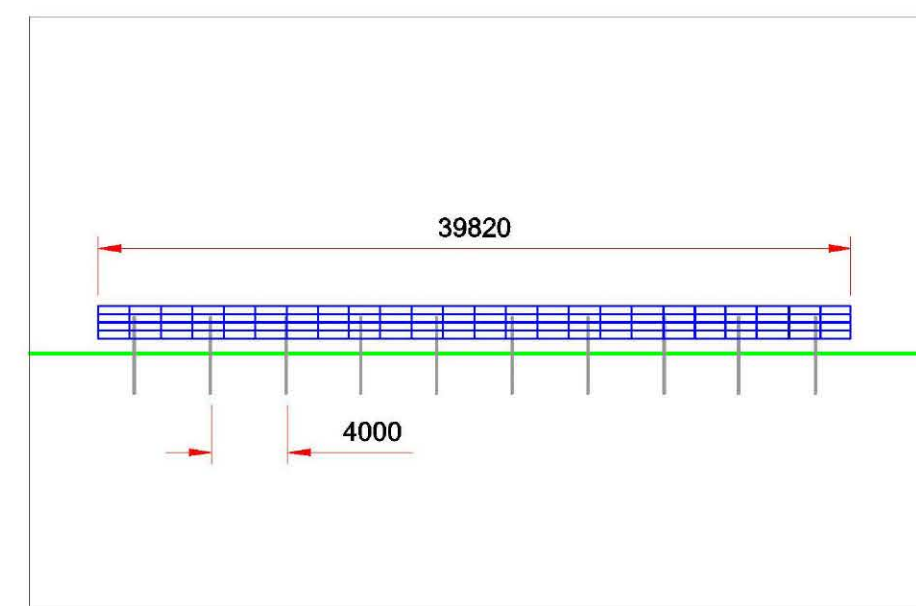
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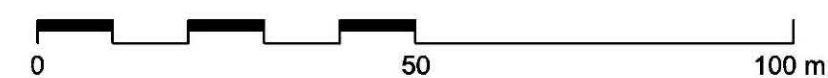
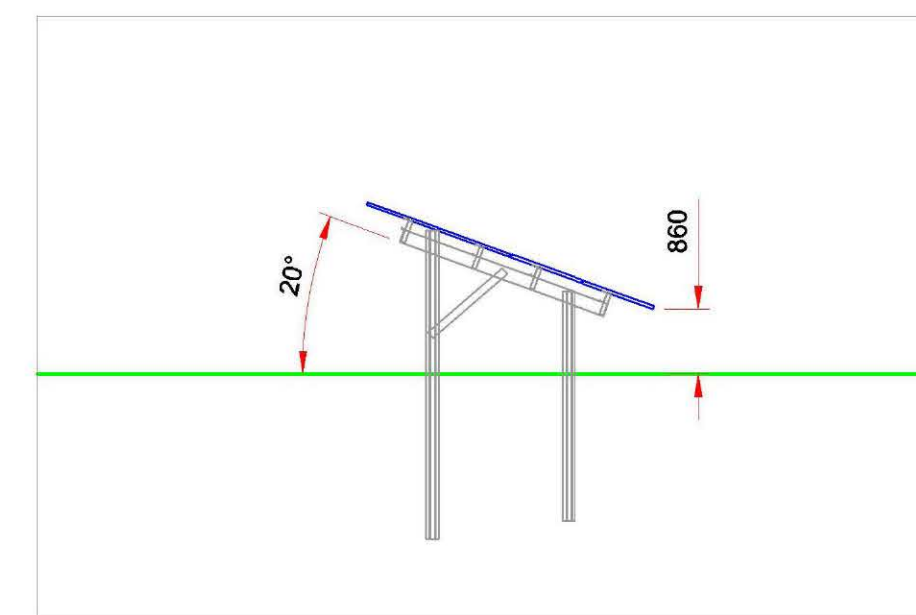
iPower Energy Ltd.
17 Kenilworth Road
Bridge of Allan
Stirling FK9 4DU

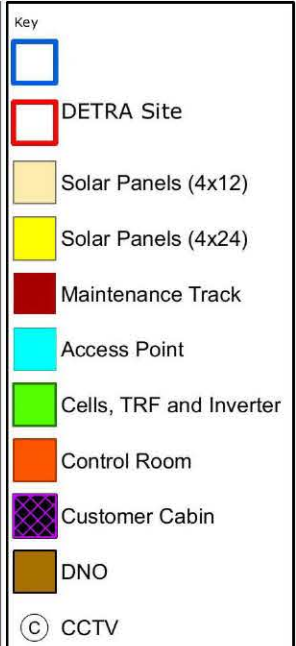
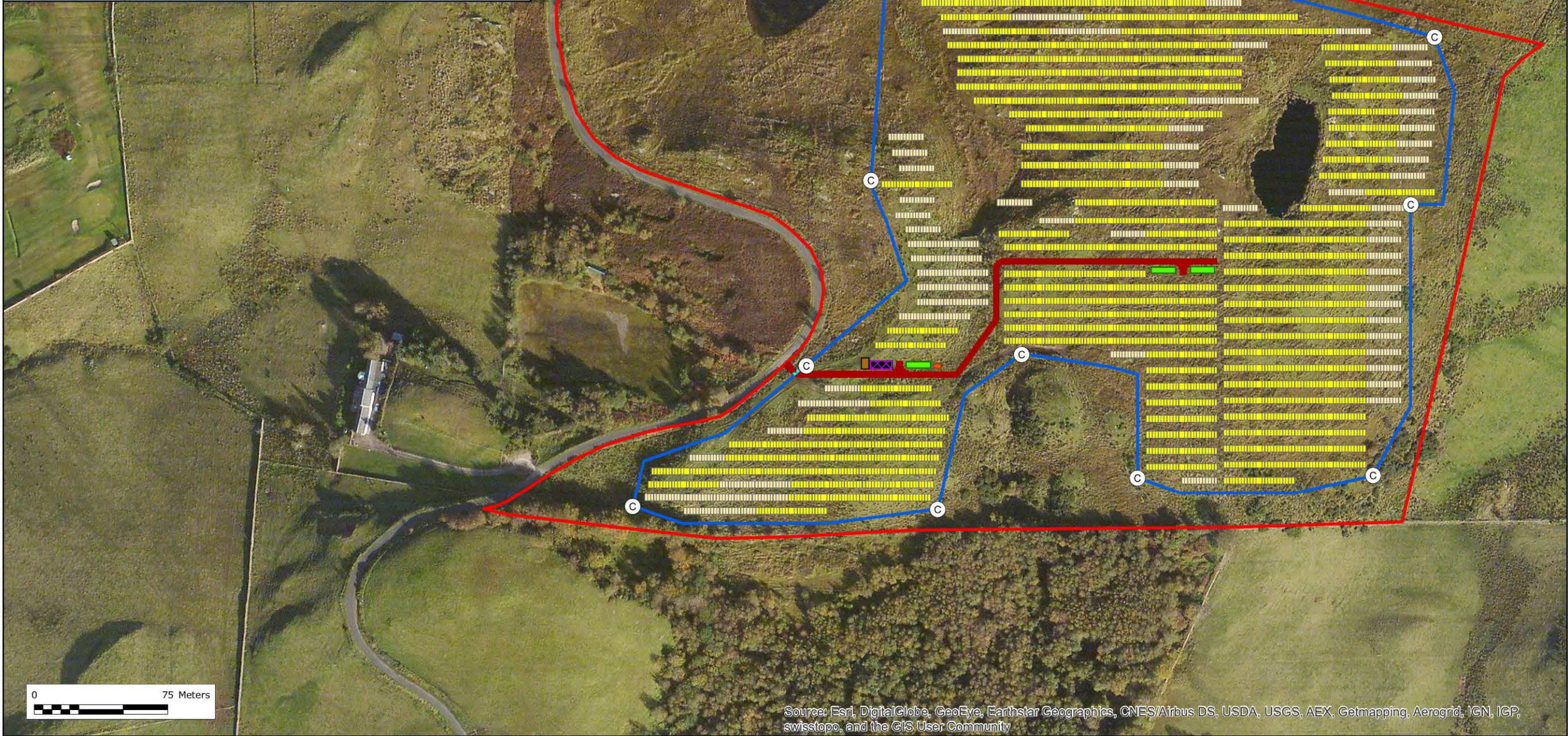
Do not scale from this drawing. Site verify all dimensions prior to construction. Report all discrepancies to the drawing originator immediately. This drawing is to be read in conjunction with all relevant documents and drawings.

FRONT ELEVATION OF 4x24 ARRAY 1:400



SIDE ELEVATION 1:100





Title: Figure 1: Location Site Layout	
Project No. UK12-22321	
Site: Great Cumbrae Solar Farm	
Client: Complete Solutions	
Date: February 2016	
Scale: 1:2,500 @ A3	
Issue: A	Drawn by: CO
RAMBOLL ENVIRON	

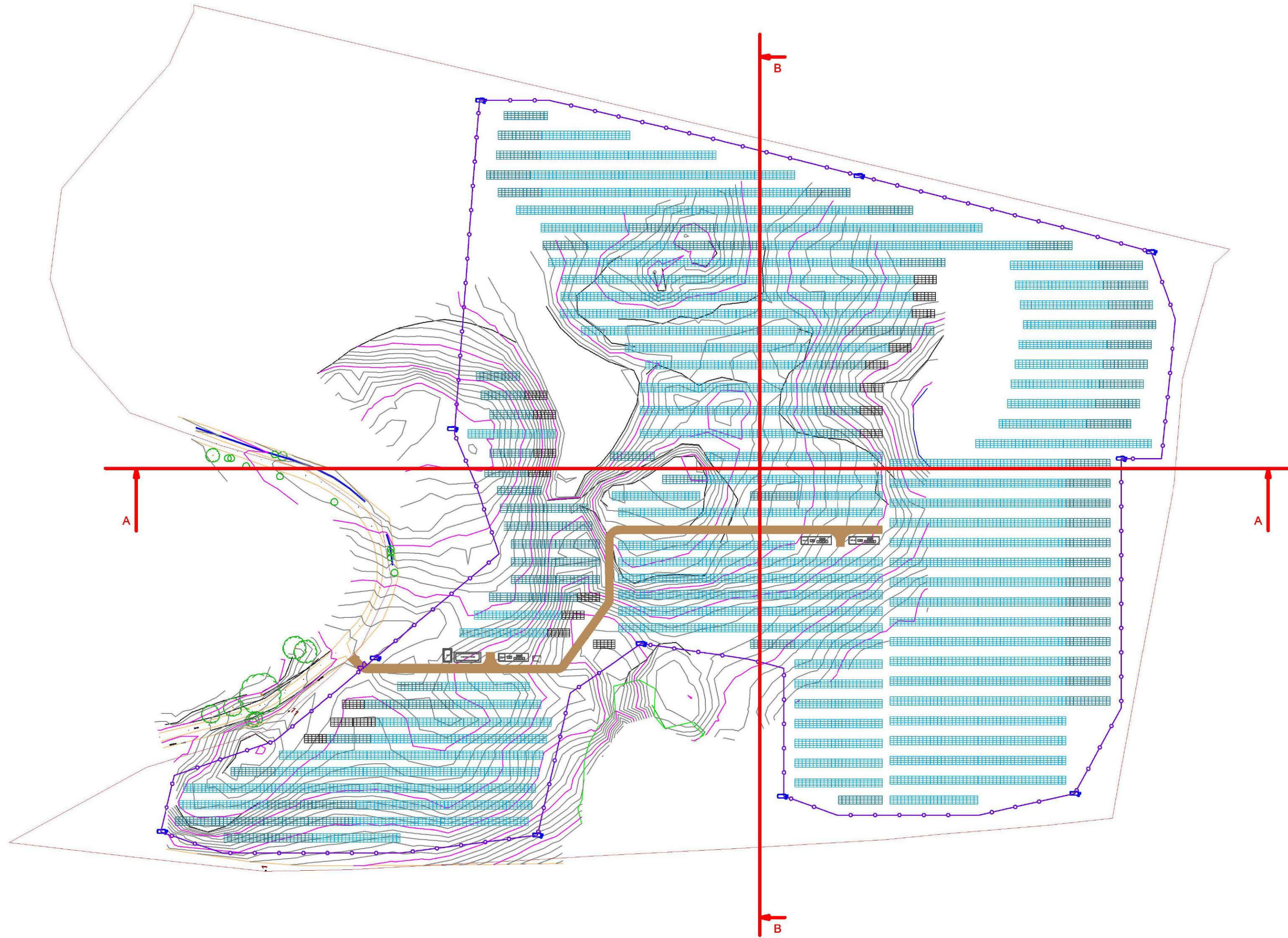
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

APPROVED

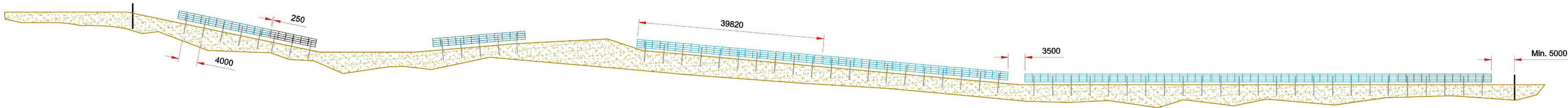
James H Miller

CHIEF DEVELOPMENT MANAGEMENT OFFICER
SUBJECT TO CONDITIONS



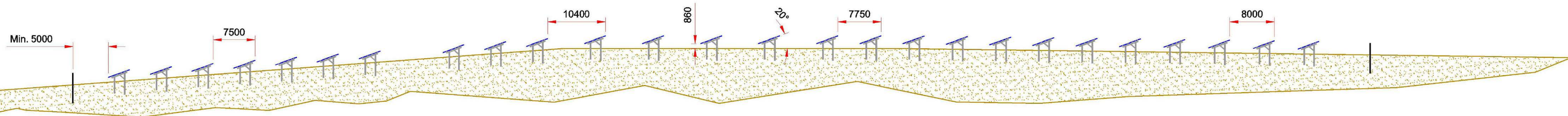
1:1500@A1

SECTION AA



1:500@A1

SECTION BB



1:500@A1

Notes:

Legend:

- Site boundary
- Perimeter fence
- Maintenance track
- Inverter housing
- CCTV

Proposed location:



System size: 4992KWp
Modules: Renesola 260W
Dimensions: 1640x992x40
Structure: 4 rows in landscape
Slope: 20°
Orientation: Due South
Inverter: TBC
Fence area: 9.17 ha
Fence length: 1545 m
Total area: 14.74 ha

Client:
Location: Isle of Cumbrae,
KA28 0HQ
55°46'12.32"N 4°55'5.44"W
Title: Cross Section

Drawn: DETRA Checked: LV
Scale: as shown@A1 Date: 21/01/16
Drawing No: IP1006-B-02 Rev: --



iPower Energy Ltd.
17 Kenilworth Road
Bridge of Allan
Stirling FK9 4DU

Do not scale from this drawing. Site verify all dimensions prior to construction. Report all discrepancies to the drawing engineer immediately. This drawing is to be read in conjunction with all relevant documents and drawings.



Cunninghame House Friars Croft Irvine KA12 8EE Tel: 01294 324 319 Fax: 01294 324 372 Email: epanning@north-ayrshire.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100209110-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- ☐ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☒ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

Please provide the application reference no. given to you by your planning authority for your previous application and the date that this was granted.

Application Reference No: *

16/00124/PP

Date (dd/mm/yyyy): *

29/03/2017

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Application for variation of conditions 6 and 10 of permission ref. 16/00124/PP for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure

Is this a temporary permission? *

☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place?

☐ Yes ☒ No

(Answer 'No' if there is no change of use.) *

Has the work already been started and/or completed? *

☒ No ☐ Yes – Started ☐ Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Harper Macleod LLP		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Roslyn	Building Name:	The Ca'd'Oro
Last Name: *	MacDonald	Building Number:	
Telephone Number: *		Address 1 (Street): *	45 Gordon Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Glasgow
Fax Number:		Country: *	United Kingdom
		Postcode: *	G1 3PE
Email Address: *			
Is the applicant an individual or an organisation/corporate entity? *			
<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Organisation/Corporate entity			

Applicant Details

Please enter Applicant details

Title:		You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *		Building Number:	
Last Name: *		Address 1 (Street): *	
Company/Organisation	Comsol Energy Limited	Address 2:	
Telephone Number: *		Town/City: *	
Extension Number:		Country: *	
Mobile Number:		Postcode: *	
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:

North Ayrshire Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Site to the North East of Wee Minnemoer Millport Isle of Cumbrae

Northing

656725

Easting

216964

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☐ Yes ☒ No

Site Area

Please state the site area:

14.75

Please state the measurement type used:

☒ Hectares (ha) ☐ Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

open land

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

☐ Yes ☒ No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

<p>Are you proposing any change to public paths, public rights of way or affecting any public right of access? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.</p>	
<p>How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?</p>	<div style="border: 1px solid black; width: 100px; height: 25px; margin: 0 auto;">0</div>
<p>How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *</p>	<div style="border: 1px solid black; width: 100px; height: 25px; margin: 0 auto;">0</div>
<p>Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).</p>	
<h2 style="margin: 10px 0;">Water Supply and Drainage Arrangements</h2>	
<p>Will your proposal require new or altered water supply or drainage arrangements? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>Do your proposals make provision for sustainable drainage of surface water?? * (e.g. SUDS arrangements) * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Note:-</p> <p>Please include details of SUDS arrangements on your plans</p> <p>Selecting 'No' to the above question means that you could be in breach of Environmental legislation.</p>	
<p>Are you proposing to connect to the public water supply network? *</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, using a private water supply</p> <p><input checked="" type="checkbox"/> No connection required</p> <p>If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).</p>	
<h2 style="margin: 10px 0;">Assessment of Flood Risk</h2>	
<p>Is the site within an area of known risk of flooding? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know</p> <p>If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.</p> <p>Do you think your proposal may increase the flood risk elsewhere? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know</p>	
<h2 style="margin: 10px 0;">Trees</h2>	
<p>Are there any trees on or adjacent to the application site? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.</p>	
<h2 style="margin: 10px 0;">All Types of Non Housing Development – Proposed New Floorspace</h2>	
<p>Does your proposal alter or create non-residential floorspace? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013 *

☐ Yes ☒ No ☐ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

☐ Yes ☒ No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

☐ Yes ☒ No

Is any of the land part of an agricultural holding? *

☐ Yes ☒ No

Are you able to identify and give appropriate notice to ALL the other owners? *

☒ Yes ☐ No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate B

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

I hereby certify that

(1) - No person other than myself/the applicant was an owner [Note 4] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or –

(1) - I have/The Applicant has served notice on every person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was owner [Note 4] of any part of the land to which the application relates.

Name:

Mr James Steele

Address:

[REDACTED]

Date of Service of Notice: *

13/03/2020

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding;

or –

(2) - The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have/the applicant has served notice on every person other than myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. These persons are:

Name:

Address:

Date of Service of Notice: *

Signed: Roslyn MacDonald

On behalf of: Comsol Energy Limited

Date: 13/03/2020

☒ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☒ Yes ☐ No ☐ Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☒ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- ☐ Site Layout Plan or Block plan.
- ☐ Elevations.
- ☐ Floor plans.
- ☐ Cross sections.
- ☐ Roof plan.
- ☐ Master Plan/Framework Plan.
- ☐ Landscape plan.
- ☐ Photographs and/or photomontages.
- ☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

☐ Yes ☒ N/A

A Design Statement or Design and Access Statement. *

☐ Yes ☒ N/A

A Flood Risk Assessment. *

☐ Yes ☒ N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

☐ Yes ☒ N/A

Drainage/SUDS layout. *

☐ Yes ☒ N/A

A Transport Assessment or Travel Plan

☐ Yes ☒ N/A

Contaminated Land Assessment. *

☐ Yes ☒ N/A

Habitat Survey. *

☐ Yes ☒ N/A

A Processing Agreement. *

☐ Yes ☒ N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

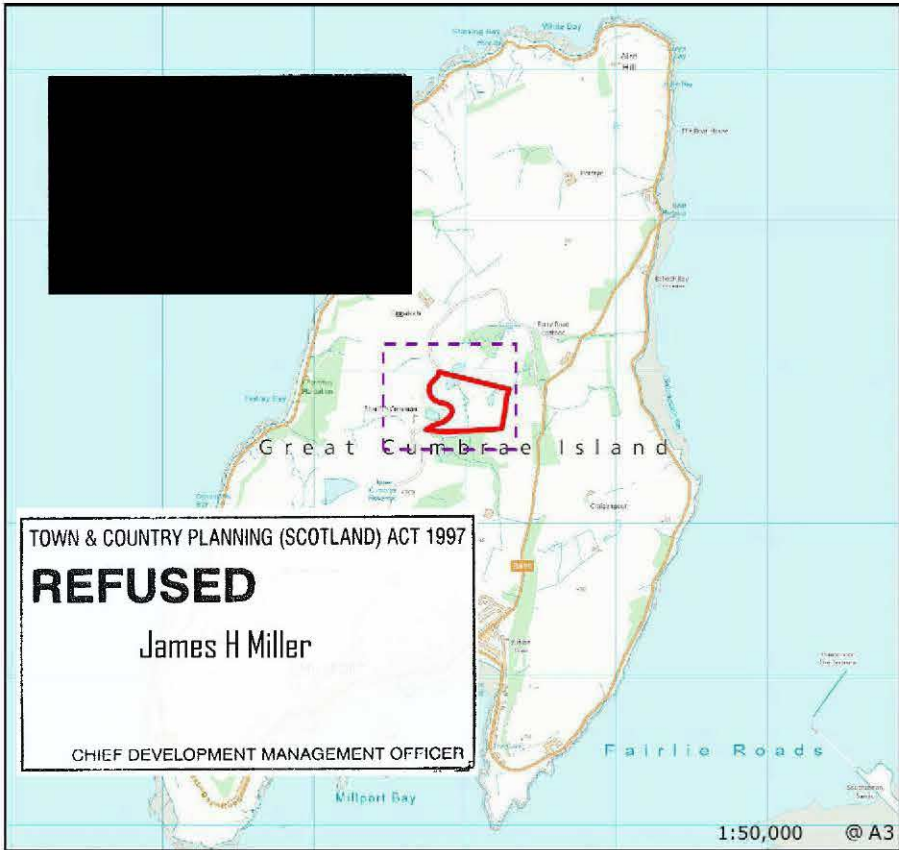
Declaration Name: Miss Roslyn MacDonald

Declaration Date: 13/03/2020

Payment Details

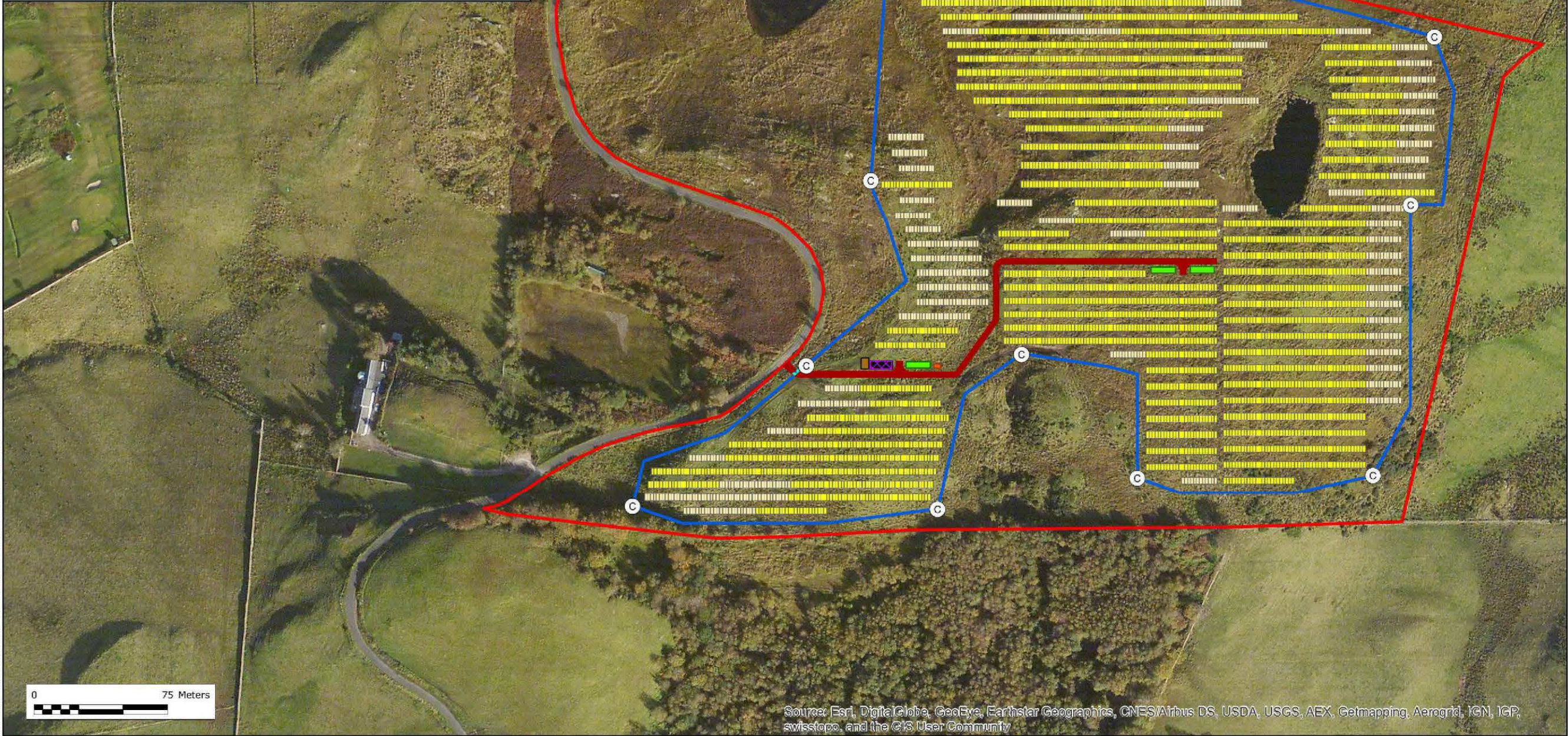


Created: 16/03/2020 14:19



TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997
REFUSED
James H Miller
CHIEF DEVELOPMENT MANAGEMENT OFFICER

1:50,000 @ A3



- Key
- DETRA Site
 - Solar Panels (4x12)
 - Solar Panels (4x24)
 - Maintenance Track
 - Access Point
 - Cells, TRF and Inverter
 - Control Room
 - Customer Cabin
 - DNO
 - CCTV

Title: Figure 1: Location Site Layout	
Project No.: UK12-22321	
Site: Great Cumbrae Solar Farm	
Client: Complete Solutions	
Date: February 2016	
Scale: 1:2,500 @ A3	
Issue: A	Drawn by: CO
RAMBOLL ENVIRON	

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Application for the installation of a photovoltaic solar farm with an output of 5MW and associated infrastructure without compliance with conditions 6 and 10 of permission 16/00124/PP

Site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae

Section 42 of the Town and Country Planning (Scotland) Act 1997

Paper Apart Supporting Statement

Comsol Energy Limited ("the Applicant") seeks planning permission to develop without compliance with the existing wording conditions 6 and 10 of permission 16/00124/PP in terms of section 42 of the Town and Country Planning (Scotland) Act 1997. The Applicant proposes that new conditions 6 and 10 be imposed, with the wording of these conditions amended as set out below.

Permission 16/00124/PP ("the Permission") was granted subject to a number of conditions on 29 March 2017 for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure.

The Permission was granted subject to condition 6 which reads as follows:

"That, within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site."

The reason given for condition 6 is:

"To reflect the temporary nature of the development and ensure that the site is restored to its previous condition."

The Applicant now requests that condition 6 be deleted and replaced with the following condition in its place, changes to the original condition shown bold and underlined:

That, within six months of the permanent cessation of electricity generation by the solar PV facility **(with permanent cessation being deemed to occur if electricity generation ceases for a continuous period of 12 months unless the developer demonstrates to the satisfaction of the Council that such cessation is for bona fide technical or other reason and that there is a bona fide intention and realistic expectations of recommencement of electricity generation within a further 12 month period)**, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

The Applicant's reason for seeking this amended wording is that the original wording of the condition leaves scope for misconstruction of the condition. It is emphasised that the Applicant has no objection to the principle of the condition, i.e. that the site should be decommissioned and restored once the development has reached the end of its lifespan or has ceased to produce electricity without any genuine prospect of electricity production recommencing within a reasonable timeframe. It is understood that this condition is not intended to require restoration of the site where the cessation of electricity generation is only temporary, and that this condition is not designed to require the removal of apparatus from the site where the cessation of the production of electricity is, for example, the result of a technical matter. It is believed that this condition is intended to take effect only in the event that the development has stopped producing electricity without any genuine prospect of electricity being generated from the development in the short term.

As it is currently worded, the condition could be interpreted such that any cessation of the production of electricity at the development, for however short a period, might result in the condition coming into effect and requiring the development to be decommissioned. Whilst it is acknowledged that it is perhaps unlikely that the Council as planning authority would intend to enforce this condition immediately upon production of electricity at the development, on one interpretation of this condition, the Council would be entitled to do so. More importantly, however, it is felt that additional clarity as to when the condition takes effect would be in the interests of both the Applicant and the Council. We believe that this can be achieved by providing that the condition takes effect on permanent cessation of electricity at the development, with a definition of 'permanent cessation' having been proposed so that the parties have certainty as to when the condition can be enforced. It is proposed in terms of this revised wording that the Applicant should have the opportunity to demonstrate to the Council that there are realistic prospects of the development generating electricity again, as it is believed that the Council would not wish to end the lifetime of the development early where development has had to cease temporarily for any reason, yet the Applicant is taking steps to recommence generation of electricity.

In terms of Planning Circular 4/1998, a planning condition must be sufficiently precise and clear. It is the Applicant's position that the proposed wording will improve the condition from the perspective of both the Applicant and the Council by providing additional precision and clarity.

Condition 10 of the permission reads as follows:

"That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the commencement of the solar farm development."

The reason given for this condition is:

"To meet the requirements of North Ayrshire Council as Roads Authority."

The Applicant requests that condition 10 be deleted and replaced with the following condition in its place, removal of wording in the original condition shown as deleted and additional wording shown bold and underlined:

That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the ~~commencement of the solar farm development~~ **U36 Inner Circle Road being used by heavy goods vehicles in connection with the solar farm development.**

It is evident that condition 10 has been included within the permission in order to address the likely impact of construction traffic which will be using the site during the course of construction of the development. The report on the Application to the Council's Planning Committee dated 27 April 2016 refers to the Applicant's Traffic and Access Statement, and notes that the Statement identifies potential locations where enhanced passing provision could be made.

The Applicant now seeks to vary this condition 10 to provide that the passing places to be provided along the U36 Inner Circle Road be provided prior to the U36 Inner Circle Road being used by heavy goods vehicles in connection with the development, as opposed to before the commencement of any works on site. This would still allow the condition to achieve its purpose of mitigating the impacts of construction traffic on the U36. The Applicant's Traffic and Access Statement states at paragraph 5.12 that "a further review was undertaken of the U36 between its junction with the B899 and the proposed site access to identify potential locations where enhanced passing provision could be made for vehicles while construction traffic uses the route". It has been agreed between the Applicant and the Council, as set out in this condition, that the passing places are to be made permanent, and the Applicant has no objection to this. However, it is clear that the passing places were considered to be necessary in connection with this development as a result of the construction traffic which will use the

U36 inner circle road, and for that reason it is submitted that the passing places aren't needed until such time as heavy goods vehicles for use in the construction of the development are actually using the road. This condition was recommended by the Council's Roads Department and it is evident from the Roads Department's response to the application that the reason for the condition was to accommodate heavy construction vehicles in particular: *"During the construction phase the estimated number of vehicles per day is considered relatively low and as such should not have a significant impact on the operation of the adjacent road. However there are some infrastructure works required **to accommodate construction vehicles**. The applicant is proposing number of road improvements to facilitate the safe passage of all users on the U36"*.

It would greatly assist the Applicant to be able to carry out initial works on site prior to the passing places on the U36 being constructed. It is acknowledged that it is necessary for the passing places to be constructed prior to any heavy goods vehicles using the U36 for construction work, but it is not believed to be necessary for these works to have been carried out before any other material operations on site. The proposed modification to this condition would allow the Applicants to develop the site in accordance with a more suitable and manageable programme of works.

In support of this Application, we highlight the policy tests for planning conditions set out in Planning Circular 4/1998, and in particular the requirement that a planning condition be necessary. We make no argument that conditions 6 and 10 of the permission are not necessary. However, the Circular provides that *"The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; a condition should not be retained unless there are sound and clear-cut reasons for doing so."* We take this as authority that the particular wording used in the condition must be necessary in considering any application made under Section 42 of the Act which seeks to change the wording of that condition. It is our view that whilst the conditions themselves are necessary for proper planning, retaining the original wording of these conditions is not necessary.

Our ref: ROMA/531224
Your ref:

North Ayrshire Council
Cunninghame House
Irvine
KA12 8EE

13 March 2020

Dear Sirs

Application for the installation of a photovoltaic solar farm with an output of 5MW and associated infrastructure without compliance with conditions 6 and 10 of permission 16/00124/PP

Site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae

We refer to the above application which has been submitted to you for consideration.

The application seeks to vary conditions 6 and 10 of permission 16/00124/PP in terms of section 42 of the Town and Country Planning (Scotland) Act 1997. Prior to permission 16/00124/PP being issued, an agreement in terms of section 75 of the 1997 Act was entered into between the Council, our client Comsol Energy Limited as developer, and James Steel as landowner, which agreement provided for the delivery of a restoration bond in security against completion of the restoration requirements at the site following decommissioning.

It is anticipated that, should the Council be minded to grant the present application, the Council will wish to ensure that the developer remains obliged to provide adequate security for restoration of the site pursuant to any development carried out under the new permission. It is noted that the existing section 75 agreement links the requirement to provide security against restoration of the development site to the existing permission 16/00124/PP, and the wording of the existing s75 agreement doesn't appear to cover works carried out at the site under a different permission. The granting of the current application would create such a new permission.

It is our view that the requirement to deliver security against restoration of the site could be secured by making any new permission subject to an additional planning condition. Such a condition would be automatically enforceable against successor owners or developers at the site and would provide an equally robust means of enforcement against failure to deliver the security. It would also be open to the Council to require the amount of any restoration bond to be reviewed at intervals throughout the duration of the development through such a condition. We note that it is customary for the Scottish Government's Energy Consents Unit to impose conditions requiring the delivery of a decommissioning bond prior to the commencement of development when issuing permission for renewable energy developments under section 36 of the Electricity Act 1989. The costs of restoring such sites can be many times greater than the cost of restoration of the present site would be, since such conditions are routinely used, for example, to require security against restoration of large scale wind farms following decommissioning. The following is an example of a condition which has been imposed on a section 36

consent granting permission for a wind development with capacity of up to 51 MW without an additional requirement for a legal agreement:

"At least one month prior to the commencement of the first phase of the development written details of the bond or bonds or other financial provision to be put in place to cover all site restoration costs on the expiry of this consent must be submitted to the Scottish Ministers, along with an independent confirmation by a Chartered Surveyor (whose appointment for this task has been approved by the Scottish Ministers) that the amount of the bond or bonds or financial provision so proposed is sufficient to meet the full estimated costs of decommissioning, dismantling, removal, disposal, site restoration, remediation and any other work that the Scottish Ministers consider appropriate. In considering whether this bond or bonds or other financial provision is satisfactory, the Scottish Ministers will inter alia take into account the advice of the planning authority. Commencement of the development cannot take place until the Scottish Ministers to the Company have confirmed in writing that the proposed bond or bonds or other financial arrangement are satisfactory; and the planning authority has subsequently confirms to the Scottish Ministers that the bond or bonds or financial provisions have been put this in place. An independent review of the bond or bonds or other financial provision so approved must be submitted to the Scottish Ministers and the planning authority at 5 yearly intervals, or at such other time as the Scottish Ministers consider appropriate, and the bond or bonds or other financial provision must be amended if Scottish Ministers issue a directive to that effect."

We believe that a similarly worded condition imposed as part of the current application would adequately secure the obligation to deliver a restoration bond from the Council's perspective, and would avoid the need to revisit the existing s75 agreement. However, in the event that the Council is minded to grant the present application but is not inclined to include such an additional condition, we would be grateful if you would advise whether the Council requires a fresh s75 agreement to be entered into or a s75A application to be submitted to vary the existing s75 agreement to make it applicable to the new s75 agreement and, if so, whether the Council has a preference as between these alternatives.

Yours faithfully


Roslyn MacDonald
Senior Solicitor
Harper Macleod LLP


EDF Energy Renewables Limited

20 March 2020

Dear Sirs

CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF AIRIGH WIND FARM, LOCATED 8.4 KM SOUTH WEST OF TARBERT, WITHIN THE PLANNING AUTHORITY AREA OF ARGYLL AND BUTE COUNCIL.

Application

I refer to the Application made on 31 August 2017 under section 36 of the Electricity Act 1989 ("the Act") by EDF Energy Renewables Limited, a company incorporated under the Companies Act with company number 06456689 and having its registered office at 40 Grosvenor Place, Victoria, London SW1X 7EN ("the Company"), as supplemented by additional information in the form of Supplementary Environmental Information provided by the Company on 7 February 2019 ("SEI") for the construction and operation of a wind powered electricity generating station comprising 14 turbines with ground to blade tip heights of the wind turbines numbered T1, T2, T3 and T13 not exceeding 131 metres, those numbered T9 and T14 not exceeding 138.5 metres and those numbered T4, T5, T6, T7, T8, T10, T11, T12 not exceeding 149.5 metres ("the proposed Development") all as more particularly described in Annex 1. The generating station would have a nominal generating capacity exceeding 50 Mega Watts ("MW").

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 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 on land approximately 8.4km south west of Tarbert in Kintyre, Argyll & Bute. The site is located in a bowl-like area, within the Airigh and Radacal Forests, and is covered with forest plantations with a network of rides and tracks of varying accessibility. The existing forest plantations are mature and a few areas have been felled and some replanted.

Tarbert is the closest sizeable settlement with smaller settlements within approximately 15km of Killberry, Carse, Whitehouse, Clachan, Claonaig and Achnaoish. The site will be accessed from the nearest public road to the site, the A83 trunk road that runs along the length of the Kintyre Peninsula, running along the west coast of Loch Fyne to Tarbert then along the slopes south of West Loch Tarbert.

The proposed Development comprises of 14 wind turbines (with external transformers) with ground to blade tip heights of the wind turbines numbered T1, T2, T3 and T13 not exceeding 131 metres, those numbered T9 and T14 not exceeding 138.5 metres and those numbered T4, T5, T6, T7, T8, T10, T11, T12 not exceeding 149.5 metres with an installed capacity anticipated to be between 50.4 MW to 58.8MW.

Other key elements of the proposed Development include: up to 10 borrow pits, crane hard standings; underground electrical cabling; substation and control building; site signage; vehicle turning circles; approximately 30.4km of access tracks (of which 16km is existing track which will be upgraded and 14.4 km is new and includes the new site access and associated ancillary development.

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 ("Planning Authority") 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 both the Electricity (Applications for Consent) Regulations 1990 and the EIA Regulations, advertisement of the Application and the EIA report was made in the local and national press, and on the Company's application website, copies were placed in the public domain, and the opportunity given for those wishing to make representations to do so.

In addition, to comply with the EIA Regulations, Scottish Ministers require 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. Notifications were sent to the Planning Authority as well as to SNH, SEPA and HES.

On 7 February 2019 the Company submitted additional information in the form of Supplementary Environmental Information ("SEI"), to support the EIA report relating to minor amendments to the location of some on-site infrastructure components and providing additional information requested by some of the consultees. Visualisations of an additional viewpoint and assessment from the northern end of the Isle of Gigha, additional visualisations for existing viewpoints showing darker turbines, updated cumulative ornithology assessment at natural heritage zone ("NHZ") level were provided in response to SNH comments, as well as an amended Forest Design Plan requested by Forestry Commission Scotland (now Scottish Forestry). There was also additional peat information detailing peat depths and an updated carbon report in response to RSPB comments, details of proposed new construction traffic access arrangements to bypass Tarbert via the B802, a minor application red line boundary change, copies of Memorandums of Understanding, assessment of effects of the proposed Development on climate change, major accidents and disasters and human health, and details of the amended description of the proposed Development.

In accordance with the EIA Regulations the SEI was advertised, placed in the public domain and opportunity was given to those wishing to make a representation.

Under paragraph 3(2) of Schedule 9 to the Act Scottish Ministers must have regard to 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 must have regard to the extent to which the Company has complied with its duty under paragraph 3(1)(b) requiring the Company to do what it 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. Under paragraph 3(3) Scottish Ministers must also avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

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 consultation response to Scottish Ministers they 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 and the SEI 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, SEI, 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 them 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 this is the case and more generally that the requirements of paragraph 3 have been met.

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

SNH in their response to Scottish Ministers advised of the connectivity between the proposed Development and the Knapdale Lochs Special Protection Area ("SPA") classified for its breeding black throated diver population, as Loch nan Torran is very close to the construction access tracks. Black-throated divers are highly susceptible to disturbance. Movements of vehicles and componentry have the potential to disturb or displace black-throated divers during the breeding season.

A Habitats Regulation Appraisal (“HRA”) has been carried out. 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.

Scottish Ministers conclude following advice from SNH, in view of the proposed conservation objectives of the Knapdale Lochs SPA, that if the proposed Development is undertaken in accordance with mitigating conditions requiring a construction methodology, including for traffic movement on tracks and roads, that avoids disturbance on black-throated divers on Loch nan Torran, then the integrity of the SPA will not be adversely affected by the proposed Development alone or in combination with other developments. Scottish Ministers have imposed a condition on the deemed planning permission, condition 12, requiring a Construction and Environmental Management Plan containing the aforementioned mitigation measures to be approved by the Planning Authority in consultation with SNH before development commences and to be thereafter implemented.

Public Inquiry

Paragraph 2 of Schedule 8 to the Electricity Act states if the relevant planning authority make an objection and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the 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 provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of Regulations made under that paragraph, the Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a public inquiry should be held with respect to the application and, if they think it appropriate to do so, they must cause a public inquiry to be held.

West Kintyre Community Council objected to the proposed Development on the grounds that it would have visual impacts, cumulative impacts and an adverse effect on the vital tourist economy of the area.

Scottish Ministers have considered the aforementioned objection as well as the 15 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, the SEI 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

Statutory Consultees

Scottish Ministers were notified of the Planning Authority's initial objection to the Application on 13 February 2018. This objection followed a meeting of the Planning Protective Services and Licensing Committee (PPSLC) held on 9 February 2018. The objection cited significant adverse landscape and visual effects, including significant adverse visual effects on the appreciation of South Knapdale, and cumulative and visual effects, contrary to the guidance in Argyll and Bute's Landscape Wind Energy Capacity Study 2017.

The PPSLC were then asked to consider the SEI relating to minor amendments to the location of on-site infrastructure components, an assessment of the changes and the provision of further information requested by some of the consultees which was submitted by the Company in February 2019. The PPSLC met on 22 May 2019 and agreed again to raise an objection to the Application, updating their reasons stating the proposed Development would have 1) significant adverse effects on the appreciation of the South Knapdale Area of Panoramic Quality (APQ), 2) significant adverse strategic cumulative landscape impact, and 3) an unsatisfactory "jumbled" appearance due to variable levels of turbine heights in the layout. Scottish Ministers were formally notified of this objection on 23 May 2019.

At a final meeting of the PPSLC held on 21 August 2019 members were asked to consider a report by Planning Authority officials which provided clarification in respect of the consultee response from South Knapdale Community Council (SKCC) dated 16 May 2019 which had been submitted to Scottish Government's Energy Consents Unit and the Planning Authority. The report also advised members of a consultee response from Ardrishaig Community Council dated 16 April 2019 and sought confirmation from Members on whether they wished to maintain their objection to the proposed Development.

Following the meeting on 21 August 2019, Scottish Ministers were formally notified on 30 August 2019 of the Planning Authority's withdrawal of their objection to the proposed Development for the following reasons: -

- Landscape impact is minimised given that the site sits lower in the landscape due to the surrounding topography and as such it does not have a significant impact on the Upper Forest Moor Mosaic and the Rocky Mosaic character types;
- The location of the proposed Development is distant from visual receptors and as such the impact is minimised by this separation and as such it does not have a significant adverse visual impact on the appreciation of South Knapdale;
- The distance from existing wind farms is substantial which minimises the cumulative impact that can be perceived. Given that the proposed Development will sit in a bowl it will not extend the cumulative visual impact from Kintyre into Knapdale; and

- Given the compact footprint of the proposed Development site, the variable height of the turbines nevertheless creates a homogeneous grouping, which can be assimilated into the landscape having regard to the proposed layout of the turbines, it is considered that this clearly lessens the visual impact and does not give a jumbled appearance. As such, it is also considered that this is therefore fully acceptable in landscape terms, particularly from the viewpoint at Gigha North End which is approximately 14 km away.

The PPSLC advised in their final response, that given the points raised above, they had no objection to the proposed Development. They considered it to be consistent with the specified policies and guidance in the Local Development Plan.

The Planning Authority recommended that certain matters, set out as follows, should be addressed by Scottish Ministers by way of conditions to be attached to the grant of any planning permission: -

- Requiring the mitigation measures, detailed in the EIA report and SEI are implemented;
- Securing the appropriate mitigation to prevent disturbance to black-throated divers on Loch nan Torran (Knapdale Lochs SPA);
- Securing a Construction Environment Management Plan (CEMP);
- Securing a Conservation Management Plan (CMP);
- Securing a Breeding Birds Protection Plan (BBPP);
- Ensuring requirements for compensatory planting for any felling undertaken as part of the Development;
- Securing a Forest Plan;
- Requiring the control of noise immissions;
- Mitigation measures to secure the quality, quantity and continuity of private water supplies;
- Final details of substation and control building including external lighting;
- Secure appropriate aviation lighting as required by the Ministry of Defence (MOD);
- Conditions for traffic management and road safety as required by Transport Scotland and the Planning Authority's area roads engineer;
- Securing a Construction Traffic Management Plan (CTMP); and
- Conditions to secure the decommissioning of the Development to an acceptable standard, including associated ancillary infrastructure and site restoration.

Scottish Ministers have consulted with the Planning Authority and have imposed appropriate conditions at Annex 2 to address the aforementioned recommendations.

The Planning Authority also asked Scottish Ministers to consider requiring an independent tourism impact assessment of the proposed Development in their report dated 4 April 2019. Scottish Ministers have given consideration to the recommendation made by the Planning Authority in this decision letter under the heading "*Assessment of the Determining Issues*".

Scottish Natural Heritage (SNH) does not object to the proposed Development provided conditions are imposed to provide specific mitigation to safeguard the integrity of Knapdale Lochs SPA classified for its breeding black throated divers. The section of this letter headed “Conservation of Habitats and Species Regulations” sets out SNH’s advice regarding the requirements of the Habitats Regulations.

In their advice response to Scottish Ministers, SNH advised the proposed Development is contrary to the guidance set out in the Argyll and Bute Landscape Wind Energy Capacity study 2017 and as a consequence of the nature and scale of the proposed Development, it cannot be accommodated in its location without resulting in significant adverse landscape and visual effects including:

- Significant adverse landscape effects on parts of the Upland Forest Moor Mosaic (6b) and the small scale settled ‘Rocky Mosaic’ (20) landscape character types and associated seascape;
- Significant adverse visual effects from key viewpoints in particular coastal views and views from the sea where key routes, scattered settlement and recreation areas are concentrated;
- Significant adverse strategic cumulative landscape effect;
- Significant adverse cumulative landscape and visual effects; and
- Adverse effect upon the character, qualities and experience of the landscape.

SNH provided a further response following the submission of SEI in relation to their remit, which took account of the additional viewpoint from northern Gigha, the updated cumulative ornithology assessment at NHZ14 level and the proposed new construction assess arrangements. SNH remained of the view, detailed in their response dated 10 November 2017, that the nature and scale of the proposed Development cannot be accommodated in the location without significant adverse landscape and visual effects.

Additionally, SNH made a number of recommendations which have been considered by Scottish Ministers including consideration of track reinstatement options, mitigation to protect the Knapdale Lochs SPA and ecological matters in relation to invasive plant species.

Scottish Ministers have imposed appropriate conditions, set out in Annex 2, which give effect to the matters raised by SNH, particularly in respect of the mitigation measures required to secure the integrity of the Knapdale Lochs SPA.

Scottish Ministers note the concerns raised by SNH in the context of the landscape and visual impacts of the proposed Development and have given their consideration the concerns raised by SNH in this decision letter under heading “Assessment of the Determining issues”

Scottish Environment Protection Agency (SEPA) does not object but asks that their advice on site drainage, foul drainage, private water supplies, forest operations and

peat be noted. Scottish Ministers have attached appropriately worded conditions within Annex 2 which gives effect to this request.

Historic Environment Scotland (HES) does not object. Having reviewed the original EIA report and the SEI, HES are content that the proposed Development would not have a significant adverse effect on historic environment assets within their remit.

Internal Scottish Government advisors

Scottish Forestry (SF) - (formerly Forestry Commission Scotland) does not object, subject to the provision of a woodland forest plan and the provision of compensatory replanting of woodland in line the Scottish Government's Control of Woodland Removal Policy.

Scottish Ministers have attached appropriately worded conditions within Annex 2 which gives effect to this request.

Scottish Forestry are of the view that not all of the long term felling and restocking of woodland proposed by the Company is necessary for the construction and operation of the wind farm.

Scottish Ministers are satisfied that the Company has comprehensively considered the long-term management of forestry on the proposed Development site, detailing "best estimates" regarding the provision of future felling and re-stocking to satisfy compliance with current forestry standards which balances the operational requirements of the proposed Development with forestry, landscape and ecological issues. Nevertheless it is acknowledged that some phases of the felling/re-stocking proposed in the SEI Appendix 4.3 (Forestry) are not anticipated to commence until 2048. Having considered all phases of the forestry works set out in the SEI, Scottish Ministers consider that only the Forestry Works associated with phases 1 and 2 are strictly necessary for the construction and operation of the proposed Development and therefore only give planning permission for those phases, as described in Annex 1 of this consent. Any further forestry works, beyond that set out in phases 1 and 2, required for the long term management of the forestry, is not permitted by this consent and should be subject to the relevant permissions as necessary under the Forestry and Land Management (Scotland) Act 2018.

Marine Scotland does not object. It recommends the Company establish a robust water quality monitoring programme incorporating Marine Scotland Science guidelines.

Scottish Ministers have attached a condition within Annex 2 which gives effect to Marine Scotland's recommendation.

Transport Scotland does not object to the proposed Development subject to conditions in relation to abnormal loads on trunk roads; trunk road accesses layout and type (and method) of construction; additional signing or temporary traffic control measures; a Construction Traffic Management Plan (CTMP); drainage connections; HGV wheel washing and Decommissioning Plans.

Scottish Ministers have imposed planning conditions within Annex 2 to secure Transport Scotland's requirements.

Advisors to Scottish Government

A M Geomorphology reviewed the EIA report and advised that the peat stability assessment (PSA), required resubmission due to shortcomings in key elements of the assessment. Following the review of the SEI submitted by the Company they determined no further revisions were required.

Other Consultees

Ardrishaig Community Council does not object and supports the proposed Development.

Argyll Fisheries Trust does not object. They recommend the condition and connectivity of brown trout habitat on the site and its access routes are retained throughout and after the construction phase of the project. Scottish Ministers have attached a condition within Annex 2 which gives effect to this recommendation.

British Telecom does not object to the proposed Development.

Crown Estate Scotland does not object to the proposed Development, confirming that assets of Crown Estate Scotland are not affected.

Coal Authority does not object confirming the proposed Development site is located outside of the defined coalfield.

Defence Infrastructure Organisation does not object to the proposed Development subject to conditions to secure aviation safety lighting. They also require to be advised of the following prior to the commencement of construction:

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

Scottish Ministers have included planning conditions within Annex 2 to give effect to these requirements.

Fisheries Management Scotland (FMS) does not object to the proposed Development stating it falls within the district of the Argyll District Salmon Fishery Board, and the catchments relating to the Argyll Fisheries Trust.

Due to the potential for such developments to impact on migratory fish species and the fisheries they support, FMS have developed, in conjunction with Marine Scotland Science, advice for District Salmon Fisheries Boards (DSFBs) and Trusts in dealing with planning applications and strongly recommend that these guidelines are fully

considered throughout the planning, construction and monitoring phases of the proposed Development.

Glasgow Prestwick Airport does not object to the proposed Development.

Highlands and Islands Airports Limited does not object.

Joint Radio Company does not object as the proposed Development is cleared with respect to radio link infrastructure operated by The Local Electricity Utility and Scotia Gas Networks.

National Air Traffic Services (NATS Safeguarding) does not object.

RSPB Scotland does not object to the proposed Development, however they had concerns that some potential impacts may have been underestimated and sought clarification in relation to development of floating tracks and a list of peat depths at the proposed turbines and key infrastructure locations as referred to in Section 3: Peatland and Wider Habitat Management in their response dated 20 October 2017. Having reviewed the SEI submitted by the Company, RSPB made a number of recommendations in relation to black and red throated divers; golden eagles; black grouse and peatland considerations.

Scottish Ministers have taken account of RSPB comments. The planning conditions within Annex 2 include the requirement for a Breeding Birds Protection Plan (BBPP) and Construction Environmental Management Plan (CEMP)

Scottish Water does not object to the proposed Development.

Scottish Rights of Way and Access Society (ScotWays) made no comment to the proposed Development.

South Knapdale Community Council (SKCC) provided a detailed response to the consultations. SKCC advised that within their members, one group is supportive of the proposed Development, the other group objects to it and there is no clear, quantifiable majority view evident to SKCC. The group in support of the proposed Development made comments relating to community needs, local investments, community benefit income and/or shared ownership. The group against raised issues regarding the impact on South Knapdale's protected Area of Panoramic Quality (APQ); the setting of a precedent; the turbine height; ornithological concerns; it being contrary to Argyll and Bute Landscape Wind Energy Capacity Study; and the socio-economic impacts on businesses in the area.

In response to the SEI, SKCC confirmed that its original representation dated 18th October 2017 is not altered.

Visit Scotland does not object to the proposed Development. In general terms, without specific reference to the proposed Development, it highlighted the importance of tourism to Scotland's local and national economy on the natural landscape for

visitors and strongly recommends any potential detrimental visual, environmental or economic impact on tourism be identified and considered in full.

Visit Scotland ask that for each site considered, an independent tourism impact assessment should be carried out. This assessment should be geographically sensitive and should consider the potential impact on any tourism offerings in the vicinity. Visit Scotland would also urge consideration of the specific concerns raised relating to the impact any perceived proliferation of developments may have on the local tourism industry, and therefore the local economy.

Scottish Ministers have addressed this under “*Assessment of the Determining Issues*” of this decision letter.

West Kintyre Community Council provided a detailed response in objection to the proposed Development as a consequence of its visual impacts, the cumulative impacts and the adverse effect on the vital tourist economy of the area. They did not respond to the consultation on the SEI.

The following consultees did not respond: Vodafone; Civil Aviation Authority; Mountaineering Council of Scotland; John Muir Trust; Scottish Wildlife Trust; BAA Aberdeen; Nuclear Safety Directorate; British Horse Society; Scottish Wild Land Group; and Tarbert and Skipness Community Council.

Full details of the consultation responses are available on the Energy Consents website at www.energyconsents.scot

Scottish Ministers’ consideration of the landscape and visual concerns raised by consultees has been undertaken under “*Assessment of the Determining Issues*” of this decision letter.

Summary of Public Representations

Scottish Ministers received 4 representations from members of the public in support of the proposed Development and 15 representations from members of the public objecting to the Application.

Representation in support of the proposed Development state the following: the proposed Development will result in a boost to the local economy and will create local employment opportunities; have not found existing wind farms intrusive or noisy; environmental and economic benefit effects; general support.

The concerns raised within the objections are: wind is not a reliable resource; no local need, surrounded by turbines; scale of turbines not compliant; turbines despoil the landscape, violating the designation of the area as a “special beauty and scientific interest”; not wanted by locals and detrimental effect on tourism; visual effects- residents able to see tops of turbines, higher properties exposed to more of these turbines; carbon footprint; ornithological and ecological impacts; no way of storing

electricity; no local support; safety regarding access and traffic impacts; impacts on tourism and recreation; limited information to community.

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 CO₂, 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 gCO₂/kWh of electricity generation in Scotland.

Published Energy Trends data showed Scotland has generated 21,688 GWh of renewable electricity generation in the first 9 months of 2019, up 23% from the same point in 2018. Scotland's overall renewable electricity capacity was 11.7 GW as of September 2019, up by 0.9 GW from September 2018. A further 12.9 GW of capacity is in the pipeline (i.e. either under construction, awaiting construction or in planning). This indicates that Scotland remains above the interim 2015 target of 50% suggesting that progress is being made towards achieving the target of 100% by 2020.

Scottish Ministers note not all consented schemes will progress to implementation for a variety of reasons however the proposed electricity generation capacity of the proposed Development will make a valuable contribution towards meeting national greenhouse gas emission and renewable energy targets.

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.

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 onshore wind energy development in appropriate locations. SPP introduces a presumption in favour of development that contributes to sustainable development, setting out that policies and decisions should be guided by certain principles, including: giving due weight to economic benefits; 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.

At paragraph 77 of SPP, it is set out that in remote and fragile areas and island areas out with defined small towns, in which this proposed Development would be sited, the emphasis should be on maintaining and growing communities by encouraging development that provides suitable sustainable economic activity, while preserving important environmental assets such as landscape and wildlife habitats that underpin continuing tourism visits and quality of place.

Paragraph 169 of SPP identifies a range of considerations which must be balanced to be able to reach an overall conclusion over whether renewable energy proposals, including onshore wind farms, are acceptable on a case by case basis. When considered as a whole, it is principally this balance which also determines whether or not a wind energy proposal would be a sustainable form of development. Consideration will vary relative to the scale of the proposal and area characteristics but are likely to include impacts on: landscapes and visual amenity; natural heritage; carbon rich soils; public access (including long distance walking, cycling and scenic

routes identified in NPF); historic environment; tourism and recreation; road traffic; adjacent trunk roads; the water environment (including flood risk); communities and individual dwellings; aviation; telecommunications; noise; shadow flicker; greenhouse gas emissions; and any cumulative impacts that are likely to arise.

Paragraph 169 also makes clear that, where relevant, the following should be a material consideration when considering an application: net economic benefit; the scale of contribution to renewable energy generation targets; opportunities for energy storage; the need for conditions relating to decommissioning and site restoration; and the need for robust planning obligations to ensure site restoration is achieved.

The proposed Development site (with the exception of approximately 3km of the access track which is in a group 1 area as detailed and addressed below in Assessment of the Determining Issues - Landscape and Visual Impacts) is situated within a Group 3 area as set out in Scottish Planning Policy spatial framework. These are areas with potential for wind farm development, where wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

Paragraph 170 further advises that areas identified for wind farms should be suitable for use in perpetuity. It sets out that consents may be time-limited but wind farms should nevertheless be sited and designed to ensure impacts are minimised and to protect an acceptable level of amenity for adjacent communities.

Scottish Ministers are satisfied that matters pertaining to SPP have been addressed in the Application, the EIA report, Additional Information and responses to the consultation by the Planning Authority, SEPA, SNH, HES and other relevant bodies. The range of considerations set out in paragraph 169 have been taken into account by Scottish Ministers before reaching their determination. On balance, it is considered that the proposed Development contributes to sustainable development. The site specific, determinative factors in respect of the proposed Development are considered in detail under the heading *“Assessment of the Determining Issues”*

Scottish Energy Strategy

The Energy Strategy sets out a vision for the future energy system in Scotland through to 2050. It 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 sets out two new targets for the Scottish energy system by 2030 – (1) the equivalent of 50% of the energy for Scotland’s heat, transport and electricity consumption to be supplied from renewable sources; (2) an increase by 30% in the productivity of energy uses across the Scottish economy. 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 Onshore Wind Policy Statement (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.

OWPS also acknowledges that although the common assumption is that there is a 25 year life limit for the operation of a wind farm, there is no current statutory or legislative limits imposed on the duration of consent that may be granted. The operating period of every wind farm development is a matter which developers will consider prior to the submission of an application. In this case the Company has requested a 30 year limit on the consent to operate the wind farm.

Scottish Ministers are satisfied that the proposed Development will contribute to these strategic priorities.

Compatibility with Local Development Plan and Supplementary Guidance

Although the Planning Authority initially objected to the proposed Development, following further consideration they withdrew their objection in a final response to Scottish Ministers on the basis of the proposed Development being consistent with the specified policies and guidance in the Argyll & Bute Local Development Plan 2015.

Scottish Ministers accept and agree with the Planning Authority's view that the proposed Development is supported by the Local Development Plan and have imposed relevant conditions that have been agreed with the Planning Authority.

The Scottish Ministers Considerations

Main Determining Issues

Having considered the Application, the EIA report, the SEI, 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 renewable energy benefits of the proposed Development; and
- the extent to which the proposed Development accords with and is supported by Scottish Government policies.

Assessment of the Determining Issues

Landscape and visual Impacts

The proposed Development is located within the Knapdale Upland Forest Moor Mosaic (UFMM) (6B) Landscape Character Type (LCT) identified in the Argyll & Bute Landscape Wind Energy Capacity Study 2017 (LWECS). The area in which the proposal is located forms the landscape backdrop to the coastal, small scale settled Rocky Mosaic LCT and to views across the scenic West Loch Tarbert area. The proposed Development lies within the western part of the area which is designated an

Area of Panoramic Quality (Knapdale APQ) and which also forms the backdrop to the adjacent Knapdale National Scenic Area (NSA).

Policy LDP 6 - Supporting the Sustainable Growth of Renewables of Argyll and Bute's Local Development Plan, Supplementary Guidance to the Argyll & Bute Local Plan 15' (2016) 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, further supplemented by the SEI which has been considered by SNH and the Planning Authority before responding to Scottish Ministers on the proposed Development.

In landscape terms, taking account of the Planning Authority's Spatial Framework, the area of the site that encompasses the wind turbines is situated entirely within a Group 3 area as set out in Scottish Planning Policy spatial framework. These are areas with potential for wind farm development, where wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

Approximately 3km of the 30.4km of access track passes through a corner of the Knapdale NSA, a group 1 area where wind farms will not be acceptable. The access track follows the route of existing track infrastructure already situated within the National Scenic Area and whilst this means a small portion of the proposed Development falls within the NSA, Scottish Ministers agree with the Planning Authority's view as set out in Planning Official's Supplementary Report No 2 dated 4 April 2019, that this is not considered contrary to the spatial framework. As SPP and the resulting spatial framework focus specifically upon the wind turbine components (and tip height) the access track is not considered to conflict with the aims of the spatial framework or SPP and any effect on the National Scenic Area by the access track has been mitigated by routing and design.

SNH's View

SNH summarise in their response to Scottish Ministers their view that, "*the proposal is clearly contrary to the guidance set out in the Argyll & Bute Landscape Wind Energy Capacity Study (ABLWECS) commissioned jointly by SNH and Argyll & Bute Council in 2017. We consider that the nature and scale of the proposal cannot be accommodated in this location without significant adverse landscape and visual effects*" including;

- Significant adverse landscape effects on parts of the Upland Forest Moor Mosaic (6b) and the small scale settled 'Rocky Mosaic' (20) landscape character types and associated seascape;
- Significant adverse visual effects from key viewpoints in particular coastal views and views from the sea where key routes, scattered settlement and recreation areas are concentrated;
- Significant adverse strategic cumulative landscape effect
- Significant adverse cumulative landscape and visual effects; and

- Adverse effect upon the character, qualities and experience of the landscape.

SNH consider the turbines related to the proposed Development would be too large in relation to the distinct ridge between Stob Odhar and Meall Reamhar and in this location would significantly detract from the scenic views and experience of West Loch Tarbert.

The Planning Authority's View

The Planning Authority initially objected to and maintained their objection to the proposed Development as a consequence of its landscape and visual impacts being unacceptable, namely 1) significant adverse effects on the appreciation of the South Knapdale Area of Panoramic Quality (APQ), 2) significant adverse strategic cumulative landscape impact, and 3) an unsatisfactory “jumbled” appearance due to variable levels of turbine heights in the layout.

In their final response to the consultation they withdrew their objection for the following reasons:

- Landscape impact is minimised given that the site sits lower in the landscape due to the surrounding topography and as such it does not have a significant impact on the Upper Forest Moor Mosaic and the Rocky Mosaic character types;
- The location of the proposed Development is distant from visual receptors and as such the impact is minimised by this separation and as such it does not have a significant adverse visual impact on the appreciation of South Knapdale;
- The distance from existing wind farms is substantial which minimises the cumulative impact that can be perceived. Given that the proposed Development will sit in a bowl it will not extend the cumulative visual impact from Kintyre into Knapdale; and
- Given the compact footprint of the proposed Development site, the variable height of the turbines nevertheless creates a homogeneous grouping which can be assimilated into the landscape having regard to the proposed layout of the turbines, it is considered that this clearly lessens the visual impact and does not give a jumbled appearance. As such, it is also considered that this is therefore fully acceptable in landscape terms, particularly from the viewpoint at Gigha North End which is approximately 14 km away.

Other Views

The Scottish Ministers note that West Kintyre Community Council objected on the grounds of visual impact, cumulative impact and adverse effect on the vital tourist economy of the area. There were also 15 representations from members of the public citing their objection in relation to the landscape and visual impacts of the proposed Development, in particular that the scale of the wind turbines would despoil the landscape and violate the designation of the area as an area of “special beauty and scientific interest”.

Scottish Ministers also note however, the 4 representations made in support of the proposed Development as well as Ardrishaig Community Council's support and South Knapdale Community Council's neutral stance. Reasons cited for support included finding existing wind farms not to be intrusive.

Conclusions

A site visit was undertaken by Scottish Government officials to consider the Landscape and Visual Impact Assessment (LVIA), SNH's and the Planning Authority's response. The site visit, as well as providing an understanding of the area surrounding the proposed Development, incorporated visits to the following viewpoints:

Viewpoint 2: Carse Kirk Bridge, Viewpoint 3: Ardpatrik Road, Viewpoint 6: Spion Kop, Viewpoint 8: A83 South of Whitehouse, Viewpoint 9: Dun Skeig, Viewpoint 10: Ronachan Dun and Viewpoint 11: A83 Achnafad.

Officials also additionally visited Loup Jetty (near Loup Point) to help gain a better understanding of viewpoints (F1,F2,F3) - representative of views from Jura/Islay Ferries.

Landscape Character

The Knapdale Upland Forest Moor Mosaic (LCT)(6b) already accommodates the operational Allt Dearg and Srondoire wind farms. The Argyll & Bute Landscape Wind Energy Capacity Study (ABLWECS) identifies scope to locate large wind turbines in this landscape area type (LCT)(6b), in areas of lower, less complex landform set back from sensitive coastal edges and from higher more defined ridges and pronounced summits.

Scottish Ministers note SNH's view that the proposed Development may be contrary to some of the guidance set out in the ABLWECS. However whilst this study is generally acknowledged to be a material consideration, Scottish Ministers also acknowledge the study is strategic in nature and a more detailed LVIA of specific proposals also requires to be considered by consultees and determining authorities when reaching a decision on the acceptability or otherwise of wind farm development.

The Company's design approach has been to contain the turbines associated with the proposed Development within the defined bowl-like landform and to reduce visibility from the wider area with adjustments to turbine heights.

Scottish Ministers note the proposed Development is located within, and is visible from only the southern third of this LCT (6b). The proposed Development sits back from the sensitive fringes of the landscape area and well below the main ridges of Stob Odhar and Meall Reamhar. Scottish Ministers agree with the Company's view which identifies that the significant effects extend only a short distance of 1- 2km from the turbines. Visibility of the proposed Development is otherwise limited by topographic containment and blanket forest cover, beyond this the turbines may be visible but it is not considered they would change the character of the landscape. Scottish Ministers

therefore agree with the Planning Authority final view “that landscape impact is minimised given that the site sits lower in the landscape due to the surrounding topography and as such does not have a significant impact on the Upland Forest Moor Mosaic (LCT)(6b) or the Rocky Mosaic Character types.”

Areas of Panoramic Quality (APQ)

The proposed Development site lies within the southern part of the Knapdale/Melfort APQ. Scottish Ministers note the northern part (Melfort) has no visibility of the proposed Development. There are no citations for APQs but Scottish Ministers would agree with the LVIA conclusion “*given the title of the designation it follows that the reason for designation would include the availability of panoramic views*”.

Scottish Ministers note SNH comments “*the West Loch Tarbert area has high scenic value recognised in the designation of both Knapdale and the west coast of Kintyre as Areas of Panoramic Quality (APQ).*” In SNH’s view “*the proposed windfarm would have significant adverse impacts on the regionally distinctive landscape of West Loch Tarbert area; in terms of its landscape character and visual amenity, adversely affecting the experience of the landscape for both residents and tourists.*”

In an earlier notification of objection by the Planning Authority they said “*the proposal would be visible from West Kintyre, the northern part of Gigha (additional viewpoint 15) and extensively offshore. Views from these areas tend to focus on the arresting profile of Jura but south Knapdale forms part of an extensive panorama of little developed coast, settled fringes, forested and open uplands. It is considered that the proposal would be likely to incur significant adverse impacts on the appreciation of the area of Panoramic Quality in views from parts of North West Kintyre, from West Loch Tarbert and other offshore areas (principally from the Islay ferry but also from recreational sailing craft)*”.

Scottish Ministers agree with the Company’s view that the proposed Development will not affect the panoramic views out from the APQ. Scottish Ministers agree there would be significant adverse impacts on views towards the APQ, from the areas mentioned in the above paragraph. Significant impacts would occur on a short section of the ferry route from the north end of Gigha to West Loch Tarbert just north of Loup Point, but such impacts would diminish with distance. Scottish Ministers agree there would be no significant effects from the proposed Development for the remaining ferry route within West Loch Tarbert due to limited visibility of the Development. Scottish Ministers acknowledge the Planning Authority’s final view that “*the location of the proposed Development is distant from visual receptors and as such the impact is minimised by this separation and as such it does not have a significant adverse impact on the appreciation of South Knapdale*”.

The West Kintyre (coast) APQ lies 6km to the south of the site and extends from Loup Point to Kilchenzie. Viewpoint 9 Dun Skeig and Viewpoint 10 Ronachan are within this APQ.

Scottish Ministers note the proposed Development affects views north towards West Loch Tarbert, but from the panoramic view available from Dun Skeig, the proposed Development will be seen in a different direction than the focal feature of Jura, and will be set back from West Loch Tarbert.

With regard to viewpoint 10 Ronachan, Scottish Ministers agree with the statement in the LVIA conclusion *“that although the development will be visible from some parts of the coast it will be a peripheral feature in panoramas out to sea from some parts of the APQ.”*

Visual Effects

Scottish Ministers note that the proposed Development would be visible from the A83 which runs along the length of the Kintyre peninsula and across Argyll, is used by locals and tourists, including those wishing to travel by ferry to Islay/Jura and Gigha, and is valued for its scenic route as it runs through the West Kintyre APQ and Loch Fyne APQ.

Scottish Ministers note SNH, in summary, consider significant visual effects include:

- popular and scenic walking routes including the promoted long distance route – part of the Kintyre Way as represented by for example VP10 Ronachan and the walk to Dun Skeig as represented by for example VP9 Dun Skeig;
- coastal views and panoramas across West Loch Tarbert from the west coast of northern Kintyre, including areas popular for recreation e.g. Ronachan;
- offshore views from the sea (west Loch Tarbert area including views from Islay/Jura and recreational watercraft with effect reducing with distance); and
- Views from the minor routes e.g. Clachan area.

Scottish Ministers note Dun Skeig (VP9) is a prominent small hill on the south side of West Loch Tarbert noted to be frequented by occasional walkers and situated within the West Kintyre APQ. It affords a 360° panorama, with views over West Loch Tarbert and out to sea. Scottish Ministers agree that the visual effects at this viewpoint are significant with 14 turbines visible. It is noted the bowl-like topography of the site means the forest changes as part of the construction and other infrastructure will not be visible however Scottish Ministers agree views to the northern part of this panorama towards West Loch Tarbert will be significantly affected. Scottish Ministers would agree with the LVIA that at this viewpoint the focal feature of Jura and outward views to the sea are not affected as these views are in a different direction from the wind farm.

Ronachan (Viewpoint 10) – Ronachan Fort is a small hill on the Kintyre coast, within the West Kintyre APQ. The Kintyre Way passes this location as it runs along the coast and visitors to this location are noted to be visitors to the coast and Kintyre Way walkers. Scottish Ministers note this is a well visited location with a parking space off the A83. Scottish Ministers agree with the view set out in the EIA report Chapter 6, paragraph 6.232-6.239 of the LVIA that the proposed Development, being located on lower ground beyond a ridge, will be partially screened such that most of the towers

will be hidden. The turbines will form a group of turbines set back from the coast at the periphery of the seascape panorama. Scottish Ministers acknowledge there will be a significant visual effect however agree with the LVIA that most viewers at this location are likely to focus on views to the west and south towards Jura and Gigha.

Islay /Jura Ferry (Viewpoint F1 – 3) Scottish Minister note these ferry routes are busy, being used by local people and tourists. The proposed Development is not visible from the Kennacraig ferry terminal, however as the ferry (and any recreational sailing crafts) continues through West Loch Tarbert blade tips on the forested horizon of the hills to the north of West Loch Tarbert will be visible. Scottish Ministers note these viewpoints represent locations where the proposed Development will be most visible. Scottish Ministers acknowledge there would be significant visual effects of the proposed Development between the north end of Gigha and West Loch Tarbert just north of Loup Point, however note the other sections of this route within West Loch Tarbert and further out to sea, effects will not be significant.

Scottish Ministers agree with SNH and the LVIA that there will be some significant adverse effects from viewpoint 9 Dun Skeig, viewpoint 10 Ronachan and on views from the Islay - Jura Ferry as represented by viewpoints F1-F3.

However, with regard to views from Gigha, Scottish Ministers note the LVIA states at this location it was judged to have a significant (moderate) visual effect however Scottish Ministers acknowledge the Planning Authority's final response which *"considered that this is therefore fully acceptable in landscape terms particularly from the viewpoint at Gigha north end which is approximately 14km away"*.

In respect of the A83, visibility of the proposed Development would be intermittent with many views hidden by roadside vegetation, therefore effects would not be significant on those sections where the proposed Development would be visible from the A83.

Scottish Ministers agree with the Planning Authority's view in their response dated 4 April 2019 where they note *"The location of the proposed windfarm within a depression provides partial screening with the full height of the turbines often not seen in key views (it would be far more prominent if sited on the ridge of high open hills). Significant landscape and visual effects would be unlikely to be widespread being largely focused in the area of West Loch Tarbert"*.

Cumulative Landscape and Visual Effects

Existing wind farms are located on the Kintyre Ridge, or on hills set back from Loch Fyne, or in the case of Allt Dearg and Strondoire wind farms on hills overlooking Loch Fyne, with most of the proposed wind farms also being located on the Kintyre Ridge.

Scottish Ministers note and agree with SNH that the high ridge between Stob Odhar to Meall Reamhar limits cumulative visual effects arising between this proposal and the operational Strondoire and Allt Dearg wind farms.

In SNH's opinion "significant adverse cumulative visual effects would occur from offshore for example, parts of Gigha, the sea and west Loch Tarbert as presented by for example theIslay – Jura ferry view (F2), where in combination with Freasdale wind farm, there would potentially be a "corridor" effect.

Scottish Ministers note the Planning Authority's final view that "the distance from existing wind farms is substantial which minimises the cumulative impact that can be perceived" which accords with the Cumulative Landscape Visual Impact Assessment (CLVIA) which identifies that due to the separation between the proposed Development and other proposed wind farms on the Kintyre Ridge, there will be no significant cumulative landscape or cumulative visual effects, and many effects remain as they were identified in the LVIA.

Scottish Ministers would agree that due to the design of the proposed Development in the landform, and its separation distance from existing and proposed windfarms, that it will not extend the cumulative visual impact from Knapdale into Kintyre.

Strategic Cumulative effects

The proposed Development is set in an area which is currently unaffected by large scale development.

Scottish Ministers note SNH's view that *"In strategic terms, the southern section of Knapdale is a key area which has not been developed for wind farms. The Proposed Airigh wind farm would result in the spread of the effects of wind farm development from the Kintyre peninsula where development is currently concentrated, across West Loch Tarbert to Knapdale."*

Scottish Ministers also acknowledge that one of the Planning Authority's reasons listed in their earlier objection cited Significant Adverse Strategic Cumulative Landscape Impact, stating *"The south Knapdale area between the high ridge of Stob Odhar to Meall Reamhar and West Loch Tarbert and west to the Kilberry area (and abutting the NSA) has a distinctive and scenic character which is unaffected by large scale development. While the richly scenic diverse coastal fringe of South Knapdale would not be dominated by this proposal (due to distance and partial/intermittent screening), the sense of this area being undeveloped and remote (principally appreciated in views across West Loch Tarbert, the NW Kintyre coast and the sea) would be significantly diminished."*

Scottish Ministers understand the Planning Authority's concerns, as set out in their response dated 4 April 2019, that a consent for this Development may open up the Knapdale area to a new wave of wind farm applications. Whilst Scottish Ministers acknowledge the scenic character of the area and note that the southern section of Knapdale is currently unaffected by large scale development, the proposed Development on its own would not dominate the richly scenic diverse coastal fringe of South Knapdale. Any potential for future development must be considered on its own merits, on a case by case basis.

Layout

Scottish Ministers note SNH's comments in relation to the poor design and layout of the proposed Development that "results in a poor layout and image from some locations as represented for example viewpoint 3". Scottish Ministers note this viewpoint is at Ardpatrik Road. The Planning Authority cited in an earlier objection that they "considered the layout of turbines at variable levels leads to an unsatisfactory 'jumbled' appearance evident in views from the south-west. In particular viewpoint 15 from Gigha north end, the layout of the proposed Development is unsatisfactory with turbines appearing muddled, which contributes to an adverse impact despite the viewpoint lying some 14 km away."

Scottish Ministers acknowledge that from some of the viewpoints the variable height of wind turbines is not ideal however they are not sited on the very sensitive high ridges and are set down below the skyline. Scottish Ministers agree with the Planning Authority's final view "that the variable heights of the turbines clearly lessens the visual impact".

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.

Scottish Ministers consider Chapter 13 of the EIA report sufficiently addresses tourism impacts and are satisfied that there will be negligible effects as a result of the proposed Development.

The Scottish Ministers also acknowledge that the Planning Authority did not object to the proposal on the grounds of impacts on tourism and recreation.

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 13 of 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 undertaken in 2016 and VisitScotland survey (2011). 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 6 permanent FTE (full-time equivalent) jobs. Once operational the Development will require a small team of personnel to service, maintain and operate with a further predicted 1 FTE job created during the life time of the Development (up to 30 years). It is likely that there will be some local employment generated as an indirect result of the construction of the proposed Development which would 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. The Company estimate additional indirect and induced employment generated by the construction of the Development is therefore 3.15 to 12.6 permanent FTEs. There will also be some local employment generated as an indirect result of the operation of the Development and this will be associated with induced employment effects resulting from increased household expenditure among those individuals who have gained employment both directly and indirectly as a result of operation of the Development. The Company estimates additional indirect and induced employment generated during operation of the Development is therefore 5.5 FTEs.

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.

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; and

- 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.

The proposed Development makes a significant contribution towards meeting greenhouse gas emission and renewable electricity targets. The proposed Development will have a generating capacity between 51MW to 59MW 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 3 years when substituting the energy generation against a Grid Mix source type, however, replacing Fossil Fuel Mix source type would result in a carbon payback period of 1.8 years

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.

The lowest estimate of installed capacity of 50.4MW is estimated by the Company. Approximately 117,683 mega-watt hours (MWh) of electricity would be produced annually once the Development is operational, which is enough to power the equivalent of 27,035 households in Scotland for a year. This would displace the equivalent of up to approximately 72,728 tonnes of CO₂ emissions per year from conventional forms of electricity generation.

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.

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 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 SEI and secured by conditions.

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

Conclusions

Reasoned Conclusions on the Environment

Scottish Ministers have fully considered the EIA report, the SEI and the consultation responses in respect of the proposed Development. The significant effects of the proposed Development on the environment are considered to be the landscape and visual impacts of the proposed Development. The Scottish Ministers are satisfied that other environmental issues can be appropriately addressed by the mitigation measures set out within each chapter 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.

Scottish Ministers in making their determination on the Application have had to balance these considerations, decide what weight is to be given to each, and reach a view as to where the balance of benefit lies.

Scottish Ministers consider the landscape and visual impacts are acceptable and are not of a level which would warrant a refusal of consent when weighed against the benefits of the electricity generation the turbines will produce.

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 the constraints, scale and complexity of constructing such developments and the timeframes associated with the commissioning of grid infrastructure to connect them, a 5 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 proposed Development electricity generating station in the Argyll and Bute Council area (as 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.

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 Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply with regard to that planning permission because of the constraints of constructing or extending a generating station with a capacity of over 50MW within 3 years and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction if there has not been Commencement of the 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

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 the Development

The Development comprises a wind powered electricity generating station known as Airigh Wind Farm with a generating capacity exceeding 50 MW, located 8.4km south-west of Tarbert in the Argyll and Bute Council planning area as specified in the Application and accompanying Environmental Impact Assessment Report submitted on 31 August 2017 and Supplementary Environmental Information submitted by the Company on 7 February 2019.

All as more particularly shown on plan reference SEI Figure 4.1 Site Layout appended to this decision letter and all as specified in the Application submitted by EDF Energy Renewables Ltd. The main components of the wind farm and related ancillary developments of the wind farm will comprise:

- Up to 14 turbines (including external transformers) with:
 - turbines numbered T1, T2, T3 and T13 at up to, but not exceeding, 131 metres in height (to blade tip); turbines numbered T9 and T14 at up to, but not exceeding, 138.5 metres in height (to blade tip); and turbines numbered T4, T5, T6, T7, T8, T10, T11, T12 at up to, but not exceeding, 149.5 metres in height (to blade tip).
- Crane hardstandings;
- Onsite underground electrical cables;
- Substation & Control building;
- Site signage;
- Vehicle turning circles;
- Approximately 30.4km of access tracks;
- 3 temporary construction compounds/laydown areas;
- Up to 10 borrow pits; and
- Phase 1 and Phase 2 of the Forestry Works associated with the Development.

Part 1

Conditions Attached to Section 36 Consent

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

1. Notification of Date of Final Commissioning

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

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

2. Commencement of Development

- (1) The Development shall be commenced no later than 5 years from the date of this consent, or such other period as the Scottish Ministers may direct in writing.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority as soon as is practicable after deciding on such a date.

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

3. Non-assignment

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

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

4. Serious Incident Reporting

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

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

Part 2

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

Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the Application and Environmental Information Assessment (EIA) Report dated 31 August 2017 as supplemented or amended by Supplementary Environmental Information submitted by the Company dated 7 February 2019 (including the approved drawings listed at Appendix 3 to this decision) including all mitigation and monitoring measures within and other documentation lodged in support of the application.

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

6. Design and operation of wind turbines

- (1) No wind turbine forming part of the Development shall be erected until details of the power rating and sound power levels, the size, external finish and colour (which should be non-reflective pale grey semi-matt) of the wind turbines, any anemometry masts and all associated apparatus, including external transformers, have been submitted to and approved in writing by the Planning Authority.
- (2) The ground to blade tip height of the wind turbines numbered T1, T2, T3 and T13 shall not exceed 131 metres, those numbered T9 and T14 shall not exceed 138.5 metres, and those numbered T4, T5, T6, T7, T8, T10, T11, T12 shall not exceed 149.5 metres.
- (3) The wind turbines shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.
- (4) 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 EIA report and SEI and in the interests of the visual amenity of the area.*

7. Signage

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

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

8. Design of Sub-Station, Control Building and Ancillary Development

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

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

9. Micro-siting

- (1) All buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown on plan reference SEI Figure 4.1 Site Layout. The wind turbines hereby permitted shall be erected at the following grid co-ordinates:

Turbine	Easting	Northing
1	176171	666802
2	176338	666477
3	176656	666231
4	175839	666441
5	176045	666076
6	175693	665729
7	176137	665662

8	176514	665489
9	176788	665168
10	175395	664870
11	175575	665326
12	175993	665135
13	176118	664809
14	176657	664744

- (2) Notwithstanding the terms of this condition the wind turbines and other infrastructure hereby permitted may be micrositied within 50m of the locations shown on SEI Figure 4.1 Site Layout or the above grid references subject to the following restrictions;
- (a) no micrositing shall take place within areas of peat of greater depth than the original location;
 - (b) no micro-siting shall take place within buffer zones for areas hosting Ground Water Dependent Terrestrial Ecosystems;
 - (c) all micro-siting permissible under this condition shall be approved in advance in writing by the Ecological Clerk of Works (“ECoW”); and
 - (d) no micro siting shall locate a turbine closer than 2km to a residential property unless the Planning Authority has given their prior written approval.
- (3) Any proposed micrositing that does not meet the criteria set out in part (2) of this condition may be permitted with the prior written approval of the Planning Authority.
- (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 micrositing has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority’s approval, as applicable.

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

10. 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.*

11. Ecological Clerk of Works

- (1) No development shall commence unless and until the terms of appointment of an independent Ecological Clerk of Works (“ECoW”) by the Company have been submitted to, and approved in writing by the Planning Authority (in consultation with SNH as required). The terms of appointment shall:
- (a) impose a duty to monitor compliance with the ecological and hydrological commitments provided in the EIA Report, SEI and other information lodged in support of the application, the Construction and Environmental Management Plan approved under **condition 12**, the Conservation Management Plan approved under **condition 15** and the Water Quality Monitoring Plan approved under **condition 16**;
 - (b) require the ECoW to report to the nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
 - (c) require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site; and
 - (d) require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW works at the earliest practical opportunity.
- (2) The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post construction restoration works.
- (3) No later than eighteen months prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier), details of the terms of

appointment of an ECoW by the Company throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted for the written approval of the Planning Authority.

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

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

12. 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 and SEPA as required).

- (2) The CEMP shall include (but is not limited to)

- (a) a Construction Method Statement (CMS) for the formation of the phasing of construction works; timing of works; emergency procedures; working practices to protect nearby residential dwellings; 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;
- (b) site 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;
- (c) details of a methodology for the construction of the Development and movement of traffic on access tracks and roads, to mitigate disturbance or displacement of black throated divers on Loch nan Torran during the breeding season;
- (d) a dust management plan;
- (e) site specific details for management and operation of any concrete batching plant (including disposal of pH rich waste water and substances);
- (f) 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;

- (g) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- (h) details of soil storage and management;
- (i) a peat management plan, to include details of vegetated turf stripping and storage, peat excavation (including volumes), handling, storage and re-use, to demonstrate how disturbance of peat has been minimised, and details of how all peatland within the application boundary will be restored and managed to maximise sequestration of carbon and active peatland habitat;
- (j) 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 (having regard to SUDS principles and taking account of SEPA's response dated 30 October 2017).
- (k) 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;
- (l) details of sewage disposal and treatment;
- (m) details of temporary site illumination;
- (n) details of the construction of the access into the site and the creation and maintenance of associated visibility splays;
- (o) the method of construction of the crane pads;
- (p) the method of construction of the wind turbine foundations;
- (q) the method of working cable trenches;
- (r) the method of construction and erection of the wind turbines and meteorological masts;
- (s) details of watercourse crossings, ensuring compliance with the Controlled Activity Regulations where appropriate, avoiding in stream works during the period from October to May and taking account of the movement requirements of fish;
- (t) requirements for details of post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas to be provided no later than 6 months prior to the date of Final Commissioning unless otherwise agreed in writing by the Planning Authority. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
- (u) details of track reinstatement and amelioration options appropriate to minimise visual impact and to protect the qualities of the NSA (Knapdale);
- (v) a felling and tree management plan;
- (w) details of suitable bio-control measures for the new traffic access route (as shown on SEI figures 1.1 and 1.1a) to prevent the spread of invasive plant species (Himalayan balsam and American skunk);

- (x) Ecological monitoring over construction period including all necessary pre- construction surveys; and
 - (y) a species protection plan to clearly identify measures to safeguard protected species in the area to minimise risk during construction.
- (3) The approved CEMP shall be implemented in full unless otherwise approved in advance in writing by the Planning Authority (in consultation with SNH and SEPA as required).

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 and SEI accompanying the application, or as otherwise agreed, are fully implemented.*

13. Borrow Pits – Scheme of Works

- (1) No development shall commence unless and until a scheme for the working and restoration of each borrow pit has been submitted to, and approved in writing by, the Planning Authority (in consultation with SEPA as required). The scheme shall include:
- (a) a detailed working method statement based on site survey information and ground investigations;
 - (b) details of the handling of any overburden (including peat, soil and rock);
 - (c) drainage measures, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependent Terrestrial Ecosystems (GWDTE) from drying out;
 - (d) a programme of implementation of the works described in the scheme; and
 - (e) details of the reinstatement, restoration and aftercare of the borrow pit(s) to be undertaken at the end of the construction period, including topographic surveys of pre-construction profiles and details of topographical surveys to be undertaken of the restored borrow pit profiles.

The approved scheme shall thereafter be implemented in full.

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

14. Borrow Pits - Blasting

- (1) Blasting shall only take place on site between the hours of 07:00 and 19:00 Monday to Friday inclusive and 07:00 to 13:00 on Saturdays, with no blasting taking place on a Sunday or a Public Holiday, unless otherwise approved by the Planning Authority.
- (2) Ground vibration from blasting shall not exceed a peak particle velocity of 6mm/s for 95% of blasts over a six month period and no individual blast shall exceed a peak particle velocity of 10mm/s at agreed blasting monitoring locations.

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

15. Conservation Management Plan

- (1) No development shall commence unless and until final details of the Conservation Management Plan ("CMP") has been submitted to and approved in writing with the Planning Authority (in consultation with SNH as required). The CMP should include but is not limited to:
 - (a) Details of the proposed conservation management measures during the period of construction, operation, decommissioning, restoration and aftercare, and shall provide for the maintenance, monitoring and reporting of the woodland management and diver management areas and species and habitats identified in the outline conservation management plan (OMCP) provided in appendix 9.4 of the EIA report.
 - (b) Provision for monitoring and review at years 1, 3, 5, 10 and 15 of the plan, to be undertaken to consider whether amendments are needed to better meet the CMP objectives. In particular, the approved CMP shall be updated to reflect any ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted for the written approval of the Planning Authority.
 - (c) A programme for the management, review and maintenance of the artificial diver nesting rafts throughout the lifetime of the windfarm, taking account of the diver breeding season.
- (2) Unless and until otherwise agreed in advance in writing with the Planning Authority, the approved CMP (as amended from time to time) shall be implemented in full.

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

16. Water Quality Monitoring Plan

- (1) No development shall commence until a Water Quality Monitoring Plan has been submitted to and approved by the Planning Authority. The Water Quality Monitoring Plan must take account of the consultation responses of Scottish Government's Marine Scotland Science, Argyll District Salmon Fishery Board and SNH made in response to the Application. The Plan 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 Water Quality Monitoring Plan. Water quality monitoring will thereafter continue through construction and continue for 1 year from the date of Final Commissioning, the results of which will be forwarded to the ECoW and be made available to the Planning Authority upon request; and
 - (b) Mitigation measures detailed in the EIA report Chapter 7, SEI Chapter 7, EIA Appendix 7.4 and EIA Report Chapters 8.191 to 8.193.
- (2) Thereafter the Water Quality Monitoring Plan must be implemented in full and in accordance with the timescales set out in the programme. No changes to the Water Quality Monitoring Plan shall take place unless they are with prior written approval of the Planning Authority.

Reason: *To ensure compliance with all commitments made in the EIA report to protect water quality and fish habitats.*

17. Breeding Bird Protection Plan ("BBPP")

- (1) No development shall commence until a Breeding Bird Protection Plan (BBPP) is submitted to and be approved in writing by the Planning Authority which addresses the proposed mitigation measures set out in Chapter 9 of the EIA and SEI, including (but not limited to):
 - (a) pre-construction survey for Black Grouse, Red Throated Diver, Black Throated Diver, Merlin and Golden Eagle,
 - (b) a 15mph speed limit within 750m of a Black Grouse lek or breeding location of a Red or Black Throated Diver,
 - (c) no construction activity within 750m of an identified Black Grouse Lek (unless in case of emergency in consultation with the ECOW) prior to 09:00 hours and after 18:00 hours between the months of April and July inclusive and no construction activity between April and August inclusive within 750m of Red or Black Throated Diver breeding locations;

- (d) two artificial nests to be deployed in locations to be agreed (with at least one being on Loch Nan Torran) and maintained throughout the operational period of the wind farm;
 - (e) measures to minimise disturbance to Breeding Merlin, if breeding occurs within 500m of any consented infrastructure;
 - (f) measures to minimise disturbance to Golden Eagle, if breeding occurs within 1km of any consented infrastructure including no construction between the months of February to August inclusive, unless otherwise agreed with the ECOW;
 - (g) measures to minimise disturbance to birds during the operational period of the wind farm.
- (2) Thereafter the Development shall be implemented in accordance with the approved BBPP or any subsequent variation thereof as may be approved in writing in advance by the Planning Authority.

Reason: *To protect ornithological interests during the construction period and to ensure compliance with commitments set out in the EIA report and SEI.*

18. Construction Hours

- (1) Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 13.00 on Saturdays, with no construction work taking place on a Sunday or Public Holiday. Outwith these specified hours, development on the site is to be limited to wind turbine erection, maintenance, pouring of concrete, emergency works, dust suppression, and the testing of plant and equipment (unless otherwise approved in advance in writing by the Planning Authority). In addition, access for security reasons, emergency responses or to effect any necessary environmental controls is permitted outwith these hours.
- (2) HGV movements to and from the site (excluding abnormal loads) during construction of the Development shall be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or Public Holiday.

Reason: *In the interests of local amenity.*

19. Road Safety - Construction Traffic Management Plan (“CTMP”)

- (1) No development shall commence unless and until a Construction Traffic Management Plan (CTMP) is submitted and approved in writing by the Planning Authority. The CTMP must take account of the consultation responses of Transport Scotland and the Planning Authority’s Roads Engineer made in response to the application. The CTMP shall include (but is not limited to):

- (a) the routing of all traffic associated with the Development on the local road network;
 - (b) measures to ensure that the specified routes are adhered to, including monitoring procedures;
 - (c) any identified works to accommodate abnormal loads along the delivery route including any temporary warning signs;
 - (d) the management of junctions to and crossing of the public highway and other public rights of way;
 - (e) temporary removal and replacement of highway infrastructure/street furniture;
 - (f) reinstatement of any signs, verges or other items displaced by construction traffic;
 - (g) details of all signage and lining arrangements to be put in place;
 - (h) provisions for emergency vehicle access;
 - (i) identification of a nominated person to whom any road safety issues can be referred;
 - (j) a plan for access by vehicles carrying abnormal loads, the number and timing of deliveries and the length, width and axle configuration of all extraordinary traffic accessing the site; and
 - (k) measures to ensure that all affected public roads are kept free of mud and debris arising from the Development.
- (2) All construction traffic will access the site directly from the A83 Tarbet – Campbeltown Trunk Road.
- (3) The approved CTMP shall be implemented in full, unless and until otherwise agreed in advance in writing with the Planning Authority.

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

20. Road Safety – Abnormal Loads Alterations and Construction Traffic (B8024 Kilbery Road and C23 Glenakill Road)

- (1) No development shall commence unless and until the full details of the proposed alterations to the B8024 Kilbery Road and C23 Glenakill Road, have been submitted for the written approval in writing by the Planning Authority.
- (2) A condition survey of the section of the B8024 Kilbery Road and C23 Glenakill Road being used for the transportation of Construction Traffic is to be carried out prior to construction and submitted to the Planning Authority.

Reason: *To minimise interference with the safety of and free flow of traffic on the B8024 Kilbery Road and C23 Glenakill Road.*

21. Forestry – Compensatory Planting

- (1) No Forestry Works, associated with the construction and operation of the Development, shall commence until a Compensatory Planting Plan (“CPP”) has been submitted to and approved by the Planning Authority (in consultation with Scottish Forestry as required). The CPP shall provide for the planting of woodland commensurate with the level of woodland lost (anticipated to be 26.74ha).
- (2) The CPP shall comply with the requirements set out in the UK Forestry Standard and the guidelines to which it refers, or such other replacement standard agreed by the Planning Authority. The CPP shall include:
 - (a) details of the location of the area to be planted;
 - (b) the nature, design and specification of the proposed woodland to be planted;
 - (c) the phasing and associated timescales for implementing the CPP;
 - (d) proposals for the maintenance of the CPP, including annual checks, replacement planting, fencing, ground preparation and drainage; and
 - (e) proposals for reporting to the Planning Authority on compliance with timescales for obtaining the Necessary Consents and implementation of the CPP.
- (3) The approved CPP shall be implemented in full, unless otherwise agreed in writing by the Planning Authority.

Reason: *To secure replanting to mitigate against effects of deforestation arising from the Development.*

22. Forestry – Felling and Restocking Plan

No Forestry Works associated with the Development shall commence until a finalised Restocking Plan, detailing the felling and restocking of the woodland, associated with phases 1 and 2 of the Forestry Works (identified in SEI Appendix 4.3), has been submitted to and approved in writing by the Planning Authority (in consultation with Scottish Forestry as required). Unless and until otherwise approved in writing by the Planning authority, the approved Restocking Plan shall be implemented in full.

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.*

23. Private Water Supplies

- (1) No development shall commence unless and until a method statement and monitoring plan, and emergency response plan in respect of Private Water

Supplies have been submitted to, and approved in writing by, the Planning Authority.

- (2) The plans must detail all mitigation measures to be taken to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of the grant of the section 36 consent and deemed planning permission and which may be affected during the construction period of the Development.
- (3) The method statement shall include water quality sampling methods and shall specify abstraction points.
- (4) Unless and until otherwise agreed in advance in writing with the Planning Authority, the approved method statement and monitoring plan and emergency response plan shall be implemented in full.
- (5) Monitoring results shall be submitted to the Planning Authority on a quarterly basis or on request during the approved programme of monitoring, during the construction period.

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

24. Redundant 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 use or 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 the Development site, in the interests of safety, amenity and environmental protection.*

25. Aviation Safety

- (1) No development shall commence unless and until the Company has provided the Planning Authority, Defence Infrastructure Organisation (DIO) and the Civil

Aviation Authority with the following information, and evidence has been provided by the Company to the Planning Authority that this has been done:

- (a) the date of the expected commencement of each stage of construction;
 - (b) the height, above ground level, of the tallest structure forming part of the Development;
 - (c) the maximum extension height of any construction equipment; and
 - (d) the position of the wind turbines and masts in latitude and longitude.
- (2) The final constructed position of the turbines will be provided to the DIO within one month of completion of construction of the site.

Reason: *In the interests of aviation safety.*

26. Aviation Lighting

- (1) No wind turbines shall be erected unless and until a scheme for aviation lighting for the Development has been submitted to, and approved by, the Planning Authority in consultation with Defence Infrastructure Organisation. The scheme shall include details of the perimeter turbines to be fitted with MOD accredited lighting.
- (2) No lighting other than that described in the scheme shall be applied, other than that required for health and safety purposes, unless otherwise agreed in writing by the Planning Authority.
- (3) The Development shall be operated in accordance with the approved scheme.

Reason: *In the interests of aviation safety*

27. Site Decommissioning, Restoration and Aftercare

- (1) The Development shall cease to generate electricity by no later than the date falling thirty (30) years from the date of Final Commissioning. The total period for decommissioning and restoration of the Site in accordance with this condition shall not exceed three years from the date falling thirty years from the date of Final Commissioning without the prior written approval of the Planning Authority in consultation with the Scottish Ministers.
- (2) No development shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the Planning Authority (in consultation with SNH and SEPA). The strategy shall outline measures for the decommissioning of the Development and restoration and

aftercare of the site, and shall include proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.

- (3) No later than three years prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved 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) details of watercourse crossings;
 - (l) a species protection plan based on surveys for protected species (including birds) carried out no longer than eighteen months prior to submission of the plan;
 - (m) a traffic management plan (TMP) which provides for the arrangements in respect of traffic associated with the decommissioning of the

Development which mirrors the provisions approved in the CTMP for the construction of the Development; and
(n) a Water Quality Monitoring 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 and aftercare of the site, in the interests of safety, amenity and environmental protection.*

28. 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 **condition 6** and **condition 30**; 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 6 and condition 30 and is to ensure the Development is being monitored at regular intervals throughout its operation.*

29. Financial Guarantee

- (1) No development shall commence unless the Company has delivered to the Planning Authority for its written approval 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 27**.

- (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 27**.
- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in **condition 27**.
- (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.

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.*

30. Operational Noise

- (1) The rating level of noise immissions from the combined effects of the wind turbines forming part of the Development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the table attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this consent. The turbines shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria 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.

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

Location	Wind speed								
	4	5	6	7	8	9	10	11	12
High Carse	35	35	35	35	35	35	35	35	35
Clachaig	35	35	35	35	35	35	35	35	35
Achaglachgach House	35	35	35	35	35	35	35	35	35
Creag Farm	35	35	35	35	35	35	35	35	35
Kilberry	35	35	35	35	35	35	35	35	35
Coulaghaitro	35	35	35	35	35	35	35	35	35
Crear	35	35	35	35	35	35	35	35	35

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

Guidance Notes for 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 $L_{A90,10 \text{ minute}}$ noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two- layer windshield or suitable equivalent approved in writing by the Local 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 $L_{A90,10 \text{ minute}}$ 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 assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

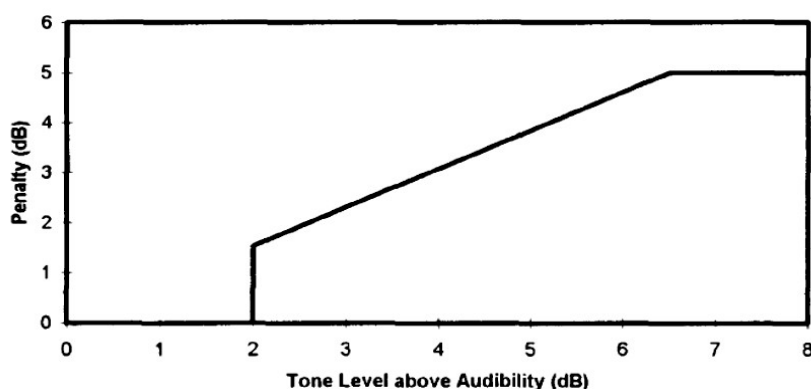
- a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)
- b) Valid data points are those measured in the conditions specified in the agreed procedures under paragraph (c) of the noise condition, but excluding any periods of rainfall 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 $L_{A90,10}$ 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 $LA_{90,10}$ minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.
- e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed, then a simple arithmetic mean shall be used 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

In this consent and deemed planning permission:-

“Application” means the application letter dated 31 August 2017.

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

“the Company” means EDF Energy Renewables Limited having its registered office at 40 Grosvenor Place, Victoria, London, Company No. 06456689, or such other person who from time to time may lawfully have the benefit of this consent.

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

“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.

“EIA report” means the Environmental Impact Assessment Report submitted by the Company dated August 2017

“Forestry Works” means the felling and restocking of woodland associated with phase 1 and phase 2 of the wind farm felling plan provided at Table 1-5 of Appendix 4.3 of the SEI.

“SEI” means the Supplementary Environmental Information submitted by the Company dated February 2019

“SEPA” means Scottish Environmental Protection Agency

“Site” means the area of land defined in the EIA report and SEI

“SNH” means Scottish Natural Heritage

“NATS” means National Air Traffic Services

“Planning Authority” means Argyll and Bute Council

“Public Holiday” means;

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

2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January.

Good Friday.

Easter Monday.

The first Monday in May.

The first Monday in August.

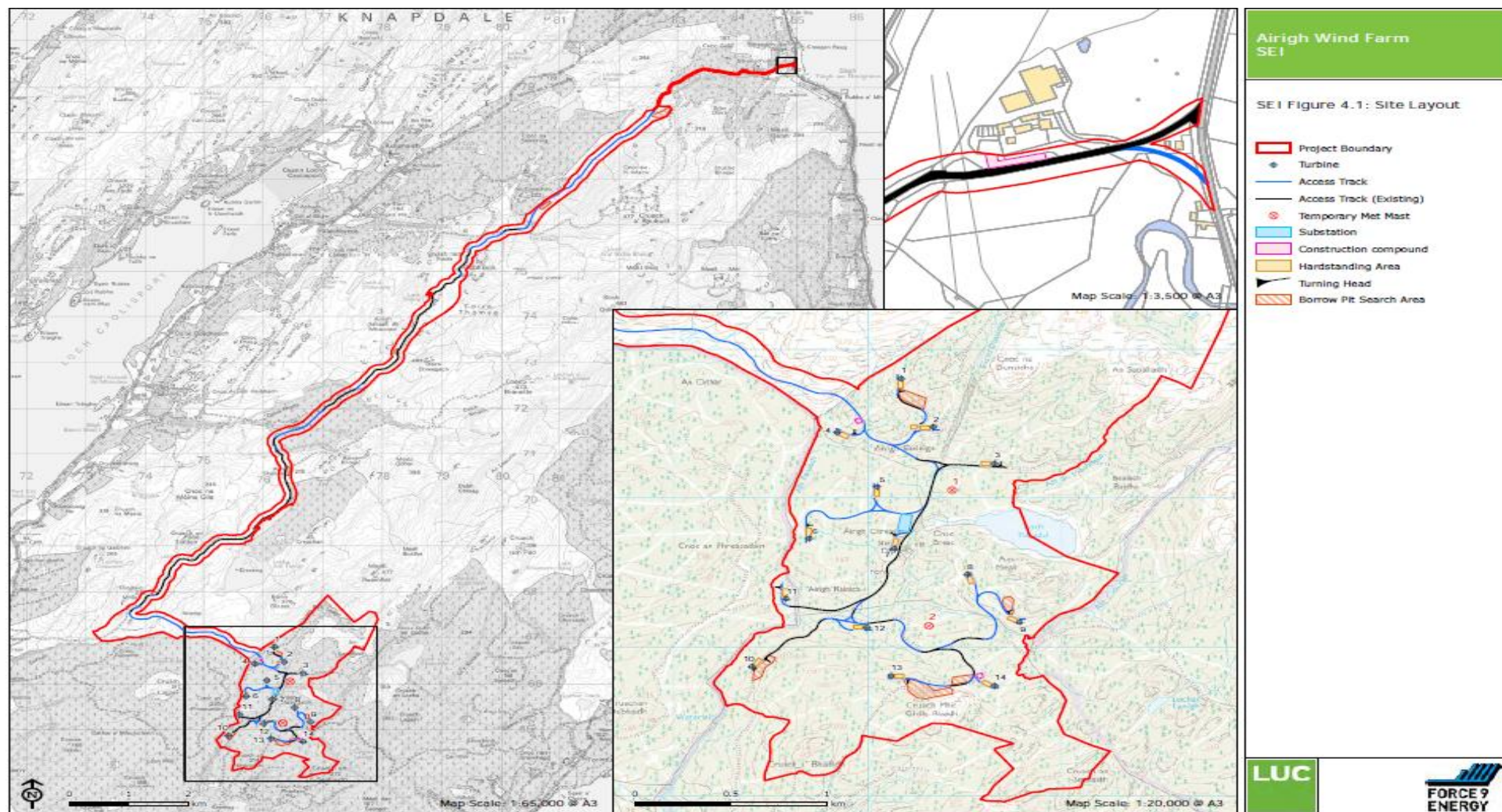
The third Monday in September.

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.

ANNEX 3 - Maps



59



Scottish Government, 5 Atlantic Quay, 150 Broomielaw,
Glasgow
www.scotland.gov.uk

This is the map referred to in the consent by the Scottish Ministers in terms of Section 36 of the Electricity Act 1989 for the construction and operation of a wind powered electricity generating station, Airigh Wind Farm, south west of Tarbert, Argyll & Bute, Dated 20 March 2020
Redacted

Signed

A member Redacted





Scottish Government, 5 Atlantic Quay, 150 Broomielaw,
Glasgow
www.scotland.gov.uk



This is the map referred to in the consent by the Scottish Ministers in terms of Section 36 of the Electricity Act 1989 for the construction and operation of a wind powered electricity generating station, Airigh Wind Farm, south west of Tarbert, Argyll & Bute, Dated 20 March 2020
Redacted

Signed

A member of the staff of the Scottish Ministers.

Peter Ferguson

From: Peter Ferguson
Sent: 01 May 2020 17:55
To: 'Iain Davies (Snr Development Man Off / Planning)'
Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Mr Davies,

Thanks for confirming the delegation arrangements.

I have set out in some detail below further submissions which should be taken account of by you prior to completion by you of your planning appraisal and by the Senior Planning Services Manager prior to their determination of the application. This note is much longer than I originally intended but this is a consequence of: (1) the complexities surrounding the meaning and effect of Section 42; and (2) the importance to my clients in delivering this project of the issues regarding the decommissioning condition being considered in the context of this application (as opposed to a fresh application.)

Approach to Determination of Section 42 Applications

For ease of reference I have set out below the approach indicated in your e-mail of 27 April which you intend taking to appraising this application.

However, the Council, as Planning Authority, considers there are two parts to the application which need to be considered;

- 1). Do the current Conditions fail to meet the tests of Circular 4/1998?,***
- 2). If so, are the proposed alterations in compliance with the Council's Local Development Plan (LDP) policies and do they meet Circular 4/1998?***

With respect, the first part of such an approach would be fundamentally incorrect. There is absolutely no necessity for an existing condition to fail to meet the tests in the Circular before such a condition can be 'changed' via a successful S42 application.

I have set out Section 42 below for ease of reference.

42 Determination of applications to develop land without compliance with conditions previously attached.

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The first key point to note is that a S42 application is an application for planning permission (as opposed to an application to change the conditions of the previous permission.) I'm not suggesting for a moment you are not aware of this distinction, I just want to make the point clearly as it is critical to appreciating how S42 is designed to operate. As the principle of the development for which planning permission has been applied is not in question, the only question to be addressed is the conditions to which such planning permission should be granted.

The approach to be taken by the Planning Authority to considering which conditions would be appropriate for a S42 derived permission, should be exactly the same approach as would be taken to considering conditions for a brand new application for planning permission (i.e. an application not covered by S42.) While for practical purposes the Planning Authority would have regard to the conditions of the previous permission and the new conditions proposed by the S42 application, the fundamental requirement of Section 42 is to identify conditions which would be appropriate to apply to the grant of planning permission in light of the circumstances pertaining at the point the application is determined. Your e-mail of 27 April referred to the possibility of a fresh planning application, "***Your client also has the right to apply for a new planning permission for the development. The Council's LDP supports energy***

infrastructure where any adverse impacts can be mitigated, including through appropriate conditions. A new full planning application would allow for all the issues to be fully examined." The conditions which should be considered for a S42 application should be exactly the same as the conditions which would be considered when determining such a fresh application. Indeed, the S42 application *is an application for fresh planning permission* (and the only difference in its handling compared to a non S42 application is under Section 42(2)(b) as described below.)

The conditions of the previous permission and the different conditions proposed by the S42 application are a useful starting point in identifying conditions which would be appropriate to apply to the planning permission which would flow from the S42 application, but that is all. The Planning Authority should consider afresh conditions which would be appropriate to apply to the grant of a new planning permission, disregarding at this stage the fact that S42 applies to the application in question. In appropriate circumstances (which I don't believe exist here) this approach can lead to conditions other than those which are the focus of the S42 application being changed or indeed new conditions applied. That is also why it would be open to the Planning Authority to either (1) apply the new conditions exactly as proposed in a S42 application; or (2) iterations of new conditions discussed in correspondence prior to determination of the application (such as the iterations outlined in my e-mail of 21 April). This is analogous to the discussions which would typically take place in a non S42 application.

All such conditions would clearly require to comply with the Council's Local Development Plan (LDP) policies and meet the tests in Circular 4/1998. That element of your approach is therefore perfectly correct, but that element is only part of the crucial step of identifying which conditions would be appropriate to apply to the grant of planning permission, and that step should precede determination of the application.

If the conditions which the planning authority consider would be appropriate to apply to the fresh grant of planning permission (disregarding the fact that the pending application is covered by this is a S42) are different to the conditions of the previous permission, planning permission should be granted as per Section 42(2)(a).

It would only be if the conditions which the planning authority consider would be appropriate to apply to the fresh grant of planning permission (again disregarding the fact that the pending application is covered by this is a S42) are exactly the same as the conditions of the previous permission, that the Section 42 application should be refused in terms of S42(2)(b).

There is therefore no requirement for a condition of a previous permission to fail the tests in Circular 4/1998 before that condition can be 'changed' via a S42 application.

If a condition of a previous planning permission failed the tests in Circular 4/1998, it would clearly not be appropriate to conclude that the new permission flowing from the S42 application should be granted subject to the same conditions as the previous planning permission. That is however just one of multiple scenarios in which permission should be granted in terms of Section 42(2)(a). One of the clearest cut scenarios which should result in planning permission being granted under Section 42(2)(a) is where different conditions which are more certain, more capable of enforcement, or more necessary than those which apply to the previous permission.

Application of this approach to pending S42 application

It is now appropriate to apply this to the circumstances of the pending S42 application.

In light of the feedback from your transportation colleagues, my clients acknowledge that condition 10 of the previous permission would be an appropriate condition to apply to the new permission.

Other than condition 6 considered further below, my clients consider that all of the other conditions of the previous permission would be appropriate to apply to the new permission. If however as a result of changed circumstances or planning reasons you consider that different or other conditions should apply, it would be open to you to do so.

Regarding the existing condition 6, I do not consider this to meet the following tests in Circular 4/1998:

Precise – As explained in previous correspondence, the term 'cessation of electricity generation' is imprecise as it could either mean a temporary or permanent stop. This uncertainty of meaning is highlighted by the fact that the adjective 'permanent' is used elsewhere in the condition in relation to cessation of construction works. There is no indication as to what period of lack of generation would be considered permanent.

Enforceable – This potential dual meaning and the lack of detail in relation to what might be regarded as a permanent cessation could lead to difficulties with enforcement. Would say a 24 month stop in generation of electricity be sufficient to trigger the requirement to decommission if the operator demonstrated that this was for bona fide technical/commercial reasons and there was a bona fide intention to re-commence in a further 12 months?

Necessary/Reasonable in all other respects – to the extent that the condition can be interpreted as meaning a temporary cessation, it would clearly not be necessary nor reasonable to require decommissioning of the site where electricity generation is stopped for a short period.

If it is accepted that the existing condition 6 doesn't meet these tests, it would clearly not be appropriate to apply such a condition to a new permission.

Even the issues identified with condition 6 fall short of failing the Circular tests, there are nevertheless a number of good reasons why this condition would not be applied to a new permission. The most obvious reason would be if a different condition could be applied which achieved the same objectives as the existing condition 6 but which didn't include the same shortcomings (for both Planning Authority and developer) as condition 6. The objectives might be self-evident but it is worth reviewing the relevant policies from each of the 2019 and 2014 LDPs.

2019 LDP- Policy 29 - "Proposals should include redundancy plans which will demonstrate how apparatus will be timeously removed as reasonably soon as the approved scheme ceases operation. There may be a requirement for financial bonds to ensure that decommissioning can be achieved."

2014 LDP- Policy PI 19 – "The Council will require that any redundant apparatus will be removed within 6 months of it becoming non-operational and that the site will be restored, unless it can be demonstrated that said apparatus will return to productive use within a reasonable timeframe."

The previous 2014 version is actually more prescriptive than the 2019 version regarding the timescales (6 months) for removal of redundant apparatus. Both versions specify that it is 'redundant' apparatus which requires to be removed, which makes clear that temporary cessation for bona fide reasons is not intended to trigger the requirement to remove the apparatus. The 2014 provided that a non-operational period exceeding 6 months may be permissible where it can be demonstrated that the apparatus will return to productive use within a reasonable timeframe.

In my view, each iteration of the proposed new version of condition 6 (i.e. the version outlined in the S42 application and the various iterations discussed in correspondence) fully meet the objectives of the LDP and address the shortcomings of the existing version of condition 6.

For the purposes of focussing the discussion, I would ask that the application is based on one of the following iterations:

6. ***That, within ~~six~~ three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons), or within ~~six~~ three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.***

This would address the main shortcomings of the existing version of condition 6 as (1) it makes clear that it is permanent cessation of generation of electricity which would be the trigger for removal and (2) provides a workable mechanism for distinguishing between temporary and permanent cessation. It also fully meets the objectives of the LDP in ensuring redundant equipment is removed timeously. The total timescale for removal of equipment would be the same as the 6 month period provided in the existing condition, save where the planning authority agreed there was a bona fide case for a temporary cessation of generation in excess of 3 months.

The above iteration of the condition would be the applicant's strong preference as it would provide operational flexibility and would provide comfort to the funders of the project. If however a potential for temporary cessation beyond 3 months was still of concern despite the fact that the planning authority would need to agree to it, and as a result you would not support this iteration as a condition to be applied to the grant of planning permission, in those circumstances only I would propose the following alternative iteration:

6. ***That, within ~~six~~ three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months), or within ~~six~~ three months following a permanent cessation of***

construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

This iteration would not be optimal from the developer's perspective for the reasons described, but it is nevertheless objectively significantly better than the existing version of condition 6 for both planning authority and developer.

Conclusion

Trying to draw all of this to a conclusion, the only basis for refusing the application would, as per Section 42(2)(b), be if, after considering conditions which would apply to the grant of fresh planning permission for the development (disregarding the fact this is a S42 application), it was concluded that the only condition which could properly ensure the removal of redundant equipment in line with the relevant LDP policy would be a condition worded exactly the same as condition 6 of the previous permission.

It is respectfully submitted that would be an untenable conclusion. Either of the iterations of a new condition 6 set out above are objectively significantly better for both the planning authority and the developer. In fact, a condition 6 worded as follows (the only difference from the existing version is the addition of the word permanent as highlighted) would be an improvement on the existing condition 6:

- 6. That, within six months of the permanent cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site.**

I am not proposing that such a condition should be used (as it doesn't provide a measure for determining permanent cessation), but I mention this as it would be an objective improvement on the existing condition which highlights why the existing condition 6 wouldn't be the optimal condition to apply to the grant of a fresh planning permission.

Going back to your comment in your e-mail of 27 April about the potential for a fresh planning application should the existing permission lapse, **"The Council's LDP supports energy infrastructure where any adverse impacts can be mitigated, including through appropriate conditions. A new full planning application would allow for all the issues to be fully examined."** That suggests a different approach could be taken to the wording of conditions in the context of such an application. As I hope I have demonstrated in this note, the approach to be taken to considering conditions for this S42 application should be the same approach as would be taken for such a new application. The existing application provides an appropriate basis for all of the pertinent issues to be examined.

Requiring a fresh planning application to enable these issues to be examined would add unnecessary time and expense and would potentially jeopardise the entire project.

If you do not agree with the basis for determining S42 applications as I have outlined in this note, and maintain that the approach outlined in your e-mail of 27 April is correct, I would urge you to seek advice from your legal team or external legal advisers prior to concluding your appraisal of the application and certainly before determination of the application by the Senior Planning Services Manager. If the pending application and a review by the LRB were to be refused on the basis of an incorrect approach, my clients reserve the right to challenge that by way of Judicial Review and in such a scenario would found on this submission. Please also ensure that this string of correspondence is brought to the attention of the Senior Planning Services Manager

Please let me know if you have any queries or need clarification on anything in this note.

Regards

Peter.

From: Iain Davies (Snr Development Man Off / Planning) [mailto:iaindavies@north-ayrshire.gov.uk]
Sent: 01 May 2020 12:55
To: Peter Ferguson
Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Dear Mr Ferguson,

Thank you for your e-mail.

The decision will be taken by the Senior Planning Services Manager.

Kind regards

Iain Davies
Senior Development Management Officer
Planning Services

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From: Peter Ferguson <Peter.Ferguson@harpermacleod.co.uk>

Sent: 29 April 2020 20:30

To: Iain Davies (Snr Development Man Off / Planning) <

Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Mr Davies,

Thank you for providing the link to the Scheme of Delegation.

I can see that as the application is a Local Development it is covered by the SOD. It is not however immediately clear who the decision is delegated to. Please advise who the decision will be actually be taken by.

Regards

Peter.

Peter Ferguson
Partner

| Recommended Lawyer in Planning and Environmental Law



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From: Iain Davies (Snr Development Man Off / Planning)
Sent: 28 April 2020 13:43
To: Peter Ferguson
Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Dear Mr Ferguson,

Thank you for your e-mail.

Your opinion of the proposed change to Condition 6 is noted. As Planning Authority, the Council's opinion is as per our e-mail of the 27th.

In terms of the Scheme of Delegation, please find attached a link to the document. It is the third link down. The Planning section starts at the bottom of Page 53.

<https://north-ayrshire.cmis.uk.com/north-ayrshire/CommitteesMeetings/GovernanceDocuments.aspx>

I hope this information is of use and look forward to hearing from your client

Kind regards

Iain Davies
Senior Development Management Officer
Planning Services
Place Directorate

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From: Peter Ferguson <Peter.Ferguson@harpermacleod.co.uk>
Sent: 27 April 2020 14:39
To: Iain Davies (Snr Development Man Off / Planning)
Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Mr Davies,

Thank you for your further comments. I will consider, take instructions and come back to you before next Tuesday (5 May.)

In the meantime, I have a few brief preliminary observations and queries.

In light of my comments regarding the uncertainty regarding the meaning of 'cessation of electricity generation' (that (1) cessation can mean either a temporary or permanent stop and (2) this can be contrasted with the other trigger for restoration in the same condition which specifies permanent cessation), it is difficult to understand how the existing wording can be considered to meet the precision test. How the Council as Planning authorities goes about enforcing against breaches cannot cure the lack of precision and enforceability.

I think you may have misunderstood what would be involved in the last iteration of condition 6 as mentioned in my e-mail (attached for ease of reference.)

6. ***That, within six three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons), or within six three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.***

As you have identified, this would ensure that, subject to one potential exception, the maximum period for restoration would be 6 months from cessation of generation and as such this iteration of the condition wouldn't extend the period for restoration. The only circumstance where that wouldn't apply would be where the planning authority agrees within the initial 3 month period on the basis of information provided that the cessation is temporary. If the planning authority were to be satisfied that the cessation was temporary, then clearly there would be no need for restoration to commence. Rather than adding uncertainty, the proposed condition would be far clearer than the existing wording as it would (1) distinguish between temporary and permanent cessation and (2) set a default period which would establish permanent cessation.

I understand that the application is currently earmarked for determination under delegation. Please provide a copy of the current Scheme of Delegation and identify which provisions are being relied upon as authority for delegation.

Regards

Peter.

Peter Ferguson
Partner

Fax: 0141 229 7332

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From: Iain Davies (Snr Development Man Off / Planning) [
Sent: 27 April 2020 13:25
To: Peter Ferguson
Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Dear Mr Ferguson,

Thank you for your e-mail.

The further information regarding the proposal is noted as are the further proposed amendments.

However, the Council, as Planning Authority, considers there are two parts to the application which need to be considered;

1). Do the current Conditions fail to meet the tests of Circular 4/1998?,

2). If so, are the proposed alterations in compliance with the Council's Local Development Plan (LDP) policies and do they meet Circular 4/1998?

In terms of 1) the Council, as Planning Authority, considers both Conditions meet the tests of Circular 4/1998 in that they are necessary; relevant to planning; relevant to the development; enforceable; precise; and reasonable in all other respects.

In terms of 2) and notwithstanding the findings at 1), it is also considered that the proposed alterations would be contrary to the LDP and not meet the tests of Circular 4/1998.

The alterations to Condition 6 are considered contrary to policies seeking to prevent harm to visual amenity generally and the Special Landscape Area specifically. Although the overall restoration period would, with the further proposed amendment, be reduced back to 6 months, the introduction of the caveat that restoration does not need to take place if a non-generation period of 3 months has a bona fide technical reason is considered to add uncertainty to the condition. This would be harmful to the Special Landscape Area and fail the tests of Circular 4/1998.

I would state that in terms of the current conditions, or any conditions, the Council, as Planning Authority, only takes action against breaches when it is expedient to do so and at its own discretion.

The alterations to Condition 10 are considered contrary to policies seeking to limit impact on roads and road safety. The proposed alterations are also considered to be unenforceable and could provide a means to avoid the road upgrade.

Although I do not consider this application can be supported your client will have a right of appeal should it be refused. Your client will be aware that should the application be refused and no appeal upheld, this permission will lapse as its expiry date was 29th March 2020.

Your client also has the right to apply for a new planning permission for the development. The Council's LDP supports energy infrastructure where any adverse impacts can be mitigated, including through appropriate conditions. A new full planning application would allow for all the issues to be fully examined.

I hope this information is of use and if your client wishes to proceed with the application, I would be grateful if they could advise. The application will not be determined until at least next Tuesday so they can also withdraw in the meantime should they so wish.

Kind regards

Iain Davies
Senior Development Management Officer
Planning Services
Place Directorate
North Ayrshire Council

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From: Peter Ferguson <
Sent: 21 April 2020 13:35
To: Iain Davies (Snr Development Man Off / Planning)
Subject: RE: Application 20/00232/PP [HM-HUB.FID4258775]

Mr Davies.

Thank you for promptly providing copies of the objections and consultation responses.

I have now had an opportunity to consider these, discuss with my clients and take instructions.

Condition 6

A renewable energy project of this nature will involve very significant capital investment by the developer/operator and others. It will also involve significant debt funding by banks or other financial institutions. The energy output will likely be sold under a power purchase agreement with a term of 20 years or more to a utility company or a large scale corporate entity. All of these and other stakeholders will require certainty that once it has been constructed the project will remain operational for its scheduled life. This will be investigated by each stakeholder through a process of detailed due diligence. One of the key areas of focus of due diligence will be to ensure that there is nothing in the planning permission which could result in the project being brought to a premature end.

The intended purpose of condition 6 is to ensure that the site is promptly cleared and restored once the project has come to a permanent end. The existing wording of the condition uses cessation of electricity generation as shorthand for the project coming to a permanent end. The difficulty is that as well as covering the situations it is designed to cover, it potentially also inadvertently covers other scenarios involving the cessation of electricity which don't involve the project having come to a permanent end. Such scenarios include but are not limited to: (1) scheduled downtime for repair and maintenance; (2) the electricity grid operator requiring production to temporary cessation of generation due to grid constraints; and (3) replacement of PV panels whether as a result of: (a) defective originals; (b) more efficient equipment becoming available; or (c) replacement of panels at the end of their scheduled working lives. None of those scenarios should trigger the requirement to decommission and restore the site.

It is these scenarios which the application in relation to clause 6 seeks to address. Even if the stakeholders referred to above could see that the original wording was not *intended* to cover scenarios involving temporary cessation of electricity generation, in the context of due diligence they will require certainty. Unfortunately the existing wording of the condition does not provide such certainty. I have set out the existing wording below for ease of reference.

- 6. *That, within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site.***

The difficulty is that the word **cessation** does not mean only a permanent stop of activity. It also covers pauses in activity. The Oxford dictionary defines cessation as "the stopping of something; a pause in something" and the Chambers dictionary defines it as "a stopping or ceasing; a pause". The use of the adjective **permanent** in relation to cessation of construction works prior to the project being fully commissioned (the other trigger for the site being restored) but not in relation cessation of electricity generation exacerbates the concern that the existing wording could cover temporary pauses in electricity generation.

It would clearly not be reasonable for the requirement for decommissioning and restoration to be triggered by a temporary cessation in the generation of electricity. That being the case, the wording of the existing condition is neither necessary nor precise.

The amended wording proposed for condition 6, set out below for ease of reference, was intended to address this concern by making it clear that only **permanent** cessation of electricity generation would trigger the requirement to decommission and restore. This would put cessation of electricity generation on the same basis as permanent cessation of construction works prior to commissioning.

6. ***That, within six months of the **permanent** cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceases for a continuous period of 12 months unless the developer demonstrates to the satisfaction of the Council that such cessation is for bona fide technical or other reason and that there is a bona fide intention and realistic expectations of recommencement of electricity generation within a further 12 month period), or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the **permanent** cessation of the operation of the site.***

The proposed **wording in brackets** for amended condition 6 wouldn't extend the period for decommissioning/restoration. Recognising that the term 'permanent' may itself lack clarity, it merely provide a practical and workable explanation of what would be regarded as permanent cessation. Indeed, without this wording temporary cessations in excess of the period provided for could be argued for, and as such, if anything, the proposed wording could be regarded as shortening rather than lengthening the period from the project coming to a permanent end and decommissioning/restoration being undertaken.

Similar approaches are widely used in the context of renewable energy consents. For example, in relation to Section 36 Consents for onshore windfarms, it is a standard condition of the deemed planning permission that turbines which become redundant before the end of the scheduled term of the planning permission should be decommissioned and the site of them restored. The wording of such conditions typically describes what shall be regarded as redundant for these purposes. I attach a copy of the 20 March 2020 Decision Notice for Arigh wind farm (I believe this is the most recent S36 consent issued by the Scottish Ministers) and have pasted below for ease of reference condition 24 of the deemed planning permission.

24. Redundant 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 use or 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 the Development site, in the interests of safety, amenity and environmental protection.

This is similar to the approach taken in the proposed amended condition 6. There is an initial period of 12 months where electricity isn't generated from a turbine potentially followed by a further period when the turbine could be brought back to productive use. The only real difference is that the wording for the proposed condition 6 specifies in advance that the potential further period is limited to 12 months, whereas the S36 condition leaves this to the approval of the planning authority.

If the proposed timescales are considered to be too long, it would be open to the Council in terms of Section 42(2)(a) of the 1997 Act to grant the application subject to the wording of condition 6 being adjusted to apply a shorter period. Indeed, if the application is considered unacceptable as it stands, it is incumbent on the planning authority to consider a reworded condition or additional conditions which could make the application acceptable. It would only be appropriate to refuse the application if it is decided that permission

should be granted subject to the same conditions as the previous conditions (S42(2)(b) of the 1997 Act).

I trust you agree that it would not be reasonable for the requirement for decommissioning and restoration to be triggered by a temporary cessation in the generation of electricity. That being the case, on the basis of the above detailed explanation, the wording of the existing condition is either not necessary (in so far as it is interpreted to cover temporary cessation) or it is not precise (in so far as it can be interpreted to cover both permanent and temporary cessation.) The original wording of the condition would therefore fail three of the tests set out in paragraph 2 of Planning Circular 4/1998: The use of planning conditions, and as such it would not be appropriate to conclude, in terms of Section 42(2)(2), that the original condition should be applied.

While the applicant remains of the view that it would be appropriate to approve condition 6 as applied for, if you remain concerned about the timescales I have set out below a potential reworded condition which could be used.

6. ***That, within six months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons), or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.***

Such a condition would address my client's primary concern about temporary cessations in generation of electricity triggering the requirement to decommission/restore by specifying that only permanent cessation will be the trigger (thereby bringing this in line with permanent cessation of construction works.) It provides a workable default explanation of what is meant by permanent cessation (both generation of electricity and construction works) with the ability for bona fide temporary extensions beyond 3 months to be approved by the planning authority. I trust that a condition such as this would address any concerns you had regarding the possibility of adverse impacts on the Special Landscape Area as a consequence of lengthening of the period in which the site would remain unrestored.

I don't think this should be necessary, but if you still had any concerns, the condition could be further amended as follows.

6. ***That, within six-three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons), or within six three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within that three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.***

By reducing the period for completion of the initial decommissioning from 6 months to 3 months (which is achievable albeit more challenging), even if the cessation of generation/construction works was permanent, allowing for the 3 month period before which this would be deemed a permanent cessation under the condition, the total period allowed under the condition from generation of electricity/construction works stopping to decommissioning of the equipment (which would be the main concern regarding any impacts on the SLA) would not be increased from the 6 month period specified in the existing condition.

Condition 10

In light of the consultation response from your Active Travel and Transport colleagues, my clients acknowledge that the amended wording of this condition (requiring the passing places to be constructed prior to HGVs using the U36 in connection with the development) as originally proposed would not be appropriate.

While the proposed amended condition refers specifically to HGVs, the supporting statement makes clear that my clients appreciate the existing constraints with the U36 and accept that the passing places will require to be completed before use of the road by any significant construction traffic. The objective of the proposed amended condition was to facilitate preliminary works, such as ground investigations, which are likely to be required before commencement of the main construction activities. Such ground investigations would only involve a landrover/pickup vehicle with a trailer. While such ground investigations would normally be permissible as permitted development under the GPDO, condition 8 removes PD for all development.

The proposed condition sought to facilitate such works by excluding HGVs. It is however recognised that this sets the bar too high and that this could allow vehicles below the threshold for HGVs which would not necessarily be appropriate on the existing road.

If it would be possible to amend the wording of condition 10 to limit preliminary works to site investigation works only involving a landrover/pickup vehicle with a trailer that would be welcome, but if even that that is not considered appropriate then my clients would understand why you may not be able to support the proposed condition 10.

I look forward to hearing from you.

Regards

Peter.

Peter Ferguson
Partner

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From: Iain Davies (Snr Development Man Off / Planning)
Sent: 20 April 2020 12:15
To: Peter Ferguson
Subject: RE: Application 20/00232/PP

Dear Mr Ferguson,

Thank you for your e-mail. There appears to be an issue with our website servers at the moment.

Please find attached a copy of Active Travel and Transportation's comments, the comments of Cumbrae Community Council and a redacted objection letter. I am unable to provide the other objection at present. However, it makes substantially similar points.

I hope this information is of use and look forward to hearing from your client shortly.

Kind regards

Iain Davies
Senior Development Management Officer
Planning Services
Place Directorate
North Ayrshire Council

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From: Peter Ferguson <Peter.Ferguson@harpermacleod.co.uk>
Sent: 20 April 2020 10:48
To: Iain Davies (Snr Development Man Off / Planning) <i
Subject: RE: Application 20/00232/PP

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Iain,

I refer to your e-mail below to my colleague Roslyn MacDonald (who is currently on leave.)

I have tried to review the objections and consultation responses on the Council's online portal but that doesn't appear to be functioning.

To enable me to consider matters and take instructions, I would be grateful if you could e-mail me copies of the objections and consultation responses.

Regards

Peter.

Peter Ferguson
Partner
Tel: 0141 227 9332
Mob: 0796 839 2642

Fax: 0141 229 7332

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From: Iain Davies (Snr Development Man Off / Planning)

Sent: 20 April 2020 08:31

To: Roslyn MacDonald

Subject: RE: Application 20/00232/PP

Dear Ms MacDonald,

I write to update you in respect of the above application you submitted on behalf of Comsol Energy Limited.

The public notification period has now passed. There have been 2 objections. The Cumbrae Community Council has also objected.

In terms of consultations, the Council's Active Travel and Transportation, who advise on road matters, has recommended refusal.

I intend to recommend the application be refused. It is not considered that there is any justification for the proposed amendments. In terms of Condition 6, the proposed amendment is considered to impact on visual amenity and the Special Landscape Area in that it effectively lengthens the period in which the site will remain unrestored following cessation of electricity generation. In terms of Condition 10, the proposed amendment is considered to impact on road safety. The Council was, and remains, satisfied that the original conditions meet all the relevant tests of the Scottish Government's Circular 4/1998.

As the application is to be recommended for refusal, your client is entitled to withdraw this application. Should they wish to do so, I would ask that they confirm by Wednesday 22nd April. If the application is refused they will have a right of appeal to the Local Review Body.

I hope this information is of use. Unfortunately, we do not have access to our office phones at present. However, if you leave a message on the number below, I will endeavour to get back to you.

Kind regards

Iain Davies
Senior Development Management Officer
Planning Services
Place Directorate
North Ayrshire Council

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North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Caitriona McAuley : Head Of Service (Economic Development & Regeneration)

No N/20/00232/PP

(Original Application No. N/100209110-001)

REFUSAL OF PLANNING PERMISSION

Type of Application: Local Application

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997,
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013

To : Comsol Energy Limited
c/o Harper Macleod LLP Fao Roslyn MacDonald
The Ca'd'Oro
45 Gordon Street
Glasgow
G1 3PE

With reference to your application received on 20 March 2020 for planning permission under the above mentioned Acts and Orders for :-

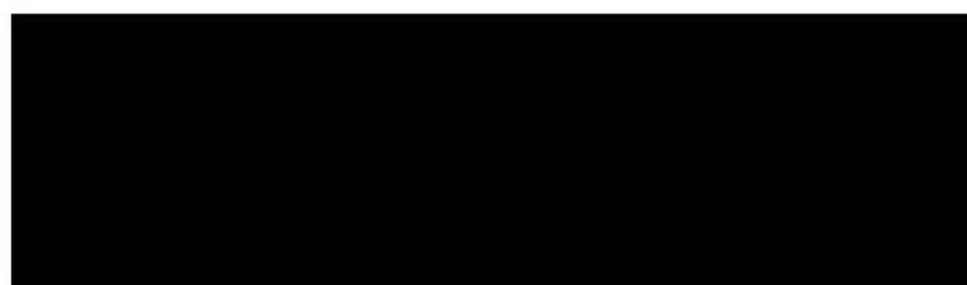
Variation of conditions 6 and 10 of permission ref. 16/00124/PP for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure

at Site To The North East Of Wee Minnemoer
Millport
Isle Of Cumbrae

North Ayrshire Council in exercise of their powers under the above-mentioned Acts and Orders hereby refuse planning permission on the following grounds :-

1. The proposal is contrary to Strategic Policy 2, Policy 15 and Policy 29 of the adopted North Ayrshire Local Development Plan as the proposed amendments to condition would both potentially harm the visual amenity of the area, which is part of a Special Landscape Area and have an adverse impact on road safety, and there are no material considerations which indicate otherwise.

Dated this : 14 May 2020



.....
for the North Ayrshire Council

(See accompanying notes)



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013 – REGULATION 28

Caitriona McAuley : Head Of Service (Economic Development & Regeneration)

FORM 2

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Committee Services, Chief Executive's Department, Cunninghame House, Irvine, North Ayrshire, KA12 8EE.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

REPORT OF HANDLING



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Reference No:	20/00232/PP
Proposal:	Variation of conditions 6 and 10 of permission ref. 16/00124/PP for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure
Location:	Site To The North East Of Wee Minnemoer, Millport, Isle Of Cumbrae,
LDP Allocation:	Countryside/Rural Community
LDP Policies:	Strategic Policy 2 / Detailed Policy 15-Landscape & Seascape / Detailed Policy 29 - Energy Infrastructure /
Consultations:	Yes
Neighbour Notification:	Neighbour Notification carried out on 20.03.2020 Neighbour Notification expired on 10.04.2020
Advert:	Regulation 20 (1) Advert Published on:- 25.03.2020 Expired on:- 15.04.2020
Previous Applications:	None
Appeal History Of Site:	None

Relevant Development Plan Policies

Strategic Policy 2

Placemaking

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places.

The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places, contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

Six qualities of a successful place

Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

Detailed Policy 15-Landscape & Seascape

Policy 15:

Landscape and Seascape

We will support development that protects and/or enhances our landscape/seascape character, avoiding unacceptable adverse impacts on our designated and non-designated landscape areas and features. In particular, we will consider the following:

a) National Scenic Areas

Development that affects the North Arran National Scenic Area including the need to protect existing sport and recreation interests, will only be supported where:

- i) the objectives of the designation and the overall integrity of the area will not be compromised; or
- ii) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

b) Special Landscape Areas

We will only support development which affects Special Landscape Areas where it would not have an unacceptable impact on their special character, qualities and setting.

c) Wild Land

We will only support development within Wild Land areas where any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.

d) Local Landscape Features

Where appropriate, development should take into consideration its individual and cumulative impacts on landscape features, including:

- i) patterns of woodlands, fields, hedgerows and trees;
- ii) lochs, ponds, watercourses, wetlands, the coast and wider seascape;
- iii) settlement setting, including approaches to settlements;
- iv) the setting of green network corridors, such as important transport routes and the cycle and footpath network;
- v) historic, natural and recreational features of interest, skylines and hill features, including important views to, from and within them.

For all development with the potential to have an impact on either Landscape Character or Landscape features (including their setting), appropriate mitigation measures should be considered as part of any planning application. Where there is potential for development to result in significant adverse landscape/visual impact, a landscape and visual impact assessment (LVIA) will be required. The Ayrshire Landscape Character Assessment (SNH, 1998) and North Ayrshire Settlement Development Strategy (Entec, 2008) provide further information on designations such as Local Landscape Character Areas and the Potential Limit of Development Expansion areas as shown on the map on page 81 and on our online proposals map. These landscape assessment documents, and any new or updated landscape assessments, will be key considerations in determining whether development proposals would be acceptable within the landscape.

Detailed Policy 29 - Energy Infrastructure
Policy 29:

Energy Infrastructure Development

We will support development proposals for energy infrastructure development, including wind, solar, tidal, cropping and other renewable sources, where they will contribute positively to our transition to a low carbon economy and have no unacceptable adverse environmental impacts, taking into consideration (including cumulatively) the following:

Environmental

- o Communities and individual dwellings - including visual impact, residential amenity, noise and shadow flicker;
- o Water quality;
- o Landscape - including avoiding unacceptable adverse impacts on our landscape designations;
- o Effects on the natural heritage - including birds;
- o Carbon rich soils including peat;
- o Impacts on the historic environment - including scheduled monuments, listed buildings and their settings.

Community

- o Establishing the use of the site for energy infrastructure development;
- o providing a net economic impact - including socio-economic benefits such as employment, associated business and supply chain opportunities;
- o Scale of contribution to renewable energy generation targets;
- o Public access - including impact on long distance walking and cycling routes and scenic routes identified in the National Planning Framework;
- o Impacts on tourism and recreation;
- o Specific locational opportunities for energy storage/generation.

Public Safety

- o Greenhouse gas emissions;
- o Aviation and defence interests and seismological recording;
- o Telecommunications and broadcasting installations - particularly ensuring that transmission links are not compromised; radio telemetry interference and below ground assets;
- o Road traffic and adjacent trunk roads;
- o Effects on hydrology, the water environment and flood risk including drinking water quality and quantity (to both the public and private water supplies);
- o Decommissioning of developments - including ancillary infrastructure, and site restoration and aftercare.

Proposals should include redundancy plans which will demonstrate how apparatus will be timeously removed as reasonably soon as the approved scheme ceases operation. There may be a requirement for financial bonds to ensure that decommissioning can be achieved. Taking into consideration the above, proposals for wind turbine developments should accord with the Spatial Framework (as mapped) and consider the current Landscape Capacity Study for Wind Farm Development in North Ayrshire. This study will be used as a point of reference for assessing all wind energy proposals including definitions of what small to large scale entails.

Buildings: Low and Zero Carbon Generating Technology

Proposals for all new buildings will be required to demonstrate that at least 10% of the current carbon emissions reduction set by Scottish Building Standards will be met through the installation and operation of low and zero-carbon generating technologies. A statement will be required to be submitted demonstrating

compliance with this requirement. The percentage will increase at the next review of the local development plan.

This requirement will not apply to:

1. Alterations and extensions to buildings
2. Change of use or conversion of buildings
3. Ancillary buildings that stand alone and cover an area less than 50 square metres
4. Buildings which will not be heated or cooled, other than by heating provided solely for frost protection.
5. Buildings which have an intended life of less than two years.

Description

Planning permission is sought to vary Conditions 6 and 10 attached to permission 16/00124/PP. That permission allowed the installation of a photovoltaic solar farm and associated infrastructure, subject to conditions.

Planning permission (ref. 16/00124/PP) has not been implemented and would have expired on the 29th March 2020. This application was received on the 20th March 2020. Should this application be granted, a new permission would be issued. Should this application be refused the original permission will have lapsed.

Condition 6 of 16/00124/PP currently reads as follows:

6. That, within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site.

The reason for Condition 6 was to reflect the temporary nature of the development and ensure that the site is restored to its previous condition.

This application seeks to add the word 'permanent' before cessation of electricity generation and operation of the site in Condition 6. The application also seeks to define what is meant by 'permanent' in this context.

Originally the applicant sought for 'permanent' to mean cessation for a continuous period of 12 months unless the developer demonstrates a bona fide technical or other reason and a bona fide intention and realistic expectation that electricity generation will recommence within a further period of 12 months, all to the Council's satisfaction.

However, following advice from Officers that the proposed condition was not considered acceptable, the applicant has proposed a different definition. The applicant now wishes it to mean 3 months unless the developer demonstrates a bona fide technical or other reason, and also now seek to replace 'six' with 'three.' For clarity the proposed amended condition is as follows;

6. That, within three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within the three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons), or within three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within the three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

Condition 10 of 16/00124/PP currently reads as follows:

10. That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the commencement of the solar farm development.

The reason for Condition 10 was to meet the requirements of North Ayrshire Council, as Roads Authority.

The applicant seeks to amend Condition 10 by deleting 'commencement of the solar farm development' and replacing with 'U36 Inner Circle Road being used by heavy goods vehicles in connection with the solar farm development.'

Following advice from Officers that the proposed condition was not considered acceptable, the applicant also proposed a different amended condition, by allowing preliminary works to be carried out with land rover/pickup vehicles and trailers prior to road upgrades. However, no formal wording request for this amendment has been made and for the avoidance of doubt the proposed amended Condition 10 is as follows:

10. That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the U36 Inner Circle Road being used by heavy goods vehicles in connection with the solar farm development.

The permission (ref. 16/00124/PP) was granted subject to a S.75 Agreement relating to a restoration bond. That agreement would not relate to any new permission. The applicant has acknowledged this point and indicated that an extra 20/00232/PP

condition could be added to any new permission requiring details of a restoration bond.

The application site lies within the Countryside and the Special Landscape Area of Cumbrae, as identified by the adopted Local Development Plan (LDP). As this application seeks to vary conditions it is considered that the relevant policies of the LDP are Strategic Policy 2: Placemaking, Policy 15: Landscape and Seascape and Policy 29: Energy Infrastructure Development. The Scottish Government's Planning Circular 4/1998 advises on the use of planning conditions.

Consultations and Representations

The application was subject to statutory neighbour notification procedures. The neighbour notification period ended prior to the further proposed amendment to Condition 6. There have been two objections received which can be summarised as follows;

1. The original permission was granted by NAC Planning Committee subject to conditions on 29 March 2017 and the consent was therefore due to expire on 29 March 2020. The application was submitted less than 2 weeks before the original consent was due to expire. The application is an attempt to gain a new permission for a development that has not begun within the originally consented 3 years, which is considered ample time to begin if the development was going to happen.

The original permission detailed 10 Conditions that the developer must comply with prior to any works commencing on site. Conditions 1; 2; 4; 5; 7; 8; 9; and 10 required full details to be submitted to the Council and for full agreement to be in place prior to any works commencing on site. No attempt has been made to meet any of the conditions contained in the original consent over the 3 year period since the permission was granted nor has any application for amendments been tabled until the permission was due to expire.

Response: This application is in respect of the merits of the proposed amended conditions only. It is acknowledged that should permission be granted a new planning permission would be granted which would effectively give another 3 years for the development to commence, unless the Council varied the time period by direction. It is noted that the Council did not alter the time period on the original permission by direction. It is also noted that the applicant did not seek to challenge or amend these conditions when the decision was issued or at any point until this date.

2. Condition 6 is sufficiently clear and precise as is the explanation of the reason for its inclusion and does not require amendment. If electricity is not being generated by the site there is a period of up to 6 months to rectify the position or to clear the site. The proposed amendment would potentially add 2 years delay to the process and the period that the site could lie unproductive and derelict without any guarantee of future power generation. This is an unreasonable request particularly given the prominent location of the site, its temporary nature and the timescale identified as being necessary to build a complete new solar farm provided by the applicant in the documentation attached to the original application.

Response: Noted. The applicant has now sought to reduce the potential period of time before restoration to 6 months, with 3 months to confirm cessation and 3 months to restore. There would be caveats that could delay restoration until beyond 20/00232/PP

that period. An assessment of Condition 6 and the proposed amendment is given below.

3. Condition 10 of the original consent was introduced to ensure that the U36 road could accommodate all construction vehicles involved in developing the site. The applicants own Planning Statement and Traffic & Access Statement which formed part of the original application (ref. Sections: 4. Construction Activities; 5. Construction Traffic & Routing; 6. Estimated Vehicle Movements) identify and emphasise the need for the measures required under Condition 10 (also emphasised as being required in Condition 9) to be introduced prior to any works commencing on site. The statements make it clear that access to the site will be required from Week 1, and continuously throughout the construction phase, by 40 tonne heavy goods vehicles delivering hard core/bottoming, security fencing, accommodation units, building supplies etc. plus low loaders delivering construction equipment etc. and articulated lorries delivering solar array equipment etc. It is therefore essential that Condition 10 is retained in its existing form for the reason stated.

Response: Noted. NAC Active Travel and Transportation object to the proposal as set out below.

4. The S.75 Agreement should remain in place. The purpose of the S.75 Agreement remains the same as when it was originally put in place.

Response: If permission is granted, effectively a new planning permission not subject to the S.75 Agreement would be issued. The Council could seek a new S.75 Agreement. However, advice from the Scottish Government issued since the original permission is that such agreements should be avoided if at all possible and planning conditions used instead. If a new permission was granted, the Council could add further conditions to address the reasons for the S.75 Agreement i.e. restoration bonds.

Cumrae Community Council object to the proposal. The applicant has made no attempt to discharge conditions or commence works in the 3 years the permission has been live. The conditions as worded are considered to be sufficiently clear and precise. Leaving the site derelict would harm the economy of Cumrae which relies heavily on tourism. As such Condition 6 should be left as it is. Condition 10 should be retained in its current form as it is vital for the safety of road users. The roads were never designed for this type of traffic and the works are vital to upgrade the road prior to commencement.

Response: Noted.

NAC Active Travel and Transportation recommend refusal of the application, object to the proposed variation of Condition 10. The U36 road is narrow. The required works are to accommodate all construction vehicles not just heavy goods vehicles. This work is required to be carried out prior to the commencement of the development as per the original condition.

Response: Noted.

Analysis

Planning permission (ref. 16/00124/PP) established that at that time a solar farm development was acceptable subject to 10 conditions and the entering of a S.75 20/00232/PP

Agreement. The determination for this application is whether the development would be acceptable with an amended Condition 6 and Condition 10. If permission was granted an additional condition addressing the requirements of the S.75 Agreement could be attached to the new permission.

Policy 29 of the LDP states that energy infrastructure development, including solar, will be supported where they will have no unacceptable adverse environmental impacts taking into consideration factors including: avoiding unacceptable adverse impacts on landscape designations; impact on public safety including roads and decommissioning. Policy 15 of the LDP states that development in a Special Landscape Area will only be supported where it would not have an unacceptable impact on their special character, qualities and setting. Strategic Policy 2 states that all development should meet the qualities of a successful place including considering the future use of the site, the surrounding landscape and the connectedness of the site for people.

Planning Circular 4/1998 states that planning conditions should only be imposed where they are: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

Condition 6 - The application seeks to amend the wording relating to when the development will have been deemed to be redundant. The applicant believes that the current wording leaves scope for misconstruction of the condition, and considers that amending the wording would add to the precision of the condition. The amended wording originally proposed, would also have added to the time period before a redundant facility would have to be removed. The applicant was advised that the original amendment would likely be refused. As such the applicant's newly proposed wording could result in the site being restored within 6 months of becoming redundant but only if a permanent redundancy is established and with caveats to delay the potential restoration if there are acceptable reasons.

Whilst the time period before restoration could potentially be 6 months (3 months of cessation and 3 months to restore), the introduction of the caveats relating to technical or other reasons which could delay restoration is held to have potential to harm the area. To have a redundant facility sited within the countryside and a Special Landscape Area, with no definitive period for restoration, is considered to harm the visual amenity of the area, and would impact on the qualities of the Special Landscape Area. Amending Condition 6 in this manner would therefore be contrary to Policies 29, 15 and Strategic Policy 2 of the LDP.

It is noted that it is at the discretion of the Council, as Planning Authority, as to whether or not to enforce a planning condition. The Council can delay or otherwise put on hold compliance with a planning condition, where it is considered expedient and in the public interest to do so and does not require an amended condition in order to do so.

It is also considered that the proposed amended wording of Condition 6 fails the tests set out in Circular 4/1998. Adding caveats introducing the prospect of recommencement is considered to add uncertainty to the condition and is therefore imprecise. Although the applicant has suggested it, it could also be considered that 3 months is an unreasonably short period for the restoration works. The applicant is under no obligation to develop or operate the site and a short time period could leave a developer/operator in an unreasonable position when restoration is required.

In so far as it is relevant, it is also not considered that the wording of the original condition is imprecise or that it fails to meet any of the tests set out in Circular 4/1998. It is noted that there were no concerns over the precision, or otherwise, of Condition 6 when the Council issued its decision. If the applicant considered it to be imprecise or otherwise unreasonable, the applicant had the right to lodge an appeal against the decision when it was made.

Condition 10 - The application seeks to delete the requirement for road upgrading works, namely formation of passing places, to take place prior to commencement, and substitute a requirement for the works only prior to the use of the road by heavy goods vehicles in connection with the development. The applicant considers this would assist development by permitting works on site prior to the formation of the passing places.

It is not clear what works could be undertaken to commence the development without the requirement of heavy goods vehicles accessing the site. Site investigation or other works required to discharge any of the other conditions of the permission would not constitute a start to the development. The original condition does not make a distinction between heavy goods vehicles or any other type of construction vehicle. The applicant subsequently suggested that vehicles such as land rovers/pickups with trailers should be permitted. However, again it is not clear what works could be undertaken, which would constitute a commencement to the development, with such vehicles.

NAC Active Travel and Transportation recommend refusal of the application, object to the proposed variation of Condition 10, and consider the required works are to accommodate all construction vehicles not just heavy goods vehicles. Amending Condition 10 would impact on road safety. Given the concerns of the Council, as Roads Authority, amending Condition 10 in this manner would therefore be contrary to Policies 29, 15 and Strategic Policy 2 of the LDP.

Amending the condition as proposed is considered to be contrary to Circular 4/1998. The proposed amended condition is considered to be unenforceable. It is unclear what works would or could be undertaken without heavy goods vehicles. It is also considered to fail to address the reason Condition 10 is necessary i.e. the impact on road safety by all construction vehicles.

Again, in so far as it is relevant, it is also not considered that the wording of the existing Condition 10 is unreasonable or that the condition fails to meet any of the tests set out in Circular 4/1998. It is noted that there were no concerns over the reasonableness, or otherwise, of Condition 6 when the Council issued its decision. The condition as worded is considered to be necessary in the interests of road safety.

It is agreed with the applicant that conditions are necessary. However, the proposed changes to these conditions would undermine the reasons for the conditions; namely the protection of the landscape, given the temporary nature of the development, and road safety. The proposal is contrary to Strategic Policy 2, Policy 15 and Policy 29 of the LDP. There are no material considerations to the contrary. If planning permission for the whole development was to be granted again it should be subject to the same conditions that the previous permission was subject to i.e. all those attached to permission 16/00124/PP. This application should be refused.

Decision

Refused

Case Officer - Mr Iain Davies

Appendix 1 - Drawings relating to decision

Drawing Title	Drawing Reference (if applicable)	Drawing Version (if applicable)
Location Plan		

OBSERVATIONS ON PLANNING APPLICATION

NORTH AYRSHIRE COUNCIL - REGENERATION

To: ePlanning, Cunninghame House, Irvine



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Application Number	20/00232/PP	Planner	Iain Davies
Recommendation	REFUSAL	Regeneration Contact	Karen McDaid
Email		Telephone	

Application Details

Type of Consent	Planning Permission (PP)		
Applicant	Harper MacLeod LLP F.a.o. Roslyn MacDonald		
Proposed Development	Variation of conditions 6 and 10 of permission ref. 16/00124/PP for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure		
Location	Site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae		
Drawing Number(s)	Location Plan and Layout Plans		
Dated	20/03/20	Date Received	20/03/20

Comments

	Active Travel and Transport recommend refusal of this proposal subject to the reasons stated below.
	The U 36 Inner circle road is a narrow road with no footways. The infrastructure work and additional passing places are to accommodate all construction vehicles not just heavy good vehicles. The work is required to be carried out before any construction work begins as the original condition 10 states.

Reasons for Refusal

	The infrastructure work and additional passing places are to accommodate all construction vehicles not just heavy good vehicles. This work is required to be carried out before any construction work begins as the original condition 10 states.

Signed: C Fitzsimmons

Date: 23/ 03 / 20

PP CAITRIONA MCAULEY, HEAD OF SERVICE, ECONOMIC DEVELOPMENT & REGENERATION

Notes for intimation to Applicant

(i)	A Construction Consent will be required by the applicant (S21)*	<input checked="" type="checkbox"/>
(ii)	A Road Bond will be required to be submitted by the applicant (S17)*	<input checked="" type="checkbox"/>
(iii)	A Road Opening Permit will be required by the applicant (S56)*	<input type="checkbox"/>

Copies To:

Roads	<input type="checkbox"/>
Roads Lighting	<input type="checkbox"/>

* Relevant Section of the Roads (Scotland) Act 1984

Circular 4/1998: The use of conditions in planning permissions

This Circular supersedes SDD No. 18/1986 (except Appendices A and B)
The Chief Executive Local Authorities

Copy to: The Director of Planning
Our ref: PGC/3/13
27 February 1998

Contents

Introduction

1. This Circular and the accompanying Annex sets out Government policy on the use of conditions in planning permissions. It updates and revises the guidance in SDD Circular 18/1986, which (except for Appendices A and B - see paragraph 11 below) is now cancelled, to take account of:

- new legislation, in particular the consolidation of the Planning Acts;
- Court decisions, which are referred to at relevant sections of the Annex;
- additional topics, such as Environmental Assessment and Nature Conservation; and
- good planning practice in the use of conditions.

General policy

2. Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects

The Secretary of State attaches great importance to these criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title.

3. Planning conditions must not, however, be applied slavishly or unthinkingly; a clear and precise reason for a condition must be given. While the use of standard conditions can be important to the efficient operation of the development control process, such conditions should not be applied simply as a matter of routine. Conditions should be used to achieve a specific end, not to cover every eventuality.

4. It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve the effectiveness of development control and enhance that confidence. Conditions imposed in an unreasonable way, so that it proves impracticable or inexpedient to enforce them, will damage such confidence and should be avoided.

5. The Annex to the Circular sets out the policy in greater detail.

Development plans

6. Where appropriate, development plans should specify the policies which the authority propose to implement regularly by means of planning conditions. Where applicants for planning permission are aware of such policies, they are more likely to incorporate appropriate details in their submissions, thus reducing the risk of delay in determining the applications and possibly avoiding the need to impose a specific condition.

Appeals

7. Paragraph 19 of Annex A to SODD Circular 13/1997 states that, in the case of planning inquiries, the statement submitted by the planning authority should include a list of conditions that it would wish to see imposed on any approval which may be given. A similar practice, which some authorities already follow, is also appropriate to cases proceeding by way of written submissions. The Secretary of State expects Reporters will be vigilant in ensuring that conditions imposed meet the criteria in paragraph 2 above and the detailed policy set out in the Annex.

Breach of condition notices

8. Since July 1992, planning authorities have been able to ensure compliance with many planning conditions by serving a breach of condition notice. Guidance about this type of notice is given in SOEnD Circular 36/1992. If a valid breach of condition notice is contravened, the resulting offence is open to summary prosecution. But the prosecution's case must always be proved on the criminal standard of proof ("beyond reasonable doubt"). Consequently, if the breach of condition notice procedure is to operate effectively, planning conditions must be formulated precisely. In the event of prosecution, Courts will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

Specialist subjects

9. This Circular does not include specific advice on the use of planning conditions for specialist subjects such as minerals workings or for developments relating to waste management.

Manpower and financial considerations

10. This Circular brings up to date existing advice, and should therefore have no effect on local government manpower or expenditure.

Model conditions

11. The Secretary of State is of the view that detailed guidance on model conditions should be provided. Further work with local authority representatives in this area will be undertaken and a list of model conditions will be issued in due course. This Circular should be read with the forthcoming guidance on model conditions. Until the new list of model conditions is published, authorities should continue to refer to these in Appendices A and B of SDD Circular 18/1986.

Enquiries and further copies

12. Enquiries about the content of this Circular should be addressed to Mr Stephen Bruce (Telephone 01312447065). Further copies of the Circular and a list of current planning circulars may be obtained from The Scottish Office Development Department, Planning Division, 2-H, Victoria Quay, Edinburgh, EH6 6QQ (Telephone 0131 244 7066 or 7825).

Annex A: The use of conditions in planning permissions

Powers

Summary of powers

1. Conditions on planning permissions may be imposed only within the statutory powers available. Advice on these powers is given below. This advice is intended to be a guide, and it must be stressed that it is not definitive. An authoritative statement of the law can only be made by the Courts. The principal powers are in sections 37 and 41 of the Town and Country Planning (Scotland) Act 1997 (referred to below as "the Act"). Sections 58 and 59 of the Act require the imposition of time-limiting conditions on most grants of planning permission (see paragraphs 45 to 52 below). Powers to impose conditions are also conferred on the Secretary of State or Reporters by sections 46, 48 and 133 and Schedule 4 of the Act. Unless the permission otherwise provides, planning permission runs with the land and conditions imposed on the grant of planning permission will bind successors in title.

General power

2. Section 37(1) of the Act enables the planning authority to grant planning permission "either unconditionally or subject to such conditions as they think fit". The power to impose conditions is not, however, as wide as it appears, and must be interpreted in the light of Court decisions.

Powers for conditions on land outside application site and temporary permissions

3. Section 41(1) amplifies the general power in section 37(1) in two ways. It makes clear that the planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. (The Courts have held that the question whether land is under the control of an applicant is a matter to be determined according to the

facts of the particular case. It is only necessary to have such control over the land as is required to enable the developer to comply with the condition.) The section also makes clear that the planning authority may grant planning permission for a specified period only.

Power to vary or remove the effect of conditions

4. Section 33 of the Act provides, among other things, for planning applications to be made in respect of development which has been carried out without planning permission and for applications for planning permission to authorise development which has been carried out without complying with some planning condition to which it was subject. Special consideration may need to be given to conditions imposed on planning permissions granted under section 33. For example, the standard time-limiting condition will not be appropriate where development has begun before planning permission has been granted.

5. Section 42 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 42. This section will not apply if the period within which the development could begin, as specified in the previous condition, has expired without the development having begun.*

Other considerations

Policy and other considerations

6. The limits of the enabling powers are not the only constraints on the use of conditions. Conditions should normally be consistent with national planning policies, as expressed in Government Circulars, National Planning Policy Guidelines (NPPGs) and other published material. They should also normally be consistent with the provisions of development plans and other policies of planning authorities. However, where a certain kind of condition is specifically endorsed by a development plan policy it is still necessary to consider whether it is justified in the particular circumstances of the proposed development. In general, conditions which duplicate the effect of other legislation should not be imposed (see paragraphs 19-22).

Practice

Role of pre-application discussions

7. Even before an application is made, informal discussions between the applicant and the planning authority can be very helpful. They can allow the applicant to formulate the details of a project so as to take full account of the requirements of the authority and assist the authority in making sure that those requirements are reasonable in the light of the development proposed. Discussion can also reduce the need for conditions, enable the authority to explore the possible terms of conditions which remain necessary and ensure that these are tailored to the circumstances of the case.

"Standard conditions"

8. Lists of standard or model conditions can be of great benefit. They can improve consistency of decisions, make effective use of staff resources and increase the speed of processing of planning applications. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for a condition which every applicant should be able to expect. Slavish or uncritical application of conditions is wholly inappropriate. Lists of standard conditions can usefully be made available locally, so that developers can take account of possible conditions at an early stage in drawing up their proposals. Such lists should contain a warning that they are not comprehensive and that conditions will always be devised or adapted where appropriate to suite the particular circumstances of a case.

Reasons

9. It is for the planning authority, in the first instance, to judge on the facts of the case whether a particular development proposal should be approved subject to planning conditions. By virtue of Article 22(1)(a) of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992, an authority deciding to grant permission subject to conditions must state the reasons for their decision. Where a planning authority, by virtue of Article 15 of the General Development Procedure Order, has consulted other bodies in respect of a planning application and is disposed to grant planning permission subject to a condition suggested to them by another body, the authority should ensure that the body has provided clear reasons for suggesting the imposition of the condition. Such conditions should only be imposed where they will meet clear land use planning objectives; as stated in paragraph 6 above conditions should not be used to duplicate controls available under other legislation. Reasons must be given for the imposition of every condition. It may be that more than one condition will be justified on the same basis, in which case it will be acceptable that such conditions be grouped together and justified by one reason. Reasons such as "to comply with the policies of the Council", "to secure the proper planning of the area" or "to maintain control over the development" are vague, and can suggest that the condition in question has no proper justification. The phrase "to protect amenity" can also be obscure and will often need amplification. If the reasons for the imposition of conditions are clearly explained, developers will be better able to understand the need for them and to comply with them in spirit as well as in letter. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

Notes for information

10. Sometimes planning authorities will wish to give guidance to an applicant for outline planning permission as to the kind of details of reserved matters which they would find acceptable. A planning authority may also wish to draw the attention of an applicant to other statutory consents (eg listed building or road construction consent) which must be obtained before development can commence. This should not be done by imposing a condition: instead a note may be appended to the planning permission. A note may also be desirable to draw the attention of the applicant to his

or her right to make an application to vary or remove a condition under section 42 of the Act, or indeed for other purposes.

Planning agreements

11. Problems posed by a development proposal may be solved either by imposing a condition on the planning permission or by concluding a planning agreement under section 75 of the Act or under other powers. The Secretary of State's policy on planning agreements is set out in SODD Circular 12/1996. This makes it clear that the planning authority should normally seek to regulate a development by a condition rather than through an agreement, since the imposition of restrictions by means of an agreement deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under Part III of the Act if they are subsequently seen as being inappropriate or too onerous. Planning authorities should note that if a certain restriction is contrary to the advice contained in this Circular it is likely to be objectionable regardless of whether it is suggested that it should be implemented by a condition or an agreement. It is ultra vires to impose a condition in a planning permission requiring an applicant to enter into an agreement. Nor should conditions imposed on a grant of planning permission be duplicated in a planning agreement.

Tests

Six tests for conditions

12. On a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the Courts' criteria for validity, conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they are:

- necessary,
- relevant to planning,
- relevant to the development to be permitted,
- enforceable,
- precise, and
- reasonable in all other respects.

Test: need for a condition

13. In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also avoid imposing conditions through anxiety to guard against every possible contingency, however remote. The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; a condition should not be retained unless there are sound and clear-cut reasons for doing so.

14. In some cases a condition will clearly be unnecessary, such as where it would repeat provisions in another condition imposed on the same permission. In other cases the lack of need may be less obvious and it may help to ask whether it would be considered expedient to enforce against a breach- if not, then the condition may well be unnecessary.

15. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. For example, where an extension to a dwelling house in a particular direction would be unacceptable, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not, however, be overloaded with conditions. It might be appropriate, for example, to impose on a permission in a conservation or other sensitive area a requirement that all external details and materials should be in complete accordance with the approved plans and specifications, rather than recite a long list of architectural details one by one.

Completion of development

16. Conditions requiring development to be carried out in its entirety, or in complete accordance with the approved plans, often fail the test of need by requiring more than is needed to deal with the problem they are designed to solve. If what is really wanted is simply to ensure that some particular feature or features of the development are actually provided or are finished in a certain way, specific conditions to this end are far preferable to a general requirement.

17. The absence of a specific condition does not prevent enforcement action being taken against development which differs materially from the approved design. However, it may well be easier for planning authorities to enforce compliance with a condition that has been breached, than to enforce on the basis of a material variation from the approved plans or description of development. Where an application includes information, for example on likely hours of working, which significantly influence the planning decision, it may be appropriate to include a specific condition to ensure compliance with the restrictions.

Test: relevance to planning

18. A condition which has no relevance to planning is ultra vires. A condition that the first occupants of dwellings must be drawn from the local authority's housing waiting list, for example, would be improper because it was meant to meet the ends of the local authority as housing authority and was not imposed for planning reasons. Although a condition can quite properly require the provision of open space to serve the approved development (as part of a housing estate, for example) it would be ultra vires if it required the open space to be dedicated to the public. Other conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) where there was no planning justification for such a constraint would similarly be ultra vires.

Other planning controls

19. Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development the planning authority should normally rely on them and not impose conditions on a grant of planning permission to achieve the purposes of a separate system of control (but on Trees note paragraphs 77 and 78 below).

Non-planning controls

20. Other matters are subject to control under separate legislation, yet are also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable. For example, a planning condition would not normally be appropriate to control the level of emissions from a proposed development where they are subject to pollution control legislation. However, such a condition may be needed to address the impact of the emissions to the extent that they might have land-use implications and/or are not controlled by the appropriate pollution control authority. (For further advice on this subject, see Planning Advice Note 51 Planning and Environmental Protection.) A condition cannot be justified on the grounds that the planning authority is not the body responsible for exercising a concurrent control and, therefore, cannot ensure it will be exercised properly. Nor can a condition be justified on the grounds that a concurrent control is not permanent but is subject to expiry and renewal (as, for example, with certain licences). Even where a condition does not actually duplicate or conflict with another control, differences in requirements can cause confusion and it will be desirable as far as possible to avoid solving problems by the use of conditions instead of, or as well as, by another more specific control.

21. Where other controls are also available, a condition may, however, be needed when the considerations material to the exercise of the two systems of control are substantially different, since it might be unwise in these circumstances to rely on the alternative control being exercised in the manner or to the degree needed to secure planning objectives. Conditions may also be needed to deal with circumstances for which a concurrent control is unavailable. A further case where conditions may be justified will be where they can prevent development being carried out in a manner which would be likely to give rise to onerous requirements under other powers at a later stage (eg to ensure adequate arrangements for the disposal of sewage and thus avoid subsequent intervention under the Sewerage (Scotland) Act 1968).

22. As a matter of policy, conditions should not be imposed in order to avoid compensation payments under other legislation (although such a condition would not be ultra vires if it could be justified on planning grounds). Although conditions which have the effect of restricting for planning purposes the activities in respect of which planning permission is granted may reasonably be imposed without any liability for compensation arising under planning legislation, great care should be taken with conditions which would have the effect of removing future liability for compensation which might arise under other legislation. For example, a condition requiring sound-proofing measures may be appropriate to a permission for residential development

near a major road where noise levels are high. But it will be inappropriate to impose such a condition with the aim of removing the roads authority's liability to install soundproofing when proposals for major road improvement are implemented. A condition of this sort is not relevant to the existing planning circumstances, but looks to future circumstances in respect of which other legislation provides compensation for those affected.

Test: relevance to the development to be permitted

23. Unless a condition fairly and reasonably relates to the development to be permitted, it will be ultra vires.

24. It is not, therefore, sufficient that a condition is related to planning objectives: it must also be justified by the nature of the development permitted or its effect on the surroundings. For example, if planning permission is being granted for the alteration of a factory building, it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists. It would similarly be wrong to require the improvement of the appearance or layout of an adjoining site simply because it is untidy or congested. Despite the desirability of these objectives in planning terms, the need for the action would not be created by the new development. On the other hand, it is proper for conditions to secure satisfactory access or parking facilities, for example, which are genuinely required by the users of a proposed development. Conditions can also be proper where the need for them arises out of the effects of the development rather than its own features; for example, where a permission will result in intensification of industrial use of a site, a condition may be necessary requiring additional sound-insulation in the existing factory buildings. It may even be justifiable to require by condition that an existing building be demolished- perhaps where to have both would result in the site being over-intensively developed.

Test: ability to enforce

25. A condition should not be imposed if it cannot be enforced. It is often useful to consider what means are available to secure compliance with a proposed condition. There are two provisions which authorities may use to enforce conditions; an enforcement notice under section 127 of the Act or a breach of condition notice under section 145. Precision in the wording of conditions is crucial when it comes to enforcement.

Practicality of enforcement

26. Sometimes a condition will be unenforceable because it is in practice impossible to detect an infringement. More commonly it will merely be difficult to prove a breach of its requirements. For example, a condition imposed for traffic reasons restricting the number of persons resident at any one time in a block of flats would be impracticable to monitor and pose severe difficulties in proving an infringement. However, where a condition is intended to prevent harm to the amenity of an area which is clearly likely to result from the development (for example, a condition requiring an amusement centre to close at a certain time in the evening), it will not usually be difficult to monitor compliance with the condition. Those affected by

contraventions of its requirements are likely to be able to provide clear evidence of any breaches.

Whether compliance is reasonable

27. A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. One type of case where this might happen is where a condition is imposed requiring the carrying out of works (eg the construction of a means of access) on land within the application site but not, at the time of the grant of planning permission, under the control of the applicant. If the applicant failed to acquire an interest in that land and carried out the development without complying with the condition, the planning authority could enforce the condition only by taking action against the third party who owned the land to which the condition applied and who had gained no benefit from the development. Such difficulties can usually be avoided by framing the condition so as to require that the development authorised by the permission should not commence until the access has been constructed.

Enforcing conditions imposed on permission for operational development

28. An otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Authorities should take into account the Court of Appeal's judgement in the case of *Handoll and Others v Warner Goodman and Streat (A firm) and Others*, (1995) 25EG157, which held that the judgement of the Divisional Court in *KerrierDC v Secretary of State for the Environment and Brewer* (1980) 41P&CR284, had been wrongly decided. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition.**

Test: precision

29. The framing of conditions requires great care, not least to ensure that a condition is enforceable. A condition, for example, requiring only that "a landscaping scheme shall be submitted for the approval of the planning authority" is incomplete since, if the applicant were to submit the scheme and even obtain approval for it, but neglect to carry it out, it is unlikely that the planning authority could actually require the scheme to be implemented. In such a case, a requirement should be imposed that landscaping shall be carried out in accordance with a scheme to be approved in writing by the planning authority; and the wording of the condition must clearly require this. A condition of this kind also sets no requirement as to the time or the stage of development by which the landscaping must be done, which can similarly lead to enforcement difficulties. Conditions which require specific works to be carried out at a certain 'time' or stage should state clearly when this must be done.

Vague conditions

30. A condition which is not sufficiently precise for the applicant to be able to ascertain what he must do to comply with it is ultra vires and must not be imposed. Vague expressions which sometimes appear in conditions, for example "keep the

buildings in a tidy state" or "so as not to cause annoyance to nearby residents", give occupants little idea of what is expected of them. Furthermore, conditions should not be made subject to qualifications, such as "if called upon to do so" or "if the growth of traffic makes it desirable", because these do not provide any objective and certain criterion by which the applicant can ascertain what is required.

Discretionary or vetting conditions

31. Conditions which attempt to provide for an arbiter to interpret such expressions or qualifications do not avoid this difficulty. Conditions requiring that tidiness, for example, shall be "to the satisfaction of the planning authority" make the applicant no more certain of what is required. Conditions which are imprecise or unreasonable cannot be made acceptable by phrases such as "except with the prior approval of the planning authority" which purport to provide an informal procedure to waive or modify their effect. Similarly, conditions restricting the occupation of a building should not set up a vetting procedure for prospective occupiers. Conditions which raise these difficulties, however, are not to be confused with conditions which require the submission of a scheme or details for approval which will, when granted, provide the precise guidelines to be followed by the developer.

Clarity

32. Conditions should be not only precise but clear. Where the wording of a condition may be difficult to follow, it may be helpful to attach to the permission an illustrative plan (eg describing sight lines required at the entrance to an access road).

Test: reasonableness

33. A condition can be ultra vires on the grounds of unreasonableness, even though it may be precisely worded and apparently within the powers available.

Conditions invalid on grounds of unreasonableness

34. A condition may be unreasonable because it is unduly restrictive. Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenity of the neighbourhood. However, it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run his business properly. If it appears that a permission could be given only subject to conditions that would be likely to be held unreasonable by the Courts, then planning permission should be refused altogether.

Avoidance of onerous requirements

35. Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner

to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

Control over land

36. Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed in paragraph 3 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

Conditions depending on others' actions

37. It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party. Similarly, conditions which require the applicant to obtain an authorisation from another body, such as the Scottish Environment Protection Agency, should not be imposed.

38. Although it would be *ultra vires* to require works which the developer has no powers to carry out, or which would need the consent or authorisation of a third party, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Whereas previously it had been understood that the test of whether such a condition was reasonable, was strict; to the effect that there were at least reasonable prospects of the action in question being performed, the House of Lords (in the *British Railways Board v the Secretary of State for the Environment and Hounslow LBC* [1994] JPL32; [1993] 3 PLR 125) established that the mere fact that a desirable condition, worded in a negative form appears to have no reasonable prospects of fulfilment does not mean that planning permission need necessarily be refused as a matter of law. Thus, while an authority will continue to have regard to all relevant factors affecting a planning application and whether it should be granted with or without conditions, there is no longer a legal requirement to satisfy a reasonable prospects test in respect of any negative condition they may decide to impose. For example, if it could be shown that improvements to sewerage facilities for a new housing development were planned but there was no clear indication that they would be built within the time limits imposed by the permission, it might still be possible to grant consent subject to a condition that the houses should not be occupied until the relevant sewerage works were completed. It might also be reasonable to use a condition requiring that a development should not commence until a particular road had been stopped up or diverted, even if the timing remained uncertain. Planning authorities should therefore note this recent House of Lords ruling and its implications for a less restrictive view in the use of negative conditions.

Consent of applicant to unreasonable conditions

39. An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. The condition will normally run with the land and may, therefore, still be operative long after the applicant has moved on. It must always be justified on its planning merits.

Regulation of development

Outline permissions

40. An applicant who proposes to carry out building or other operations may choose to apply either for full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the planning authority: the siting, design or the external appearance of the building, the means of access, or the landscaping of the site ("reserved matters"). An applicant cannot seek an outline planning permission for a change of use alone.

Details supplied in outline applications

41. An applicant can, however, choose to submit as part of an outline application details of any of these "reserved matters". Unless he has indicated that those details are submitted "for illustrative purposes only" (or has otherwise indicated that they are not formally part of the application), the planning authority must treat them as part of the development in respect of which the application is being made. The authority cannot reserve that matter by condition for subsequent approval, unless the applicant is willing to amend the application by withdrawing the details.

Conditions relating to outline permissions

42. Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 65 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters. So, where certain aspects of the development are crucial to the decision, planning authorities will wish to consider imposing relevant conditions when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified "footprint" or to retain important landscape features which would affect the setting of the building and its neighbours.

43. If the planning authority consider that, whatever the precise form the development is to take, access to the buildings should be from a particular road (or, alternatively, that there should be no means of access from a particular road), then a condition to this effect must be imposed on the outline permission. Approval of the details of the means of access to the permitted buildings can be refused on the grounds that there should not be access to the site from a particular road only if the need for such a restriction arises from the details of the development which have

been submitted for approval (eg from the density which is indicated by submitted details of the design and siting of the buildings). It is desirable that, wherever possible, notes should be appended to an outline permission to give the developer guidance as to what precise form of development will be acceptable to the planning authority.

Conditions reserving other matters

44. Authorities should seek to ensure, where possible, that conditions other than those relating to reserved matters, are self-contained and do not require further approvals to be obtained before development can begin. Where necessary, however, a planning authority may also, when granting a full or outline planning permission, impose a condition requiring that details of a specified aspect of the development which was not fully described in the application (eg the provision of car parking spaces) be submitted for approval before the development is begun. In the case of full permission such a condition can relate to details (such as landscaping) which might have been reserved matters had the application been made in outline. The applicant has the same right of appeal to the Secretary of State under section 47 of the Act if he cannot get the authority's approval, agreement or consent to matters reserved under such a condition as he has in respect of applications for approval of reserved matters.

Time-limits on the commencement of development

Statutory time-limits

45. The imposition of time-limits on the commencement of development is, by virtue of section 58 of the Act, not required for temporary permissions (see paragraphs 104-109), for permissions for any development carried out before the grant of planning permission, or for permissions granted by a development order, an enterprise zone or simplified planning zone scheme.

Time-limits on full permissions

46. Other grants of planning permission (apart from outline permissions) should, under section 58 of the Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. The section specifies a period of five years from the date of the permission. Where planning permission is granted without a condition limiting the duration of the planning permission, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the grant of permission.

Time-limits on outline permissions

47. Grants of outline planning permission must, under section 59 of the Act, be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. The periods specified for the submission of applications for approval of reserved matters are: the latest of three years from the

grant of outline permission; 6 months from the date of refusal of an earlier application; and 6 months from the date on which an appeal against such a refusal was dismissed. The periods specified for starting the development are either five years from the grant of permission or two years from the final approval of the last of the reserved matters, whichever is the longer.

Variation from standard time-limits

48. If the authority consider it appropriate on planning grounds, they may specify longer or shorter periods than those specified in the Act, and must give their reasons for so doing. In the absence of specific time-limiting conditions, permission is deemed to have been granted subject to conditions imposing the periods referred to in paragraphs 46 and 47. It may be particularly desirable to adopt a flexible approach to the fixing of time-limits where development is to be carried out in distinct parts or phases; section 59(6) of the Act provides that outline permissions may be granted subject to a series of time-limits, each relating to a separate part of the development. Such a condition must be imposed at the time outline planning permission is granted.

49. A condition requiring the developer to obtain **approval** of reserved matters within a stated period should not be used, since the timing of an approval is not within the developer's control. A condition, therefore, should set time-limits only on the **submission** of applications for approval of reserved matters.

Separate submission of different reserved matters

50. Applications for approval under an outline permission may be made either for all reserved matters at once, or for one at one time and others at another. Even after details relating to a particular reserved matter have been approved, one or more fresh applications may be made for approval of alternative details in relation to the same reserved matter. Once the time-limit for applications for approval of reserved matters has expired, however, no applications for such an approval can be made.

Effect of time-limit

51. After the expiry of the time-limit for commencement of development it would be ultra vires for development to be begun under that permission; a further application for planning permission must be made.

Renewal of permissions before expiry of time-limits

52. Developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article 5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply by letter, referring to the existing planning permission, although the planning authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:

a. there has been some material change in planning circumstances since the original permission was granted (eg a change in some relevant planning policy for the area,

or in relevant road considerations or the issue by the Government of a new planning policy which is material to the renewal application);

- b. there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
- c. the application is premature because the permission still has a reasonable time to run.

Completion of development

Completion of whole development

53. A condition requiring that the whole of the development permitted be completed is likely to be difficult to enforce. If a development forming a single indivisible whole, such as a single dwelling house, is left half-finished, it may be possible to secure completion by a completion notice under section 61 of the Act. If, however, the reason for failure to complete is financial difficulties experienced by the developer, neither a completion notice nor the enforcement of conditions would be likely to succeed. In such circumstances, the only practical step open to the planning authority, if they wish to secure the completion of the development, would be to carry it out themselves following acquisition of the land. If a large development, such as an estate of houses is left half-complete, this may be due to market changes (for example, a shift in demand from four-bedroom to two-bedroom houses) and it would clearly not be desirable to compel the erection of houses of a type for which there was no demand. Conditions requiring the completion of the whole of a development should, therefore, not normally be imposed.

Completion of elements of a development

54. Conditions may be needed, however, to secure that a particular element in a scheme is provided by a particular stage or before the scheme is brought into use, or to secure the provision of an element of a kind a developer might otherwise be tempted to defer or omit. Thus it may be desirable to require that a new access to the site should be constructed before any other development is carried out; or, where an office scheme includes a car park, that the car park is completed before the offices are occupied; or, where the scheme includes both offices and housing, that the offices should not be occupied before the houses are complete. The approach adopted must, of course, be reasonable. Taking the last example, it could well be unacceptable to require that the houses should be completed before the offices are begun; this would be likely to be an unjustifiable interference with the way the development is carried out. Or, to take another example, it could well be unacceptable to demand that all the requirements of a landscape condition should be complied with before a building is occupied; this could involve the building lying empty for many months, since such a condition will often provide for a considerable maintenance period so that trees can become established.

Phasing

55. Conditions may also be imposed to ensure that development proceeds in a certain sequence where some circumstances of the proposal, for example the

manner of infrastructure provision, makes this necessary. A condition delaying development over a substantial period is a severe restriction on the benefit of the permission granted. If land is available for a particular purpose, its commencement should not be delayed by condition because the authority have adopted a system of rationing the release of land for development.

Traffic and transport

56. The Government is planning to publish a White Paper in 1998 setting out its new integrated transport policy. This will aim, for example, to offer genuine choice to the travelling public by promoting more integrated public transport systems and to address the problems of congestion and transport related pollution. New planning guidance and advice flowing from the new policy will be issued in due course and it is likely that this will have implications for the level of parking provision which it would be appropriate to prescribe in planning conditions. Subsequent paragraphs need to be read against this general background.

Parking, public transport, walking and cycling

57. Developments often generate extra traffic, usually in the form of haulage or delivery vehicles or cars of residents, visitors or employees. Unless this demand is minimal (as it might be, for example, in the case of some very small firms) and unlikely to cause obstruction, space may need to be provided for off-street parking. Any conditions specifying the number of parking spaces should be consistent with the development plan as well as transport policies for the area. They also need to be reasonable in relation to the size and nature of the development and to satisfy the tests referred to in paragraph 12.

58. Normally a parking site separate from the road will be needed. In this case, conditions should ensure, where necessary, that space is provided for the turning of vehicles so that they do not have to reverse on to the road. Where the authority decides that it is appropriate to require the provision of car parking spaces on other land under the control of the applicant, the development must be readily accessible from the car park.

59. In certain circumstances, developers may enter into a planning agreement with the planning authority to provide off-site parking or to contribute to other transport measures directly related to the development, for example to assist public transport or walking and cycling. The provisions of such agreements should reflect Government policy as set out in SODD Circular 12/1996.

Access

60. Where a service road is needed as part of a large development for which outline permission is to be granted, it may be necessary to impose a condition requiring all access to the main road to be by means of the service road. If such a condition is not imposed at outline stage it may not be possible to secure the objective at a later stage (see paragraph 42). Similarly, if it is desired that there should be no direct access on to a main road, or that access must be taken from a particular side road, a condition to that effect should be imposed on the outline permission, as without such

a condition these restrictions could not normally be introduced when details are being considered.

61. A condition may require the provision or improvement of a service road or means of access even if such works are not included in the application, provided that they can be undertaken on the site in respect of which the application is made, or on other land which is under the control of the applicant, and relates to the proposed development. The condition should be framed so as to require the laying out or improvement of the means of access on the relevant section of the service road on defined land before the relevant buildings are occupied.

62. In considering the imposition of conditions concerning "access", planning authorities should bear in mind the definition of "road" in section 277 of the Town and Country Planning (Scotland) Act 1997 which refers to the definition in section 151 of the Roads (Scotland) Act 1984:

"any way (other than a waterway) over which there is a public right of passage (by whatever means) and whether subject to a toll or not and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes and any reference to a road includes a part thereof."

Roads fall into 2 particular categories- "public roads" and "private roads", defined in section 151 of the Roads (Scotland) Act 1984. The former are those included in a list of public roads kept by the roads authority and such roads are managed and maintained by the authority. Private roads are those over which the public has a right of passage but whose maintenance is not the responsibility of a roads authority. Such roads are maintainable privately but they are not private in any other way. They are not included in the list of public roads but there is provision in the 1984 Act under which they can be added to the roads authority's list provided they are of adoptable standard. There is sometimes confusion as to what is a private road and that term is often associated in the public mind with, for example, driveways up to private houses. These are not "roads" in terms of the Roads (Scotland) Act as there is no public right of passage over them (anyone using them does so on the sufferance of the owner) and they are, in fact, private accesses. Planning authorities should ensure that prospective developers are fully aware of the significant difference between a private access and a private road. "Private road" marked on a plan indicates that the public will have a right of passage over the land comprising the road: the developer will be required to seek from the roads authority a separate written consent to build such a road and it must be constructed to the standard required by that authority.

Lorry routing

63. Planning conditions are not an appropriate means of controlling the right of passage over public roads. Although negatively worded conditions which control such matters might sometimes be capable of being validly imposed on planning permissions, such conditions are likely to be very difficult to enforce effectively. It may be possible to encourage drivers to follow preferred routes by posting site notices to that effect, or by requiring them to use a particular entrance to (or exit from) the site. But where it is judged essential to prevent traffic from using particular

routes, the appropriate mechanism for doing so is by means of an Order under section 1 of the Road Traffic Regulation Act 1984.

Cession of land

64. Conditions may not require the cession of land to other parties, such as the roads authority.

Development of contaminated sites

Contaminated land

65. Land formerly used for many purposes, including industry and waste disposal can be contaminated by substances that pose immediate or long-term hazards to the environment or to health, or which may damage buildings erected on such sites. Contaminants may also escape from the site to cause air and surface or groundwater pollution and pollution of nearby land. The emission of gas or leachate from a landfill site may be particularly hazardous. In these circumstances, appropriate conditions may be imposed in order to ensure that the development proposed for the site will not expose future users or occupiers of the site, buildings and services, or the wider environment to risks associated with the contaminants present. Planning authorities should, however, base any such conditions on a site-specific assessment of the environmental risks which might affect, or be affected by, the particular proposed development. Conditions should not duplicate the effect of other legislative controls. The contaminated land should be remediated to a standard which is suitable for the proposed use.

66. If it is known or strongly suspected that a site is contaminated to an extent which would adversely affect the proposed development or infringe statutory requirements, an investigation of the hazards by the developer and proposals for remedial action will normally be required before the application can be determined by the planning authority. Any subsequent planning permission may need to include planning conditions requiring certain remedial measures to be carried out.

67. In cases where there is only a suspicion that the site might be contaminated, or where the evidence suggests that there may be only slight contamination, planning permission may be granted subject to conditions that development will not be permitted to start until a site investigation and assessment have been carried out and that the development itself will incorporate any remedial measures shown to be necessary.

68. Conditions might also be imposed requiring the developer to draw to the attention of the planning authority the presence of significant unsuspected contamination encountered during redevelopment. The planning authority may then require the developer to take further remediation action under public health duties. Further guidance on contaminated land is contained in NPPG 10- Planning and Waste Management. PAN 33- Development of Contaminated Land and PAN 51- Planning and Environment Protection. A new regime for identifying and remediating contaminated land is being introduced through the provision of the Environmental Protection Act 1990, as amended by the Environment Act 1995. This uses a risk-

based approach in identifying contaminated land and applies the polluter pays and 'suitable for use' principles. The role of the planning system in addressing contamination will continue alongside the new regime.

Environmental assessment

69. For projects subject to environmental assessment, conditions attached to a grant of planning permission may incorporate monitoring and mitigation measures proposed in an environmental statement where such conditions meet the criteria summarised in paragraph 12. It may be appropriate to impose conditions on the grant of planning permission and in the light of the environmental assessment, to require a scheme of mitigation covering matters of planning concern to be submitted to and approved in writing by the planning authority before any development is undertaken. Again conditions should not duplicate the effect of other legislative controls. In particular, planning authorities should not seek to substitute their own judgement on pollution control issues for that of the bodies with the relevant expertise and the statutory responsibility for that control.

Noise

70. Noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. The planning system should ensure that, wherever practicable, noise-sensitive developments are separated from major sources of noise and that new development involving noisy activities should, if possible, be sited away from noise-sensitive land uses. Where it is not possible to achieve such a separation of land uses, planning authorities should consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions or planning agreements. (See SDD Circular 16/1973.)

Nature conservation and landscape

71. Nature conservation and landscape quality can be important material considerations in determining many planning applications. Planning authorities should not, however, refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on particular species, wildlife habitats or important physical features. Moreover, for some types of development, such as mineral workings, conditions can be used to provide, on completion of operations, a natural heritage asset. Conditions can also be used, for example, to require areas to be fenced or bunded off to protect them, to restrict operations or uses at or to particular times of the year, to safeguard particular views or to reinforce particular landscape features. The views of Scottish Natural Heritage (SNH) will be particularly important in assessing the impact of development on the natural heritage of an area and in framing appropriate conditions.

72. Planning authorities should bear in mind that a number of areas valued for their landscape quality or nature conservation interest are afforded statutory protection. National Scenic Areas provide the national designation for landscape. For habitats, as well as national designations (primarily Sites of Special Scientific Interest), European Community Directives on nature conservation, most notably through

Special Areas of Conservation under the Habitats Directive and Special Protection Areas under the Wild Birds Directive, are being implemented. A number of sites have also been designated under the Ramsar Convention on Wetlands of International Importance. Conditions affecting such areas will need to be consistent with the provisions applicable for their protection. Scottish Office Environment Department Circulars 13/1991 and 6/1995 are particularly important sources of information and guidance.

73. Where the primary concern relates to land management or access to natural heritage resources, planning authorities should consider whether mechanisms other than those provided under planning legislation might provide the best means of securing their objectives. Countryside Management Agreements under the Countryside (Scotland) Act 1967 as amended by the Natural Heritage (Scotland) Act 1991 provide a mechanism for securing appropriate management of natural heritage assets. Access or Public Path Creation Agreements under the 1967 Act can be used to secure appropriate access for enjoyment of the natural heritage.

Design and landscape

74. The appearance of a proposed development and its relationship to its surroundings are material considerations in planning decisions. While planning authorities should not attempt to use conditions simply to impose matters of taste, there will be circumstances where it is important to secure a high quality of design in a proposal if this is to make a positive contribution to a site and its surroundings and show consideration for its local context. This could involve, for example, specifying in conditions the use of particular design features such as materials or finishes. The appearance and treatment of the spaces between and around buildings is also of great importance. Similarly, planning authorities may wish to use conditions to ensure that important vistas are preserved or that landscape features are provided to improve the overall setting of a development.

75. Landscape design may raise special considerations. The treatment of open space can vary greatly and the objective should be to ensure that the intended design quality is achieved in practice. It is, therefore, especially important for the authority to give some advance indication of the essential characteristics of an acceptable landscape scheme- always bearing in mind that such requirements should not be unreasonable. It is of equal importance to ensure that the design proposals are reflected in the quality of works and materials in the final product. The design and implementation stages of landscape treatment may, therefore, be addressed more successfully by separate conditions, occurring as they do at different stages and under variable circumstances. The visual impact of a development will often need to be assessed as a whole and this may well involve considering details of landscape design together with other reserved matters.

Enforcement of landscaping requirements

76. To ensure that a landscape design scheme is prepared, conditions may require that no development should take place until the scheme is approved, so long as this requirement is reasonable. Enforcing compliance with landscape schemes can pose problems, since work on landscaping can rarely proceed until building operations are

nearing completion. Only on permissions for a change of use would it be acceptable to provide that the development permitted should not proceed until the landscaping had been substantially completed. Where permission is being granted for a substantial estate of houses, it might be appropriate to frame the relevant condition to allow for landscape works to be phased in accordance with a programme or timetable to be agreed between the developer and the planning authority and submitted for approval as part of the landscape design proposals. Alternatively, the erection of the last few houses might be prohibited until planting had been completed in accordance with the landscape scheme. In relation to a permission for an industrial or office building, it would be possible to impose a condition prohibiting or restricting occupation of the building until such works had been completed.

Trees

77. Section 159 of the Act places an express duty on the planning authority, when granting planning permission, to ensure whenever appropriate that adequate conditions are imposed to secure the preservation or planting of trees, and that any necessary tree preservation orders are made under section 160 of the Act. When granting outline planning permission, the authority may consider it appropriate to impose a condition requiring the submission of particular details relating to trees to be retained on the site, such as their location in relation to the proposed development and their general state of health and stability. When granting detailed planning permission, conditions may be used to secure the protection of trees to be retained, for example by requiring the erection of fencing around trees during the course of development or restricting works which are likely to adversely affect them. The long-term protection of trees, however, should be secured by tree preservation orders rather than by condition. Such orders may also be expedient for the temporary protection of existing trees until details of the reserved matters are submitted and it becomes clear whether there is a need to retain the trees.

78. The planting and establishment of new trees may need work over several months or years and the authority may wish to ensure that they obtain details of those responsible for the management and maintenance of certain planted areas during that period of time. Where appropriate, a condition may require not just initial planting, but also that trees shall be maintained over a specified period of years and that any which die or are removed within that time shall be replaced.

Sites of archaeological interest

Archaeological sites

79. Monuments scheduled as of national importance by the Secretary of State are protected by Part I of the Ancient Monuments and Archaeological Areas Act 1979. Where its provisions apply, their effect should not be duplicated by planning conditions (see paragraphs 19-21), although authorities granting planning permission in such circumstances are advised to draw the attention of the applicant to the relevant provisions of the 1979 Act.

80. Where, however, planning permission is being granted for development which might affect the setting of a scheduled monument or a non-scheduled monument or its setting, the planning authority may wish to impose conditions designed to protect

the monument or its setting; to secure the provision of archaeological excavation and recording prior to development commencing; or, if the expectation of significant archaeological deposits is low, to ensure arrangements are made for a watching brief before and during the construction period. Further advice on archaeology and planning conditions is given in NPPG 5 Archaeology and Planning and Planning Advice Note⁴² Archaeology.

Maintenance conditions

81. A condition may be imposed, where appropriate, requiring some feature of a development to be retained- car parking spaces off the road, for example, or an area of open space in a housing scheme. A condition requiring something to be maintained, in the sense of being kept in good repair or in a prescribed manner, should be imposed only when the planning authority are fully satisfied that the requirement is both relevant to the development which is being permitted, reasonable in its effects and sufficiently precise in its terms to be readily enforceable. Maintenance conditions should not normally be imposed when granting permission for the erection of buildings, or for works other than works of a continuing nature such as minerals extraction.

Conditions requiring a financial or other consideration for the grant of permission

82. As a general proposition no payment of money or other consideration can be required when granting a permission or any other kind of consent required by a statute, except where there is specific statutory authority. Conditions requiring, for instance, the cession of land for road improvements or for open space, or requiring the developer to contribute money towards the provision of facilities not directly related to the proposed development, should accordingly not be attached to planning permissions. There may, however, be certain circumstances whereby the general proposition should not apply. The appropriateness of conditions involving financial or other considerations is dependent on the particular circumstances of the development for which the planning authority intends to grant planning permission and whether, in particular, the proposed conditions satisfy the criteria in paragraph 12. Thus conditions, involving financial considerations, but which meet the tests in paragraph 12 need not necessarily be ultra vires. Planning authorities should also bear in mind the advice in SODD Circular 12/1996 on Planning Agreements.

Conditions altering the nature of the development

Modifying proposed development

83. If some feature of a proposed development, or the lack of it, is unacceptable in planning terms, the best course will often be for the applicant to be invited to modify the application. If the modification is substantial, of course, a fresh application will be needed. It may however, depending on the case, be quicker and easier for the planning authority to impose a condition modifying the development permitted in some way. The precise course of action will normally emerge during discussion with the applicant. It would thus be legitimate to require by condition that a factory

proposal, for example, should include necessary car parking facilities, but wrong to grant permission for a development consisting of houses and shops subject to a condition that houses be substituted for the shops. Whether a modification would amount to substantial difference will depend upon the circumstances of the case. A useful test will be whether it would so change the proposal that: (i) those who have shown an interest in it would wish to comment on the modification; and (ii) those who, although they had a right to object to the original application and chose not to do so, would be prejudiced if they were not now given an opportunity to comment. A condition modifying the development, however, cannot be imposed if it would make the development permitted substantially different from that comprised in the application.

Regulation after development

84. Conditions which will remain in force after the development has been carried out always need particular care. They can place onerous and permanent restrictions on what can be done with the premises affected and they should, therefore, not be imposed without scrupulous weighing of where the balance of advantage lies. The following paragraphs give more detailed guidance.

Restrictions on use or permitted development

85. Exceptionally, conditions may be imposed to restrict further development which would normally be permitted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, or to restrict changes of use which would not be regarded as development whether because the change is not a "material" change within the terms of section 26(1) of the Act, or by reason of section 26(2) and the provisions of The Town and Country Planning (Use Classes) (Scotland) Order 1997. Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses. It should be noted, however, that a condition restricting changes of use will not restrict ancillary or incidental activities unless it so specifies. Similarly, a general condition which restricts the use of land does not remove permitted development rights for that use unless the condition specifically removes those rights as well.

Presumption against such restrictions

86. Both the General Permitted Development Order and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Accordingly, save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by the General Permitted Development Order or future changes of use which the Use Classes Order would otherwise allow. The Secretary of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there was no other forms of control and that the condition would serve a clear planning purpose.

87. To illustrate some exceptional circumstances, it may be possible to justify imposing a condition restricting permitted development rights allowed by Class 7 of the General Permitted Development Order so as to preserve an exceptionally

attractive open plan estate free of fences, or under Class 1 of the General Permitted Development Order so as to avoid over-development by extensions to dwelling houses in an area of housing at unusually high density. Similarly, changes of use may be restricted so as to prevent the use of large retail premises as a food or convenience goods supermarket, where such a use may generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby town centre. Conditions may also limit the storage of hazardous substances in a warehouse.

Specific conditions better than general ones

88. Because of the general presumption against such restrictions on permitted development or on changes of use which are not development, it will always be necessary to look carefully at the planning reasons for any restriction and to ensure that the condition imposed is no more onerous than can be justified (see paragraph 87 above). It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end. For example, where it is necessary to restrict the volume of noise emitted from an industrial site and a condition addressing the problem expressly can be used, that condition should be imposed, rather than one restricting the permitted uses. Scrupulous care in the giving of proper, adequate and intelligible reasons for imposing conditions (see paragraph 9) can help authorities to ensure that the conditions they impose are not more onerous than is necessary to achieve their objective.

Restrictions on use

89. It will be preferable if a condition designed to restrict changes of use can be drafted so as to prohibit a change to a particular unacceptable use or uses (provided the list does not become too long), rather than in terms which prevent any change of use at all. However, in certain cases a condition confining the use only to the use permitted may be necessary. In appropriate circumstances, it might be reasonable to impose a condition limiting the intensification of use of small office or industrial buildings where intensification beyond a certain point would generate traffic and/or parking problems. Conditions designed to prevent the primary use of an office building being changed to use as shops are unnecessary, as this would involve a material change of use amounting to development of land which would require planning permission.

Ancillary uses

90. Conditions are sometimes imposed restricting ancillary or incidental activities which would not normally be material changes of use involving development. Conditions of this kind can be burdensome to some technologically advanced industries. They may have a need for higher than normal levels of ancillary office, research or storage uses, or for short-term changes in uses or the balance of uses. Such conditions should, therefore, not normally be imposed on permissions for manufacturing or service industry, except where they are designed to preclude or regulate activities giving rise to hazard, noise or offensive emissions.

Conditions restricting the occupancy of buildings and land

Occupancy: general considerations

91. Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission.

Personal permissions

92. Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions relating, for example, to strong compassionate or other personal grounds, where the planning authority is minded to grant permission for the use of a building or land for some purpose which would not normally be allowed. In such a case the permission may be made subject to a condition that it shall enure only for the benefit of a named person- usually the applicant. A permission personal to a company is generally inappropriate. Conditions of this type will scarcely ever be justified in the case of a permission for the erection of a permanent building.

General undesirability of commercial and industrial occupancy conditions

93. Conditions are sometimes imposed to confine the occupation of commercial or industrial premises to local firms. Such conditions can act- undesirably- to protect local businesses against fair competition and may hinder the movement of industry in response to economic demand. If a service, or the employment it generates, is needed in an area, there is no planning reason why it should be provided by one firm rather than another. Commercial and industrial buildings in an area of open countryside will not become more acceptable because their occupancy is restricted, nor will the expansion of a local firm necessarily lead to less pressure for further development (eg housing) than the arrival of a firm from outside. The Secretary of State therefore regards such conditions as undesirable in principle.

Conditions governing size of unit occupied

94. Conditions requiring that a large commercial or industrial building should be occupied either only as a single unit or, alternatively, only in suites not exceeding a certain area or floorspace, represent a significant interference with property rights which is likely to inhibit or delay the productive use of the buildings affected. Such conditions should, therefore, normally be avoided.

Domestic occupancy conditions

95. Subject to the advice about affordable housing (paragraph 96), staff accommodation (paragraph 98-99), agricultural and forestry dwellings (paragraphs 100-102) and seasonal use (paragraphs 111-113), if the development of a site for housing is an acceptable use of the land, there will seldom be any good reason on

land use planning grounds to restrict the occupancy of those houses to a particular type of person (eg those already living or working in the area). To impose such a condition would be to draw an artificial and unwarranted distinction between new houses or new conversions and existing houses that are not subject to such restrictions on occupancy or sale. It may deter house-builders from providing homes for which there is a local demand and building societies from providing mortgage finance. It may also impose hardship on owners who subsequently need to sell. It involves too detailed and onerous an application of development control and too great an interference in the rights of individual ownership. Such conditions should, therefore, not be imposed save in the most exceptional cases where there are clear and specific circumstances that warrant allowing an individual house (or extension) on a site where development would not normally be permitted.

Affordable housing

96. The community's need for a mix of housing types- including affordable housing- is capable of being a material planning consideration. It follows that there may be circumstances in which it will be acceptable to use conditions to ensure that some of the housing built is occupied only by people falling within particular categories of need. Such conditions would normally only be necessary where a different planning decision might have been taken if the proposed development did not provide for affordable housing and should make clear the nature of the restriction by referring to criteria set out in the relevant development plan policy. Conditions should not normally be used to control matters such as tenure, price or ownership. Guidance on affordable housing is contained in NPPG 3: Land for Housing.

"Granny annexes"

97. Some extensions to dwellings are intended for use as "granny annexes". It is possible that a "granny annex" which provides independent living accommodation, could subsequently be let or sold off separately from the main dwelling. Where there are sound planning reasons why the creation of an additional dwelling would be unacceptable, it may be appropriate to impose a planning condition to the effect that the extension permitted shall be used solely as accommodation ancillary to the main dwelling house. The same is true for separate buildings (often conversions of outbuildings) intended for use as "granny annexes". In these cases it is even more likely that a separate unit of accommodation will be created.

Staff accommodation

98. The above considerations may equally apply to staff accommodation. Where an existing house is within the curtilage of another building and the two are in the same occupation, any proposal to occupy the two buildings separately is likely to amount to a material change of use, so that planning permission would be required for such a proposal even in the absence of a condition. Planning authorities should normally consider applications for such development sympathetically since, if the need for such a dwelling (for the accommodation of an employee, for example) disappears, there will generally be no justification for requiring the building to stand empty or to be demolished.

99. Conditions tying the occupation of dwellings to that of separate buildings (eg requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, eg where a dwelling has been allowed on a site where permission would not normally be granted. To grant an unconditional permission would mean that the dwelling could be sold off for general use which may be contrary to development plan policy for the locality. To ensure that the dwelling remains available to meet the identified need, it may therefore be acceptable to grant permission subject to a condition that ties the occupation of the new house to the existing business.

Agricultural and forestry dwellings

100. In many parts of Scotland planning policies impose strict controls on new residential development in the open countryside. There may, however, be circumstances where permission is granted to allow a house to be built to accommodate a worker engaged in bona fide agricultural or forestry employment on a site where residential development would not normally be permitted. In these circumstances, it will often be necessary to impose an agricultural or forestry worker occupancy condition.

101. Planning authorities will wish to take care to frame agricultural occupancy conditions in such a way as to ensure that their purpose is clear. In particular, they will wish to ensure that the condition does not have the effect of preventing future occupation by retired agricultural workers or the dependants of the agricultural occupant.

102. Where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application unless it is shown that circumstances have materially changed and that the agricultural need which justified the approval of the house in the first instance no longer exists.

Retail development

103. Out-of-centre retail developments, including retail parks, can change their composition over time. If such a change would create a development that the planning authority would have refused on the grounds of impact on vitality and viability of an existing town centre, it may be sensible to consider the use of planning conditions to ensure that these developments do not subsequently change their character unacceptably. Any conditions imposed should apply only to the main ranges of goods (eg food and convenience goods, hardware, electrical goods, furniture and carpets) and should not seek to control details of particular products to be sold. For further guidance see NPPG 8: Retailing.

Temporary permissions

104. Section 41(1)(b) of the Act gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. Where permission is granted for the development of the operational land of a statutory undertaker, however, this power does not apply except with the

undertaker's consent (see section 219 of the Act). Conditions of this kind are sometimes confused with conditions which impose a time-limit for the implementation of a permission (paragraphs 45 to 49) but they are quite distinct and different considerations arise in relation to them.

Principles applying to temporary permissions

105. In other cases, in deciding whether a temporary permission is appropriate, three main factors should be taken into account. Firstly, it will rarely be necessary to give a temporary permission to an applicant who wishes to carry out development which conforms with the provision of the development plan. Secondly, it is undesirable to impose a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent. Lastly, the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenity of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard amenity. If it is not possible to devise such conditions and the damage to amenity cannot be accepted, then the proper course is to refuse permission. These considerations mean that a temporary permission will normally only be appropriate either where the applicant himself proposes temporary development or when a trial run is needed in order to assess the effect of the development on the area.

Short-term buildings or uses

106. Where, therefore, a proposal relates to a building or use which the applicant is expected to retain or continue only for a limited period, whether because he has specifically volunteered that intention or because it is expected that the planning circumstances will change in a particular way at the end of that period, then a temporary permission may be justified. For example, permission might reasonably be granted on an application for erection of a temporary building to last seven years on land which will be required for road improvements eight or more years hence, although an application to erect a permanent building on the land would normally be refused.

Trial runs

107. Again, where an application is made for permanent permission for a use which may be a "bad neighbour" to existing uses nearby but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development. However, a temporary permission would not be justified merely because, for example, a building is to be made of wood rather than brick. Nor would a temporary permission be justified on the grounds that, although a particular use, such as a hostel or playgroup, would be acceptable in a certain location, the character of its management may change. In certain circumstances it may be possible to grant temporary permission for the provision of a

caravan or other temporary accommodation, where there is some evidence to support the grant of planning permission for an agricultural or forestry dwelling but it is inconclusive, perhaps because there is doubt about the sustainability of the proposed enterprise. This allows time for such prospects to be clarified.

108. A second temporary permission should not normally be granted. A trial period should be set that is sufficiently long for it to be clear by the end of the permission whether permanent permission or a refusal is the right answer. Usually a second temporary permission will only be justified where road or redevelopment proposals have been postponed or in cases of hardship where temporary instead of personal permission has been granted for a change of use.

Restoration of sites

109. If the temporary permission is for development consisting of, or including, the carrying out of operations, it is important to make provision by condition for the removal of any buildings and works permitted- not merely for the cessation of the use- and for the reinstatement of the land when the permission expires. Where the permission is for temporary use of land as a caravan site, conditions may include a requirement to remove at the expiry of the permission any buildings or structures, such as toilet blocks, erected under Class 17 of the General Permitted Development Order.

Access for disabled people

110. Where a building is new or is being altered, it is usually sufficient to rely on building regulations to ensure adequate access for disabled people. However, some new development does not require building regulation approval, eg development affecting the setting of buildings (layout of estates, pedestrianisation etc) rather than the buildings themselves. Where there is a clear planning need, it may be appropriate to impose a condition to ensure adequate access for disabled people.

Seasonal use

Seasonal occupancy conditions

111. Occasionally it may be acceptable to limit the use of land for a particular purpose to certain seasons of the year. For example, where planning permission is being granted for a caravan site, the planning authority may think it necessary to impose a condition to ensure that during the winter months the caravans are not occupied and are removed for storage to a particular part of the site or away from the site altogether. Where such a condition is imposed, particular care should be taken to see that the condition allows a reasonable period of use of the caravans in each year. A similar approach may be taken where it is necessary to prevent the permanent residential use of holiday chalets, which by the character of their construction or design are unsuitable for continuous occupation. Seasonal occupancy conditions may also be appropriate to protect the local environment, for example, where the site is near a fragile habitat which requires peace and quiet to allow seasonal breeding or winter feeding to take place.

Holiday occupancy conditions

112. In recent years there has been an increased demand for self-catering holiday accommodation- whether new buildings (including mobile homes) or converted properties- which may be constructed to a standard that would equally support permanent residence in some comfort. But this accommodation may also be located in areas in which the provision of permanent housing would be contrary to national policies on development in the countryside or not in accordance with development plan policies, or both. The Secretary of State considers that the planning system should respond to these changes without compromising policies to safeguard the countryside.

113. There may be circumstances where it will be reasonable for the planning authority to grant planning permission for holiday accommodation as an exception to these policies, with a condition specifying its use as holiday accommodation only. For example, conversions of redundant buildings into holiday accommodation where conversion to residential dwellings would not be permitted may reduce the pressure on other housing in rural areas. A holiday occupancy condition would seem more appropriate in those circumstances than a seasonal occupancy condition. But authorities should continue to use seasonal occupancy conditions to prevent the permanent residential use of accommodation which by the character of its construction or design is unsuitable for continuous occupation, particularly in the winter months.

[Addendum to Circular 4/1998](#)

Planning series:

National Planning Policy Guidelines (NPPGs) provide statements of Government policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.

Circulars, which also provide statements of Government policy, contain guidance on policy implementation through legislative or procedural change.

Planning Advice Notes (PANs) provide advice on good practice and other relevant information.

Statements of Government policy contained in NPPGs and Circulars may, so far as relevant, be material considerations to be taken into account in development plan preparation and development control.

REPORT OF HANDLING



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Reference No:	20/00232/PP
Proposal:	Variation of conditions 6 and 10 of permission ref. 16/00124/PP for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure
Location:	Site To The North East Of Wee Minnemoer, Millport, Isle Of Cumbrae,
LDP Allocation:	Countryside/Rural Community
LDP Policies:	Strategic Policy 2 / Detailed Policy 15-Landscape & Seascape / Detailed Policy 29 - Energy Infrastructure /
Consultations:	Yes
Neighbour Notification:	Neighbour Notification carried out on 20.03.2020 Neighbour Notification expired on 10.04.2020
Advert:	Regulation 20 (1) Advert Published on:- 25.03.2020 Expired on:- 15.04.2020
Previous Applications:	None
Appeal History Of Site:	None

Relevant Development Plan Policies

Strategic Policy 2

Placemaking

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places.

The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places, contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

Six qualities of a successful place

Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

Detailed Policy 15-Landscape & Seascape

Policy 15:

Landscape and Seascape

We will support development that protects and/or enhances our landscape/seascape character, avoiding unacceptable adverse impacts on our designated and non-

designated landscape areas and features. In particular, we will consider the following:

a) National Scenic Areas

Development that affects the North Arran National Scenic Area including the need to protect existing sport and recreation interests, will only be supported where:

- i) the objectives of the designation and the overall integrity of the area will not be compromised; or
- ii) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

b) Special Landscape Areas

We will only support development which affects Special Landscape Areas where it would not have an unacceptable impact on their special character, qualities and setting.

c) Wild Land

We will only support development within Wild Land areas where any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.

d) Local Landscape Features

Where appropriate, development should take into consideration its individual and cumulative impacts on landscape features, including:

- i) patterns of woodlands, fields, hedgerows and trees;
- ii) lochs, ponds, watercourses, wetlands, the coast and wider seascape;
- iii) settlement setting, including approaches to settlements;
- iv) the setting of green network corridors, such as important transport routes and the cycle and footpath network;
- v) historic, natural and recreational features of interest, skylines and hill features, including important views to, from and within them.

For all development with the potential to have an impact on either Landscape Character or Landscape features (including their setting), appropriate mitigation measures should be considered as part of any planning application. Where there is potential for development to result in significant adverse landscape/visual impact, a landscape and visual impact assessment (LVIA) will be required. The Ayrshire Landscape Character Assessment (SNH, 1998) and North Ayrshire Settlement Development Strategy (Entec, 2008) provide further information on designations such as Local Landscape Character Areas and the Potential Limit of Development Expansion areas as shown on the map on page 81 and on our online proposals map. These landscape assessment documents, and any new or updated landscape assessments, will be key considerations in determining whether development proposals would be acceptable within the landscape.

Detailed Policy 29 - Energy Infrastructure

Policy 29:

Energy Infrastructure Development

We will support development proposals for energy infrastructure development, including wind, solar, tidal, cropping and other renewable sources, where they will

contribute positively to our transition to a low carbon economy and have no unacceptable adverse environmental impacts, taking into consideration (including cumulatively) the following:

Environmental

- o Communities and individual dwellings - including visual impact, residential amenity, noise and shadow flicker;
- o Water quality;
- o Landscape - including avoiding unacceptable adverse impacts on our landscape designations;
- o Effects on the natural heritage - including birds;
- o Carbon rich soils including peat;
- o Impacts on the historic environment - including scheduled monuments, listed buildings and their settings.

Community

- o Establishing the use of the site for energy infrastructure development;
- o providing a net economic impact - including socio-economic benefits such as employment, associated business and supply chain opportunities;
- o Scale of contribution to renewable energy generation targets;
- o Public access - including impact on long distance walking and cycling routes and scenic routes identified in the National Planning Framework;
- o Impacts on tourism and recreation;
- o Specific locational opportunities for energy storage/generation.

Public Safety

- o Greenhouse gas emissions;
- o Aviation and defence interests and seismological recording;
- o Telecommunications and broadcasting installations - particularly ensuring that transmission links are not compromised; radio telemetry interference and below ground assets;
- o Road traffic and adjacent trunk roads;
- o Effects on hydrology, the water environment and flood risk including drinking water quality and quantity (to both the public and private water supplies);
- o Decommissioning of developments - including ancillary infrastructure, and site restoration and aftercare.

Proposals should include redundancy plans which will demonstrate how apparatus will be timeously removed as reasonably soon as the approved scheme ceases operation. There may be a requirement for financial bonds to ensure that decommissioning can be achieved. Taking into consideration the above, proposals for wind turbine developments should accord with the Spatial Framework (as mapped) and consider the current Landscape Capacity Study for Wind Farm Development in North Ayrshire. This study will be used as a point of reference for assessing all wind energy proposals including definitions of what small to large scale entails.

Buildings: Low and Zero Carbon Generating Technology

Proposals for all new buildings will be required to demonstrate that at least 10% of the current carbon emissions reduction set by Scottish Building Standards will be met through the installation and operation of low and zero-carbon generating technologies. A statement will be required to be submitted demonstrating compliance with this requirement. The percentage will increase at the next review of the local development plan.

This requirement will not apply to:

1. Alterations and extensions to buildings
2. Change of use or conversion of buildings
3. Ancillary buildings that stand alone and cover an area less than 50 square metres
4. Buildings which will not be heated or cooled, other than by heating provided solely for frost protection.
5. Buildings which have an intended life of less than two years.

Description

Planning permission is sought to vary Conditions 6 and 10 attached to permission 16/00124/PP. That permission allowed the installation of a photovoltaic solar farm and associated infrastructure, subject to conditions.

Planning permission (ref. 16/00124/PP) has not been implemented and would have expired on the 29th March 2020. This application was received on the 20th March 2020. Should this application be granted, a new permission would be issued. Should this application be refused the original permission will have lapsed.

Condition 6 of 16/00124/PP currently reads as follows:

6. That, within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar facility coming into operational use, whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the cessation of the operation of the site.

The reason for Condition 6 was to reflect the temporary nature of the development and ensure that the site is restored to its previous condition.

This application seeks to add the word 'permanent' before cessation of electricity generation and operation of the site in Condition 6. The application also seeks to define what is meant by 'permanent' in this context.

Originally the applicant sought for 'permanent' to mean cessation for a continuous period of 12 months unless the developer demonstrates a bona fide technical or other reason and a bona fide intention and realistic expectation that electricity generation will recommence within a further period of 12 months, all to the Council's satisfaction.

However, following advice from Officers that the proposed condition was not considered acceptable, the applicant has proposed a different definition. The applicant now wishes it to mean 3 months unless the developer demonstrates a

bona fide technical or other reason, and also now seek to replace 'six' with 'three.'
For clarity the proposed amended condition is as follows;

6. That, within three months of the permanent cessation of electricity generation by the solar PV facility (with permanent cessation being deemed to occur if electricity generation ceased for a continuous period of three months (unless within the three month period the planning authority agree on the basis of information provided that a temporary cessation of electricity generation for a period of three months or longer is required for bona fide technical or other reasons), or within three months following a permanent cessation of construction works prior to the solar facility coming into operational use (with permanent cessation being deemed to occur if construction works cease for a continuous period of three months (unless within the three month period the planning authority agree on the basis of information provided that a temporary cessation of construction works for a period of three months or longer is required for bona fide technical or other reasons), whichever is the sooner, the solar PV panels, frames and all associated structures and fencing, hereby approved shall be removed from the site. Thereafter the site shall be restored in accordance with a scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority prior to the permanent cessation of the operation of the site.

Condition 10 of 16/00124/PP currently reads as follows:

10. That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the commencement of the solar farm development.

The reason for Condition 10 was to meet the requirements of North Ayrshire Council, as Roads Authority.

The applicant seeks to amend Condition 10 by deleting 'commencement of the solar farm development' and replacing with 'U36 Inner Circle Road being used by heavy goods vehicles in connection with the solar farm development.'

Following advice from Officers that the proposed condition was not considered acceptable, the applicant also proposed a different amended condition, by allowing preliminary works to be carried out with land rover/pickup vehicles and trailers prior to road upgrades. However, no formal wording request for this amendment has been made and for the avoidance of doubt the proposed amended Condition 10 is as follows:

10. That, the proposed passing places to be provided along the U36 Inner Circle Road, shall be constructed as permanent fixtures, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. For the avoidance of doubt, the passing places shall be formed prior to the U36 Inner Circle Road being used by heavy goods vehicles in connection with the solar farm development.

The permission (ref. 16/00124/PP) was granted subject to a S.75 Agreement relating to a restoration bond. That agreement would not relate to any new permission. The applicant has acknowledged this point and indicated that an extra condition could be added to any new permission requiring details of a restoration bond.

The application site lies within the Countryside and the Special Landscape Area of Cumbrae, as identified by the adopted Local Development Plan (LDP). As this application seeks to vary conditions it is considered that the relevant policies of the LDP are Strategic Policy 2: Placemaking, Policy 15: Landscape and Seascape and Policy 29: Energy Infrastructure Development. The Scottish Government's Planning Circular 4/1998 advises on the use of planning conditions.

Consultations and Representations

The application was subject to statutory neighbour notification procedures. The neighbour notification period ended prior to the further proposed amendment to Condition 6. There have been two objections received which can be summarised as follows;

1. The original permission was granted by NAC Planning Committee subject to conditions on 29 March 2017 and the consent was therefore due to expire on 29 March 2020. The application was submitted less than 2 weeks before the original consent was due to expire. The application is an attempt to gain a new permission for a development that has not begun within the originally consented 3 years, which is considered ample time to begin if the development was going to happen.

The original permission detailed 10 Conditions that the developer must comply with prior to any works commencing on site. Conditions 1; 2; 4; 5; 7; 8; 9; and 10 required full details to be submitted to the Council and for full agreement to be in place prior to any works commencing on site. No attempt has been made to meet any of the conditions contained in the original consent over the 3 year period since the permission was granted nor has any application for amendments been tabled until the permission was due to expire.

Response: This application is in respect of the merits of the proposed amended conditions only. It is acknowledged that should permission be granted a new planning permission would be granted which would effectively give another 3 years for the development to commence, unless the Council varied the time period by direction. It is noted that the Council did not alter the time period on the original permission by direction. It is also noted that the applicant did not seek to challenge or amend these conditions when the decision was issued or at any point until this date.

2. Condition 6 is sufficiently clear and precise as is the explanation of the reason for its inclusion and does not require amendment. If electricity is not being generated by the site there is a period of up to 6 months to rectify the position or to clear the site. The proposed amendment would potentially add 2 years delay to the process and the period that the site could lie unproductive and derelict without any guarantee of future power generation. This is an unreasonable request particularly given the prominent location of the site, its temporary nature and the timescale identified as being necessary to build a complete new solar farm provided by the applicant in the documentation attached to the original application.

Response: Noted. The applicant has now sought to reduce the potential period of time before restoration to 6 months, with 3 months to confirm cessation and 3 months to restore. There would be caveats that could delay restoration until beyond that period. An assessment of Condition 6 and the proposed amendment is given below.

3. Condition 10 of the original consent was introduced to ensure that the U36 road could accommodate all construction vehicles involved in developing the site. The applicants own Planning Statement and Traffic & Access Statement which formed part of the original application (ref. Sections: 4. Construction Activities; 5. Construction Traffic & Routing; 6. Estimated Vehicle Movements) identify and emphasise the need for the measures required under Condition 10 (also emphasised as being required in Condition 9) to be introduced prior to any works commencing on site. The statements make it clear that access to the site will be required from Week 1, and continuously throughout the construction phase, by 40 tonne heavy goods vehicles delivering hard core/bottoming, security fencing, accommodation units, building supplies etc. plus low loaders delivering construction equipment etc. and articulated lorries delivering solar array equipment etc. It is therefore essential that Condition 10 is retained in its existing form for the reason stated.

Response: Noted. NAC Active Travel and Transportation object to the proposal as set out below.

4. The S.75 Agreement should remain in place. The purpose of the S.75 Agreement remains the same as when it was originally put in place.

Response: If permission is granted, effectively a new planning permission not subject to the S.75 Agreement would be issued. The Council could seek a new S.75 Agreement. However, advice from the Scottish Government issued since the original permission is that such agreements should be avoided if at all possible and planning conditions used instead. If a new permission was granted, the Council could add further conditions to address the reasons for the S.75 Agreement i.e. restoration bonds.

Cumbræ Community Council object to the proposal. The applicant has made no attempt to discharge conditions or commence works in the 3 years the permission has been live. The conditions as worded are considered to be sufficiently clear and precise. Leaving the site derelict would harm the economy of Cumbræ which relies heavily on tourism. As such Condition 6 should be left as it is. Condition 10 should be retained in its current form as it is vital for the safety of road users. The roads were never designed for this type of traffic and the works are vital to upgrade the road prior to commencement.

Response: Noted.

NAC Active Travel and Transportation recommend refusal of the application, object to the proposed variation of Condition 10. The U36 road is narrow. The required works are to accommodate all construction vehicles not just heavy goods vehicles. This work is required to be carried out prior to the commencement of the development as per the original condition.

Response: Noted.

Analysis

Planning permission (ref. 16/00124/PP) established that at that time a solar farm development was acceptable subject to 10 conditions and the entering of a S.75 Agreement. The determination for this application is whether the development would be acceptable with an amended Condition 6 and Condition 10. If permission was

granted an additional condition addressing the requirements of the S.75 Agreement could be attached to the new permission.

Policy 29 of the LDP states that energy infrastructure development, including solar, will be supported where they will have no unacceptable adverse environmental impacts taking into consideration factors including: avoiding unacceptable adverse impacts on landscape designations; impact on public safety including roads and decommissioning. Policy 15 of the LDP states that development in a Special Landscape Area will only be supported where it would not have an unacceptable impact on their special character, qualities and setting. Strategic Policy 2 states that all development should meet the qualities of a successful place including considering the future use of the site, the surrounding landscape and the connectedness of the site for people.

Planning Circular 4/1998 states that planning conditions should only be imposed where they are: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

Condition 6 - The application seeks to amend the wording relating to when the development will have been deemed to be redundant. The applicant believes that the current wording leaves scope for misconstruction of the condition, and considers that amending the wording would add to the precision of the condition. The amended wording originally proposed, would also have added to the time period before a redundant facility would have to be removed. The applicant was advised that the original amendment would likely be refused. As such the applicant's newly proposed wording could result in the site being restored within 6 months of becoming redundant but only if a permanent redundancy is established and with caveats to delay the potential restoration if there are acceptable reasons.

Whilst the time period before restoration could potentially be 6 months (3 months of cessation and 3 months to restore), the introduction of the caveats relating to technical or other reasons which could delay restoration is held to have potential to harm the area. To have a redundant facility sited within the countryside and a Special Landscape Area, with no definitive period for restoration, is considered to harm the visual amenity of the area, and would impact on the qualities of the Special Landscape Area. Amending Condition 6 in this manner would therefore be contrary to Policies 29, 15 and Strategic Policy 2 of the LDP.

It is noted that it is at the discretion of the Council, as Planning Authority, as to whether or not to enforce a planning condition. The Council can delay or otherwise put on hold compliance with a planning condition, where it is considered expedient and in the public interest to do so and does not require an amended condition in order to do so.

It is also considered that the proposed amended wording of Condition 6 fails the tests set out in Circular 4/1998. Adding caveats introducing the prospect of recommencement is considered to add uncertainty to the condition and is therefore imprecise. Although the applicant has suggested it, it could also be considered that 3 months is an unreasonably short period for the restoration works. The applicant is under no obligation to develop or operate the site and a short time period could leave a developer/operator in an unreasonable position when restoration is required.

In so far as it is relevant, it is also not considered that the wording of the original condition is imprecise or that it fails to meet any of the tests set out in Circular

4/1998. It is noted that there were no concerns over the precision, or otherwise, of Condition 6 when the Council issued its decision. If the applicant considered it to be imprecise or otherwise unreasonable, the applicant had the right to lodge an appeal against the decision when it was made.

Condition 10 - The application seeks to delete the requirement for road upgrading works, namely formation of passing places, to take place prior to commencement, and substitute a requirement for the works only prior to the use of the road by heavy goods vehicles in connection with the development. The applicant considers this would assist development by permitting works on site prior to the formation of the passing places.

It is not clear what works could be undertaken to commence the development without the requirement of heavy goods vehicles accessing the site. Site investigation or other works required to discharge any of the other conditions of the permission would not constitute a start to the development. The original condition does not make a distinction between heavy goods vehicles or any other type of construction vehicle. The applicant subsequently suggested that vehicles such as land rovers/pickups with trailers should be permitted. However, again it is not clear what works could be undertaken, which would constitute a commencement to the development, with such vehicles.

NAC Active Travel and Transportation recommend refusal of the application, object to the proposed variation of Condition 10, and consider the required works are to accommodate all construction vehicles not just heavy goods vehicles. Amending Condition 10 would impact on road safety. Given the concerns of the Council, as Roads Authority, amending Condition 10 in this manner would therefore be contrary to Policies 29, 15 and Strategic Policy 2 of the LDP.

Amending the condition as proposed is considered to be contrary to Circular 4/1998. The proposed amended condition is considered to be unenforceable. It is unclear what works would or could be undertaken without heavy goods vehicles. It is also considered to fail to address the reason Condition 10 is necessary i.e. the impact on road safety by all construction vehicles.

Again, in so far as it is relevant, it is also not considered that the wording of the existing Condition 10 is unreasonable or that the condition fails to meet any of the tests set out in Circular 4/1998. It is noted that there were no concerns over the reasonableness, or otherwise, of Condition 6 when the Council issued its decision. The condition as worded is considered to be necessary in the interests of road safety.

It is agreed with the applicant that conditions are necessary. However, the proposed changes to these conditions would undermine the reasons for the conditions; namely the protection of the landscape, given the temporary nature of the development, and road safety. The proposal is contrary to Strategic Policy 2, Policy 15 and Policy 29 of the LDP. There are no material considerations to the contrary. If planning permission for the whole development was to be granted again it should be subject to the same conditions that the previous permission was subject to i.e. all those attached to permission 16/00124/PP. This application should be refused.

Decision

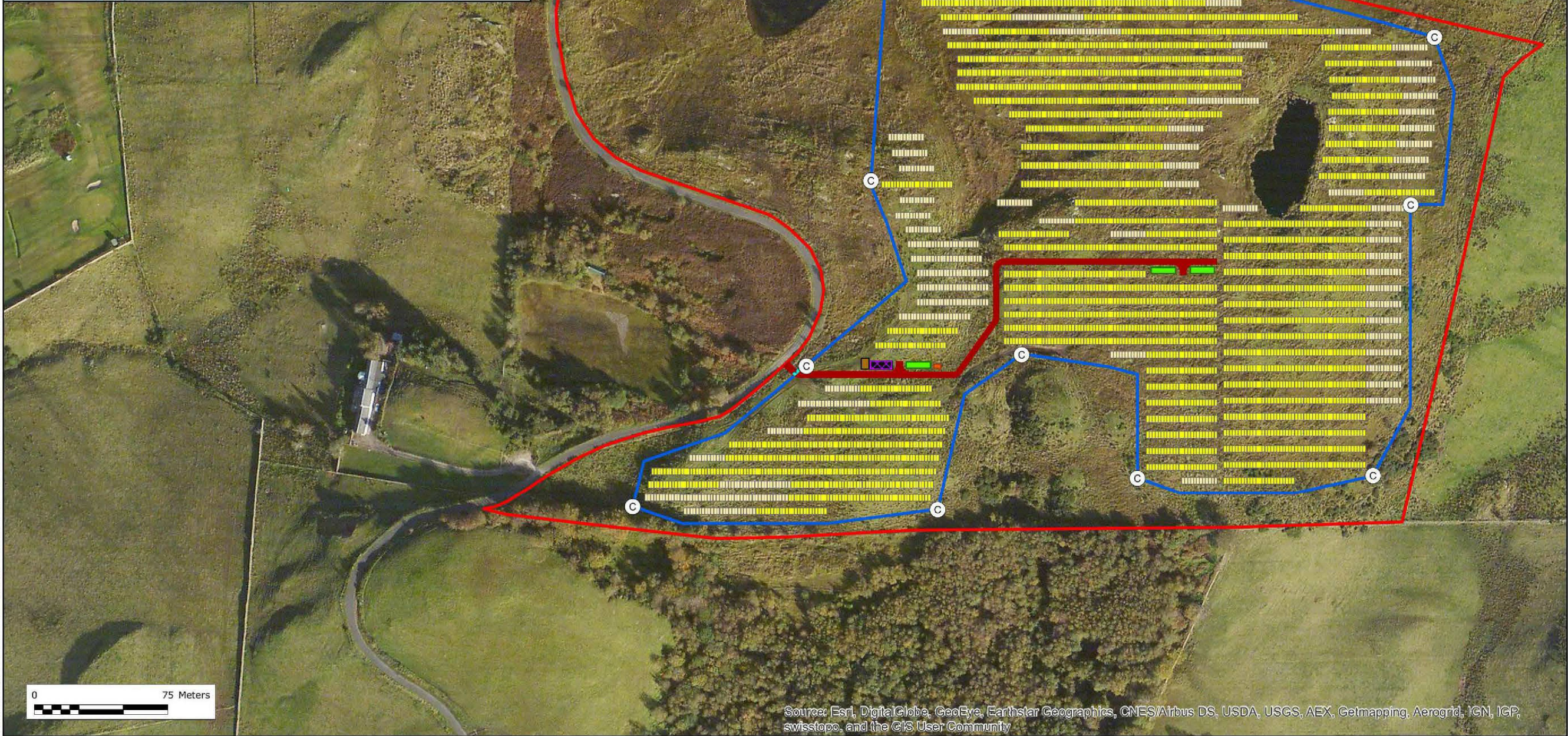
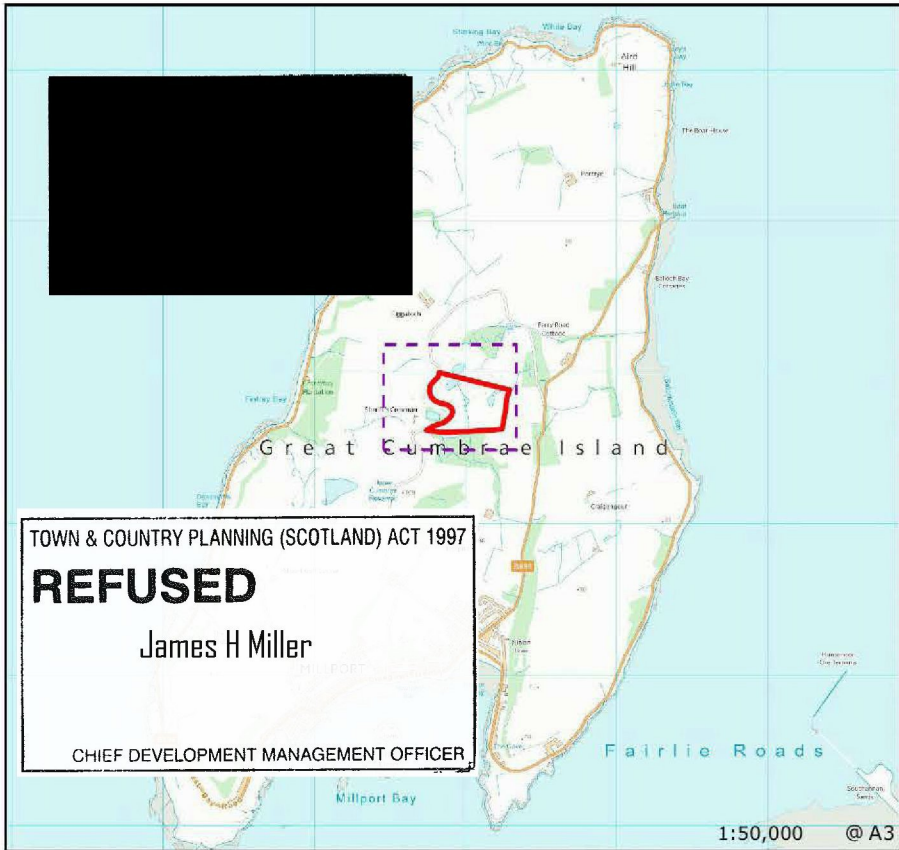
20/00232/PP

Refused

Case Officer - Mr Iain Davies

Appendix 1 - Drawings relating to decision

Drawing Title	Drawing Reference (if applicable)	Drawing Version (if applicable)
Location Plan		



Key

- DETRA Site
- Solar Panels (4x12)
- Solar Panels (4x24)
- Maintenance Track
- Access Point
- Cells, TRF and Inverter
- Control Room
- Customer Cabin
- DNO
- © CCTV

Title: Figure 1:
Location
Site Layout

Project No: UK12-22321

Site: Great Cumbrae Solar Farm

Client: Complete Solutions

Date: February 2016

Scale: 1:2,500 @ A3

Issue: A Drawn by: CO

RAMBOLL
ENVIRON

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Caitriona McAuley : Head Of Service (Economic Development & Regeneration)

No N/20/00232/PP

(Original Application No. N/100209110-001)

REFUSAL OF PLANNING PERMISSION

Type of Application: Local Application

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997,
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013

To : Comsol Energy Limited
c/o Harper Macleod LLP Fao Roslyn MacDonald
The Ca'd'Oro
45 Gordon Street
Glasgow
G1 3PE

With reference to your application received on 20 March 2020 for planning permission under the above mentioned Acts and Orders for :-

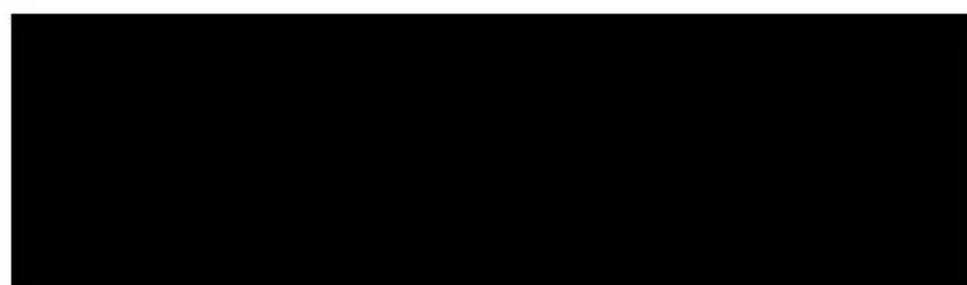
Variation of conditions 6 and 10 of permission ref. 16/00124/PP for installation of a photovoltaic solar farm with an output of up to 5MW and associated infrastructure

at Site To The North East Of Wee Minnemoer
Millport
Isle Of Cumbrae

North Ayrshire Council in exercise of their powers under the above-mentioned Acts and Orders hereby refuse planning permission on the following grounds :-

1. The proposal is contrary to Strategic Policy 2, Policy 15 and Policy 29 of the adopted North Ayrshire Local Development Plan as the proposed amendments to condition would both potentially harm the visual amenity of the area, which is part of a Special Landscape Area and have an adverse impact on road safety, and there are no material considerations which indicate otherwise.

Dated this : 14 May 2020



.....
for the North Ayrshire Council

(See accompanying notes)



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013 – REGULATION 28

Caitriona McAuley : Head Of Service (Economic Development & Regeneration)

FORM 2

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Committee Services, Chief Executive's Department, Cunninghame House, Irvine, North Ayrshire, KA12 8EE.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.