

T: 0131-244 7589
E: planning.decisions@gov.scot

Fiona Macgregor
Pinsent Masons LLP

Fiona.MacGregor@pinsentmasons.com

Our ref: PPA-130-2064

18 December 2019

Dear Fiona

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPEAL: ERECTION OF 14 WIND TURBINES (13 WITH A BLADE TIP
HEIGHT OF UP TO 126.5M (AND A HUB HEIGHT OF UP TO 80M) AND ONE WITH A
BLADE TIP HEIGHT OF UP TO 115.5M (AND HUB HEIGHT OF UP TO 69M)),
UPGRADING OF PERMANENT ACCESS, FORMATION OF SITE ACCESS TRACKS,
ERECTION OF PERMANENT ANEMOMETER MAST, CONTROL BUILDING AND
SUBSTATION, WATERCOURSE CROSSINGS AND TEMPORARY CONSTRUCTION
COMPOUND AT CLACHAIG GLEN WINDFARM, LAND NORTH EAST OF MUASDALE,
ARGYLL**

1. This letter contains Scottish Ministers' decision on the above appeal lodged on behalf of E.ON Climate & Renewables UK.
2. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2010, as amended, the appeal came into a class to be determined by a person appointed by Scottish Ministers, rather than by Scottish Ministers themselves. However, in exercise of the powers under paragraph 3(1) of Schedule 4 to the Town and Country Planning (Scotland) Act 1997, Scottish Ministers directed, on 22 March 2018, that they would determine the appeal.
3. The appeal was considered by way of public local inquiry which took place on 9 January 2019 conducted by Mr Keith Bray BSc (Hons) and Mr Dan Jackman BA(Hons) MRTPI, Reporters' appointed for that purpose. A copy of their report is enclosed with this letter. The

contents are listed on page 1 of their report and their overall conclusions and recommendations are set out in Chapter 10.

Scottish Ministers' Decision

4. Scottish Ministers have carefully considered the evidence presented at the public local inquiry and the reporters' overall conclusions and recommendations. They accept the reporters' conclusions and recommendations and adopt them for the purpose of their own decision.

5. Accordingly, Scottish Ministers allow the appeal and grant planning permission for the erection of 14 wind turbines (13 with a blade tip height of up to 126.5M (and a hubheight of up to 80M) and one with a blade tip height of up to 115.5M (And a hub height of up to 69M)), upgrading of permanent access, formation of site access tracks, erection of permanent anemometer mast, control building and substation, watercourse crossings and temporary construction compound at Clachaig Glen windfarm, land North East of Muasdale, Argyll subject to the conditions set out in Appendix 5 of the reporters' report and appended to this letter.

6. An Appropriate Assessment concluding that the development is not predicted to have any adverse effect on the integrity of the Kintyre Goose Roosts SPA or any other Designated European Sites, alone or in-combination with other projects, has been completed by Scottish Ministers and is also appended to this letter.

7. The foregoing decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

8. A copy of this letter and the reporters' report has been sent to Argyll and Bute Council, South Knapdale Community Council and West Kintyre Community Council.

Yours sincerely

ELAINE RAMSAY

PPA-130-2064 PLANNING APPEAL: ERECTION OF 14 WIND TURBINES AND ASSOCIATED WORKS AT LAND NORTH EAST OF MUASDALE, CLACHAIG GLEN, KINTYRE, ARGYLL

PLANNING CONDITIONS

DEFINED TERMS

CEMP	means the Construction and Environment Management Plan to be submitted to and approved by the planning authority pursuant to planning condition 8.
Commencement of Development	means the initiation of development pursuant to the planning permission by the carrying out of a material operation within the meaning of section 27(2) of the Town and Country Planning (Scotland) Act 1997 as amended, but excluding Permitted Preliminary Works.
Date of Final Commissioning	means the earlier of (i) the date on which commissioning and performance testing of the last of the turbines forming part of the Development is certified as complete and full commercial operation of the Development begins following the issue of a take-over certificate; or (ii) the date falling thirty six months from the date of Commencement of Development.
Development	means the wind powered generating station and ancillary development described in the planning permission.
ES	means the Environmental Statement submitted in May 2016 (as updated).
Permitted Preliminary Works	means (i) any site investigation or other preparatory works or surveys required for the purpose of satisfying or discharging any pre-commencement obligations under the planning conditions, and (ii) the provision of any temporary contractors' facilities within the Site which are necessary for (i) above.
Site	means the area of land outlined in red on Figure 1 (HC_160506_PA1) of the ES;

1. The development shall be undertaken in accordance with the application dated 18 May 2016 and planning drawings listed below except insofar as amended by the terms of and conditions attached to this permission. The approved planning drawings are:

- HC_160506_PA1 (*Figure 1, Location and Site Plan*)
- HC_160503_PA2 (*Figure 2, Turbine Model*)
- HC_160506_PA3 (*Figure 3, Site Entrance*)
- HC_160420_PA4 (*Figure 4, Permanent Anemometer Mast*)
- HC_160506_PA6 (*Figure 6a, Control Building and Substation Compound*)

Reason: to ensure the development is carried out in accordance with the approved drawings.

Timing and Operation

2. This planning permission shall lapse on the expiration of a period of five years from the date of this decision notice, unless development has begun within that period.

Reason: to apply a reasonable time limit on implementation.

3. The permission for the development (excluding the access tracks) shall expire after a period of 26 years beginning on the date when electricity is first exported commercially to the electricity grid network, following commissioning of any of the wind turbines ('first export date'). Written confirmation of the first export date shall be provided to the planning authority within 1 month of the first export date.

Reason: in recognition of the expected lifespan of the wind farm.

4. If any turbine fails to supply electricity to the grid for a continuous period of 12 months then, unless the turbine is in the process of being repaired or replaced or otherwise agreed in writing by the planning authority, a scheme for the removal of the wind turbine and any surface ancillary works solely relating to that wind turbine should be submitted in writing to the planning authority within 18 months of the turbine first ceasing to supply electricity. The approved scheme shall thereafter be fully implemented in accordance with the agreed timescales.

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

Decommissioning

5. Not later than 12 months before intended decommissioning, or the end of this permission as stated in condition 3, whichever is sooner, a decommissioning and site restoration scheme shall be submitted to and agreed in writing by the planning authority. Such a scheme shall include the removal of above-ground elements of the development (excluding the access tracks which will be left in situ unless otherwise agreed with the planning authority), the management and timing of any works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. The scheme shall be implemented in accordance with such timescales and measures as may be agreed by the planning authority.

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

6. No turbine shall be erected (including formation of turbine foundations) as allowed for by this planning permission until details of the financial provision to be put in place to cover the full cost of decommissioning and site restoration have been submitted to the planning authority. Following approval by the planning authority of the proposed financial provision, documentary evidence shall be provided to the planning authority to confirm these provisions are in place and, thereafter, the provision must be kept in place until site decommissioning and restoration is complete in accordance with condition 5.

The value of the financial provision shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations contained in condition 5. The value of the financial provision shall be reviewed by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations.

Reason: to guarantee the restoration of the site following cessation of the development.

Micro-Siting

7. All infrastructure comprised in the development shall be erected, constructed or formed in the positions indicated on approved drawing HC_160506_PA1_v4 save that without further recourse to the planning authority, the final as built position of (a) any turbine and associated crane pad, the met mast and access track may vary by up to 50 metres in any direction and (b) the control building, substation compound and temporary construction compound may vary by up to 100 metres in any direction, provided that any such variation does not infringe any requirement of any other condition attached to this permission.

Unless approved by the ECoW (appointed under condition 12), any micro-siting under this condition shall not result in:

- a. any infrastructure being located in areas of peat with a depth in excess of 2 metres;
- b. other than watercourse crossings, any infrastructure within 50 metres of any existing watercourses;
- c. new access tracks being located within 100 metres of any existing private water supplies; or,
- d. infrastructure (other than new access tracks) within 250 metres of any existing private water supplies.

Reason: to provide flexibility to take account of local ground conditions as provided for and assessed in the ES.

Construction Environmental Management Plan

8. No development shall commence until a construction and environmental management plan (CEMP), incorporating mitigation measures specified within the Environmental Statement, has been submitted to and agreed in writing by the planning authority. The required documents shall address the following:
- a. Construction Resource Management Plan (addressing site waste including details setting out how any forestry waste will be managed);
 - b. Dust management including cleaning arrangements for the site entrance and the adjacent public road (the A83);
 - c. Pollution prevention and control measures;
 - d. Arrangements for on-site storage of fuel and other chemicals;
 - e. Details of temporary site illumination;
 - f. Details of the methods to be adopted to limit the effects of noise occurring during the construction period; and,
 - g. Post-construction restoration/reinstatement of the temporary working areas within the site.
 - h. pre-construction surveys for species as set out in the Environmental Statement for otter and water vole, pine marten, red squirrel and breeding birds (in particular for hen harriers and black grouse).
 - i. Details of access arrangements for the Kintyre Way during the period of construction.
 - j. Details of temporary water and foul drainage arrangements.
 - k. Details of any water course engineering works including any stream crossings;

The agreed CEMP shall thereafter be fully implemented.

Reason: to set out the detailed site development methodology including measures to control pollution of air, land and water and to ensure full consideration of all consequential effects arising during the construction period.

Traffic and Site Entrance

9. Development shall not commence until a traffic management plan (TMP) has been submitted to, and agreed in writing by, the planning authority either for a specified sub-phase of construction or for the whole phase if the required information is available.

The TMP shall include information on materials (including details of any quarries being used to source road construction materials), plant, equipment, components and labour required during construction as well as details of escorts for abnormal loads, access and egress arrangements for abnormal loads, concrete wagons and heavy goods vehicles (including potential out of hours deliveries) and a local signage scheme, the scheduling and timing of abnormal load movements, pre and post construction surveys, and a programme and methodology for any repairs as a consequence of any damage caused by construction traffic.

The works shall then be carried out in accordance with the agreed TMP.

Reason: to ensure that all necessary information is made available regarding construction traffic arriving at the site and how this will then be managed to minimise adverse impacts on residents and local businesses in the area.

10. The proposed route for any abnormal loads on the trunk road network will be approved by the planning authority following consultation with Transport Scotland prior to the movement of any abnormal load. Any accommodation measures required (including the removal of street furniture, junction widening, or traffic management measures on the trunk road network) will be approved in advance by the planning authority in consultation with Transport Scotland and will be undertaken by a recognised Quality Assured traffic management consultant.

Reason: to ensure that all necessary information is made available regarding abnormal load routing and accommodation measures and how this will be managed to minimise adverse impacts on amenity.

11. The detailed design of the proposed turning area at the access to the trunk road shall be submitted to, and approved in writing by the planning authority in consultation with Transport Scotland prior to the commencement of those works.

Reason: to ensure highway safety is maintained.

Ecology

12. An ecological clerk of works (ECoW) shall be appointed to supervise all works of construction and dismantling of the wind farm. The identity of and terms of appointment for the ECoW shall be submitted to and agreed in writing by the planning authority and they shall be employed by the wind farm developer for the periods of:
 - a. wind farm construction, including site preparation, micro-siting and

post- construction restoration; and,

- b. wind farm decommissioning and site restoration.

In relation to (a) the terms of appointment shall be submitted prior to the commencement of the development and in relation to (b), prior to the commencement of any decommissioning works.

The terms of appointment shall require the clerk of works to:

- review site specific plans to inform the requirement for micro-siting, to minimise the potential for effects on otter and water vole, pine marten, red squirrel and breeding birds (particularly hen harriers and black grouse).
- carry out pre-construction surveys to inform the CEMP.
- monitor compliance with the decommissioning and site restoration scheme required in terms of condition 5, the ecological aspects of the CEMP required in terms of condition 8, the habitats management plan required in terms of condition 13, the peat management plan required in terms of condition 14 and the drainage scheme referred to in condition 30.
- report to the Company's nominated construction project manager any incidences of non-compliance at the earliest practical opportunity;
- submit a monthly report to the planning authority summarising works undertaken on site; and,
- report to the planning authority any incidences of noncompliance at the earliest practical opportunity.

Reason: to secure effective monitoring of and compliance in the interests of nature conservation and environmental protection.

13. Prior to the commencement of development, a habitat management plan (HMP) shall be submitted to and approved in writing by the planning authority. The HMP shall set out proposed habitat management measures within the wind farm site during the period of construction, operation, decommissioning and restoration of the site, and shall unless otherwise agreed with the planning authority be consistent with the outline terms described in section 9.6.13 of the environmental statement. Unless otherwise agreed in advance in writing with the planning authority, the approved HMP shall be implemented in full.

Reason: in the interests of the protection and enhancement of habitats.

14. A peat management plan shall be submitted to and approved in writing by the planning authority prior to the commencement of development. The approved

peat management plan shall be implemented in full for the duration of construction works, unless any intended revisions are submitted to and agreed in writing by the planning authority.

Reason: in the interest of ensuring the conservation of peat resources.

15. Any active black grouse lekking sites identified in pre-construction surveys undertaken as part of condition 14 shall be subject to a 500 metre buffer zone, within which no construction activity shall be allowed during the period of 1 hour before to 1 hour after sunrise during April and May. No construction activity will take place within 500 metres of any occupied hen harrier nest identified.

Reason: in the interests of nature conservation and to ensure that appropriate controls are applied if active black grouse lekking or hen harrier nesting sites are found.

Construction Hours and Timings

16. (1) Save as provided in 16(2) below, the hours of operation during the construction phase of the development shall be limited to 0700 hours to 1900 hours on Monday to Friday, 0900 to 1700 on Saturday, and no work shall take place on Sundays or public holidays unless previously agreed in writing by the planning authority. Piling shall not take place on Sundays or Bank holidays or during the night-time periods.

(2) Turbine delivery and erection, commissioning, maintenance and the delivery and pouring of concrete foundations (provided that the developer notifies the planning authority of any such works within 24 hours if prior notification is not possible) may take place outside the hours specified in 18(1) above. In addition, access is permitted out with the above hours for security reasons, emergency responses or to undertake any necessary environmental controls or environmental surveys.

Reason: in the interest of residential amenity.

Turbine appearance

17. The turbine selected and installed at the site shall not exceed the blade tip height of 126.5 meters above ground level except for turbine 1 which shall not exceed the blade tip height of 115.5 metres above ground level.

Reason: in order to ensure that the development adheres to the design parameters considered in the assessment of the proposal.

18. Prior to turbine erection, details of the wind turbine external finish and colour shall be submitted to and agreed in writing by the planning authority. Only wind turbines and a meteorological mast with the agreed finish and colour shall be installed within the development site. No illumination (with the exception of aviation safeguarding lighting required under condition 23) shall be permitted, nor shall any symbols, signs, logos, or other lettering, except as may be required by law, be applied to the

turbines without the prior written agreement of the planning authority. The development shall be implemented in accordance with the agreed details.

Reason: for the avoidance of doubt and in the interest of visual amenity.

19. All turbines rotors shall rotate in the same direction.

Reason: in the interest of visual amenity.

Control building and compound details

20. Prior to the commencement of construction of the control building and substation compound, final details of the size, form and external finish of the control building and all ancillary structures shall be submitted to, and agreed in writing by, the planning authority. The development shall be implemented in accordance with the duly agreed details.

Reason: in order to secure an appropriate appearance in the interests of amenity and to assimilate the building into the landscape setting.

Aviation

21. Prior to the erection of the first wind turbine, the developer shall provide written confirmation to the Civil Aviation Authority and the Ministry of Defence of the anticipated date of commencement of, and completion of, construction; the height above ground level of the highest structure in the development; and the position of each wind turbine in latitude and longitude.

Reason: in the interests of aviation safety.

22. Prior to the erection of the first wind turbine a scheme of aviation lighting for the wind farm shall be submitted to and agreed in writing by the planning authority in consultation with the Ministry of Defence. The turbines shall be erected with the agreed lighting installed and the lighting shall remain operational throughout the lifetime of the wind farm.

Reason: in the interests of aviation safety.

Television reception

23. There shall be no Commencement of Development unless a Television Reception Mitigation Plan has been submitted to, and approved in writing by, the planning authority. The Television Reception Mitigation Plan shall provide for a baseline television reception survey to be carried out prior to the installation of any turbine forming part of the Development, the results of which shall be submitted to the planning authority.

The approved Television Reception Mitigation Plan shall thereafter be implemented in full.

Any claim by any individual person regarding television picture loss or interference at their house, business premises or other building, made during the period from installation of any turbine forming part of the Development to the date falling twelve months after the date of Final Commissioning, shall be investigated by a qualified engineer appointed by the Company and the results shall be submitted to the planning authority. Should any impairment to the television signal be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline television reception.

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

Forestry

24. Prior to the commencement of any felling activity required to construct the wind farm (a) the long term forest plan for the wind farm site and (b) details of the scheme to be put in place for any compensatory planting for any trees felled and not replanted on site which is required pursuant to the terms of the Scottish Government Policy on the Control of Woodland, shall be submitted to and agreed in writing by the planning authority.

The scheme shall include replanting proposals for those trees lost during the construction work associated with the realignment of the road access and haul road.

The agreed scheme shall be implemented until the woodland(s) referred to within this condition are established unless otherwise agreed in writing by the planning authority. Thereafter, responsibility for ensuring on-going compliance with the UK Forest Standard will revert solely to Forestry Commission Scotland.

Reason: to ensure compliance with Scottish Government Policy on the Control of Woodland and to maintain the setting of the listed 'Dolls houses' in the long term.

Tree removal and the UK Forestry Standard

25. Prior to the commencement of felling a suitably qualified professional forester shall be appointed to oversee the forestry works on the site.

Details of the volume and physical characteristics of any chipped/mulched waste that will be generated along with a management plan for this waste shall, unless otherwise agreed with the planning authority, be included as part of the CEMP (or Construction Resource Management Plan if prepared separately) to be submitted to and agreed in writing by the planning authority pursuant to condition 8 attached to this permission. Thereafter forestry works shall proceed in accordance with the details of the duly agreed forestry waste management plan.

Reason: in the interests of environmental protection and to ensure compliance with

Scottish Environment Protection Agency and Forestry Commission Scotland guidance on forestry wastes.

Archaeology

26. Prior to commencement of development a written scheme of archaeological investigation shall be submitted to and agreed in writing by the planning authority. Thereafter the agreed scheme shall be fully implemented.

Reason: to enable the opportunity to identify and examine any items of archaeological interest which may be found on the site.

Operational Noise Limits

27. The following noise conditions will apply:

1. The level of noise immissions from the combined effects of the wind turbines at Clachaig Glen wind farm (including the application of any tonal penalty) when calculated in accordance with “A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise “ published by the Institute of Acoustics in May 2013 (unless the guidance has been superseded in which case the procedure shall be consistent with any updated guidance endorsed by national planning policy as representing best practice or any updated guidance published by the Institute of Acoustics where guidance endorsed by national planning policy does not exist) shall not exceed the values set out in Tables 1 to 4 as appropriate. Noise limits for dwellings which lawfully exist or have planning permission for construction at the date of this consent but are not listed in the tables below shall be those of the physically closest location listed in the tables unless otherwise agreed by the planning authority.

**Table 1 – LA_{90,10min} dB Wind Turbine Noise Level between 07:00 and 23:00 hours
Killean Windfarm NOT permitted**

Location	Standardised wind speed (m/s) at 10m height within the site averaged over 10 minute periods									
	4	5	6	7	8	9	10	11	12	
Braids	40.0	40.0	40.0	40.0	40.8	43.1	45.8	49.0	52.7	
Beacharr	43.8	45.7	46.1	45.7	45.2	45.3	46.7	50.4	56.9	
North Beachmore	36.7	40.4	43.0	45.1	46.8	48.6	50.8	53.7	57.7	
North Crubasdale	35.0	36.8	39.4	41.4	43.2	45.0	47.3	50.3	54.4	
High Clachaig	39.5	41.9	43.0	43.4	43.5	44.1	45.6	48.7	54.0	
Low Clachaig	39.5	41.9	43.0	43.4	43.5	44.1	45.6	48.7	54.0	

Table 2 – LA_{90,10min} dB Wind Turbine Noise Level between 23:00 and 07:00 hours Killean Windfarm NOT permitted

Location	Standardised wind speed (m/s) at 10m height within the site averaged over 10 minute periods									
	4	5	6	7	8	9	10	11	12	
Braids	43.0	43.0	43.0	43.0	43.0	44.1	47.1	50.7	50.7	
Beacharr	44.8	44.7	44.9	45.3	45.9	46.9	48.3	50.1	52.3	
North Beachmore	43.0	43.0	44.5	45.6	46.6	47.8	49.8	53.2	58.4	
North Crubasdale	43.0	43.0	43.0	43.0	43.4	44.4	46.2	49.1	53.8	
High Clachaig	43.0	43.0	43.5	43.7	43.7	44.0	45.1	47.7	52.3	
Low Clachaig	43.0	43.0	43.5	43.7	43.7	44.0	45.1	47.7	52.3	

Table 3 – LA_{90,10min} dB Wind Turbine Noise Level between 07:00 and 23:00 hours Killean Windfarm permitted

Location	Standardised wind speed (m/s) at 10m height within the site averaged over 10 minute periods									
	4	5	6	7	8	9	10	11	12	
Braids	30.3	30.3	30.8	32.5	32.8	33.4	36.1	39.3	43.0	
Beacharr	42.5	44.4	44.8	44.4	43.9	44.0	45.4	49.1	55.6	
North Beachmore	36.0	39.7	42.3	44.4	46.1	47.9	50.1	53.0	57.0	
North Crubasdale	34.2	36.0	38.6	40.6	42.4	44.2	46.5	49.5	53.6	
High Clachaig	39.5	41.9	43.0	43.4	43.5	44.1	45.6	48.7	54.0	
Low Clachaig	39.5	41.9	43.0	43.4	43.5	44.1	45.6	48.7	54.0	

Table 4 – LA_{90,10min} dB Wind Turbine Noise Level between 23:00 and 07:00 hours Killean Windfarm permitted

Location	Standardised wind speed (m/s) at 10m height within the site averaged over 10 minute periods									
	4	5	6	7	8	9	10	11	12	
Braids	33.3	33.3	33.3	33.3	33.3	34.4	37.4	41.0	41.0	
Beacharr	43.5	43.4	43.6	44.0	44.6	45.6	47.0	48.8	51.0	
North Beachmore	42.3	42.3	43.8	44.9	45.9	47.1	49.1	52.5	57.7	
North Crubasdale	42.2	42.2	42.2	42.2	42.6	43.6	45.4	48.3	53.0	
High Clachaig	43.0	43.0	43.5	43.7	43.7	44.0	45.1	47.7	52.3	
Low Clachaig	43.0	43.0	43.5	43.7	43.7	44.0	45.1	47.7	52.3	

Table 5 – Coordinates of properties listed in Tables 1 to 4

Location	Eastings	Northings
Braids	171851	644762
Beacharr	169345	643214
North Beachmore	168900	641964
North Crubasdale	168734	641141
High Clachaig	169985	640844
Low Clachaig	169494	640379

2. 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 part 1 above. The report shall include details of any proposed noise reduction measures and be prepared with reference to the Institute of Acoustics Good Practice Guide to the Application of ETSU-R-97 and associated supplementary guidance notes.
3. 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 following procedures to be agreed with the planning authority in accordance with "A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise " published by the Institute of Acoustics in May 2013 (unless the guidance has been superseded in which case the procedure shall be consistent with any updated guidance endorsed by national planning policy as representing best practice or any updated guidance published by the Institute of Acoustics where guidance endorsed by national planning policy does not exist).
4. The wind turbine operator shall provide to the planning authority the independent consultant's assessment and conclusions regarding the said noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information shall be provided within 2 months of the date of the written request of the planning authority unless otherwise extended in writing by the planning authority. The wind turbine operator shall take such remedial action required to meet the noise immission values set out in Tables 1 to 4 as appropriate.
5. Wind speed, wind direction and power generation data shall be continuously logged and provided to the planning authority in a format to be agreed at its request and within 28 days of such a request. Such data shall be retained by the operator for a period of not less than 12 months.
6. No development shall commence until there has been submitted to the planning authority details of a nominated representative for the development to act as a point of contact for local residents (in connection with parts 1 - 5) together with the arrangements for notifying and approving any subsequent change in the nominated representative. The nominated representative shall have responsibility for liaison with the planning authority in connection with any noise complaints made during the construction, operation and decommissioning of the wind turbines.

Reason: to protect nearby residents from undue noise disturbance.

External Lighting

28. Details of any external lighting to be used within the site and along its access

during construction shall be submitted to, and agreed in writing by, the planning authority prior to the use of any such lighting. Such information shall include details of the location, type and angle of direction and wattage of each light, which shall be positioned and angled where practicable to prevent any glare or light spillage out with the site boundary. No external lighting shall be used after the first export date unless otherwise agreed in writing by the planning authority.

Reason: in order to avoid the potential of light pollution infringing on surrounding land uses and properties taking into account the guidance in respect of intrinsically dark areas.

Drainage Strategy

29. No development shall commence until a drainage strategy has been submitted to and approved in writing by the planning authority in consultation with Scottish Environment Protection Agency. The drainage strategy will set out details in respect of permanent and temporary drainage measures, including sustainable drainage system design concept including run-off and sediment control measures, any flood risk management measures, details of any watercourse engineering works and foul drainage arrangements. Thereafter the agreed Drainage Strategy shall be fully implemented.

Reason: to ensure the provision of an acceptable drainage system in the interests of the amenity in the area.

30. No development shall commence until a scheme for risk assessment, appraisal and any mitigation work to private water supplies in the vicinity of the development has been submitted to and approved in writing by the planning authority. Thereafter the agreed scheme and any mitigation works shall be fully implemented.

Reason: to ensure that there is no impact on private water supplies in the area.

Borrow Pits

31. For the avoidance of doubt this permission should not be construed as conferring consent for the working of any borrow pits within the application site, the provision of which would require to be the subject of separate applications to the planning authority for mineral planning consent.

Reason: for the avoidance of doubt and having regard to the need for separate planning permission.

Guidance Notes for Noise Conditions

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the

publication entitled “The Assessment and Rating of Noise from Wind Farms” (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

- (a) Values of the LA90,10 minute noise statistic should be measured at the complainant’s property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 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 wind farm operator shall submit for the written approval of the planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The LA90,10 minute measurements should be synchronised with measurements of the 10- minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator 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

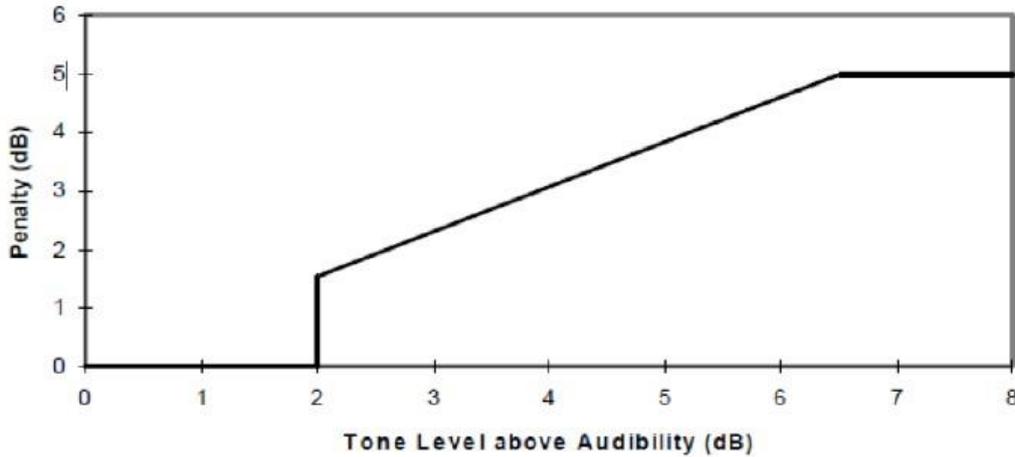
- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)
- (b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods 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 planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

- (c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90,10}$ minute noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (d) 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. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- (a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the planning authority in its written protocol under paragraph (d) of the noise condition.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant’s dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
- (e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the planning authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.
- (f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- (g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

- (h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.

PPA-130-2064 PLANNING APPEAL: ERECTION OF 14 WIND TURBINES AND ASSOCIATED WORKS AT LAND NORTH EAST OF MUASDALE, CLACHAIG GLEN, KINTYRE, ARGYLL

APPROPRIATE ASSESSMENT

Procedures

1. The Clachaig Glen wind farm has been identified as giving rise to likely significant effects on Kintyre Goose Roosts Special Protection Area (either alone or in combination with other wind farms) and before it can be consented requires to be the subject of an Appropriate Assessment to accord with the requirements of Article 6(3) of the Habitats Directive, which in Scotland is transposed by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended. This legislation is known as the Habitats Regulations.

2. An Appropriate Assessment (AA) determines the potential significant effects of a project or plan on listed European species and habitats.

Assessment

3. The following is an appropriate assessment undertaken by Planning and Architecture Division (PAD) on behalf of Scottish Ministers.

4. At paragraph 6.62 of their report to Ministers, dated 14 Oct 2019, the appointed reporters have recommended that Ministers could adopt the council's reasoning in its Appropriate Assessment which is set out at Appendix 4 to that report. And, in doing so, Ministers should have regard to the submission produced by the appellant to assist in the Appropriate Assessment process – appeal production ECG 1.9. Both of these documents have been taken into account and are attached as annexes to this assessment.

5. Drawing upon the consultation advice of SNH and the RSPB, the Appropriate Assessment by Argyll and Bute Council has concluded that it has been demonstrated that this proposal will not adversely affect the integrity of the Kintyre Goose Roosts Special Protection Area and that the proposal will not adversely affect the integrity of the site for the qualifying interests.

6. The submission produced by the appellant to assist in the Appropriate Assessment process (appeal production ECG 1.9 as copied in the attached annex), also demonstrates that the development is not predicted to have any adverse effect on the integrity of the SPA or any other Designated European Sites, alone or in combination with other projects.

Consideration

7. Planning and Architecture Division (PAD) on behalf of Scottish Ministers have taken into account both submissions and adopt the reasoning as their own. PAD have also taken into account and agree with the reporters' conclusion at 6.62 of their 14 Oct 2019 report, that noting the findings of the council's appropriate assessment, they note that they are satisfied that from their assessment of the

implications for the Kintyre Goose Roosts Special Protection Area, and having regard to the site's conservation objectives, the evidence demonstrates that development would not have an adverse effect on the integrity of the Special Protection Area. PAD note that the reporters find that there is no policy concern in this respect. PAD note that reporters have reached this conclusion having regard the position of Scottish Natural Heritage, which does not object to the development and is itself of the view that the integrity of the Special Protection Area would be unaffected.

Conclusion

8. On behalf of Scottish Ministers PAD are satisfied that requirements in terms of the Habitats Regulations have been met, and are satisfied that the information provided demonstrates that the development is not predicted to have any adverse effect on the integrity of the Kintyre Goose Roosts SPA or any other Designated European Sites, alone or in combination with other projects.

Planning & Architecture Division
On behalf of Scottish Ministers
18 December 2019

ANNEX A : ARGYLL AND BUTE COUNCIL HABITATS REGULATIONS APPROPRIATE ASSESSMENT

Note: Appropriate Assessment relates to 'Designations' rather than 'Species'. As there are no Golden Eagle SPA's close to/on the site, although they are an Annex 1 protected species which frequent the area, they are not required to be included in this Appropriate Assessment.

The proposal is 4km from the Kintyre Goose Roosts Special Protection Area (SPA), Kintyre Goose Lochs Site of Special Scientific Interest (SSSI) and Kintyre Goose Roosts Ramsar site. all classified for wintering Greenland white-fronted geese. The status of the SPA designated under European legislation for its internationally important wintering population of Greenland white-fronted goose (*Anser albifrons flavirostris*) means that the requirements of the Conservation (Natural Habitats & c.) Regulations 1994 as amended (the "Habitats Regulations") apply, or (for reserved matters), the Conservation of Habitats and Species Regulations 2010 as amended apply. Consequently, the Council is required to consider the effect of the proposal on the SPA before it can be approved (commonly known as Habitats Regulations Appraisal).

SNH have advised the Council in this matter and have taken the view that this proposal has potential to have a significant effect on the Greenland white-fronted goose qualifying interest(s) of the site. In these circumstances, in accordance with the aforementioned regulations, an 'appropriate assessment' is required to be carried out by the Council in its capacity as 'competent authority', in view of the site's conservation objectives for its qualifying interest(s).

The appraisal SNH carried out considered the impact of the proposal on the following factors:

Is the plan or project directly connected with or necessary to site management for nature conservation? - This is a wind farm proposal which is not connected with or necessary to site management of any of the SPA lochs for nature conservation.

Is the plan or project (either alone or in combination with other plans or projects) likely to have a significant effect on the site? - There is likely significant effect on the Greenland white-fronted goose interest feature of the Kintyre Goose Roosts SPA. This is because the distance to turbines is within the known foraging range of the geese. Kintyre Goose Lochs SSSI and Kintyre Goose Roosts Ramsar site may also be affected but any concerns about the interests of these designations are fully addressed as part of the following consideration of the SPA.

SNH has concluded that the proposal is likely to have a significant effect on the SPA site.

Can it be ascertained that the proposal will not adversely affect the integrity of the site?

SNH concludes that, in their view, based on the information provided and appraisal carried out to date, the proposal will not adversely affect the integrity of the site. No flights by Greenland white-fronted geese were recorded within 500m of the proposed turbine locations. There is therefore a very low risk of collisions. Greenland whitefronted goose flight activity was found to be mostly following the glen to the southeast of the site and to the north of the site. The proposed turbine array avoids those flight line areas. No geese were recorded feeding or roosting in or near the proposed site and so there is also a very low likelihood of any displacement and disturbance effects.

SNH advise that there would be no adverse effect on the Kintyre Goose Roosts Special Protection Area (SPA). Their position is endorsed by the RSPB who likewise indicate their

opinion for the requirement for 'appropriate assessment' but advise of their conclusion that the impacts are unlikely to be significant in this case. In circumstances where the applicant's assessment accords with the views expressed in consultation responses by both SNH and the RSPB it can be concluded that there is an absence of 'reasonable scientific doubt' in this case and that Habitats Directive interests will be safeguarded by this proposal.

Consultation advice from SNH and RSPB has informed the Council's conclusion in the matter, which is that it has been demonstrated that this proposal will not adversely affect the integrity of the SPA and that the proposal will not adversely affect the integrity of the site for the qualifying interests.

ANNEX B : APPEAL PRODUCTION ECG 1.9 - INFORMATION PROVIDED BY THE APPELLANT TO REPORTERS TO INFORM THE APPROPRIATE ASSESSMENT – DATED 27 NOV 2018

Extract from production

This submission is made on behalf of E.ON Climate and Renewables UK Developments Limited (the "**Appellant**") and responds to a request from the Reporter for a summary of environmental information in relation to the potential effects of Clachaig Glen Wind Farm ('**the Development**') on ecological sites designated under the Habitats and Birds Directives¹ ('**Designated European Sites**') to aid the appropriate assessment ('**AA**') process.

Background

Under Article 6(3) of the Habitats Directive, an AA is required where a plan or project is likely to have a significant effect upon a Designated European Site, either individually or in combination with other plans or projects. Where an AA is necessary, it must determine whether or not the project will have an adverse effect on the integrity of the relevant Designated European Site.

In Scotland the requirements of Article 6(3) of the Habitats Directive, which contains the AA requirement, is transposed by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (see Regulation 48). This legislation is known as the Habitats Regulations.

The only Designated European Site found within the study area² for the EIA was the Kintyre Goose Roosts Special Protection Area (SPA), which consists of six separate parcels both to the north and south of the Development, the closest part of which is approximately 3km to the north (Figure 10.1, Environmental Statement (ES) Volume 2b). This SPA is designated for a nationally important population of wintering Greenland white-fronted geese. No other European Designated Sites requiring consideration have been identified by the Appellant or any consultees.

The closest roost site of this bird species identified within this European Designated Site was located more than 4km from the nearest proposed turbine location. Due to this and the 3km distance of the SPA from any construction activity relating to the Development, the EIA concluded that no disturbance is anticipated from construction (see paragraph 10.4.1, ES Volume 2a).

Additionally, due to an absence of observed flight activity within 500m of the Development Site as determined from site-specific survey work undertaken on behalf of the Appellant, it was concluded that there is no connectivity between the Development Site and the SPA. On this basis an AA is not considered to be required by the Appellant (see paragraph 10.4.2, ES Volume 2a).

It is noted that Scottish Natural Heritage ('**SNH**') advised that, in their opinion, an AA would be required as the distance to turbines is within the known foraging range of the geese, and therefore it is considered that there is a likely significant effect on the Greenland white-fronted goose interest feature of the Kintyre Goose Roosts SPA 3. Greenland white-fronted geese may forage up to a maximum distance of 5-8 km from roosting sites during the winter season (see paragraph

10.4.1, ES Volume 2a). However, SNH goes on to advise that there would be no adverse effect on the integrity of the SPA, as there is a very low risk of collisions and a very low likelihood of any displacement and disturbance effects.

Summary of Information to Inform Appropriate Assessment

The Environmental Impact Assessment (EIA) conducted for the Development evaluated the likely significant effects on ecological resources and birds and the findings are reported in Chapters 9 and 10 of Volume 2a of the ES respectively. This was achieved through describing the baseline as identified through a site survey and desk study; highlighting important features, including Designated European Sites; and assessing whether the potential impacts of the Development were likely to give rise to a significant ecological effect.

As noted in section 7.2.2 of the Scoping Report (see Appendix 5.2, ES Volume 3), a Geographical Information System (GIS) database was used initially to undertake a search for European Designated Sites within a 30km radius of the Development Site.

This confirmed there were no European Designated Sites present within the Development Site. It further confirmed that the only European Designated Sites within 5km was the SPA (see Table 7.1(a) of the Scoping Report).

As set out in Table 7.1(a) of the Scoping Report, the SPA qualifies under Article 4.1 of the Birds Directive as an SPA by supporting an overwintering population of Greenland white-fronted goose *Anser albifrons flavirostris* listed on Annex I of the Directive. The population size is 2,323 individuals representing at least 16.6% of the wintering population in Great Britain. The SPA is designated as a Ramsar site for hosting a population of Greenland white-fronted goose of international importance. The population represents an average of 8.5% of the total population.

Further information on the SPA (including the site conservation objectives) can be found on SNH's Sitelink website at: <https://sitelink.nature.scot/site/8518>. SiteLink records that last condition assessment of its conservation status carried out by SNH found the SPA to be "*favourably maintained*" and subject to "*no negative pressures*".

The Conservation Objectives for the SPA are as follows:

To avoid deterioration of the habitats of the qualifying species (listed below) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and

To ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site*
- Distribution of the species within site*
- Distribution and extent of habitats supporting the species*
- Structure, function and supporting processes of habitats supporting the species*
- No significant disturbance of the species*

Vantage Point (VP) surveys were conducted as part of the EIA between November 2014 and April 2016 (see paragraph 10.3.3, ES Volume 2a). In terms of birds of high conservation importance, there were 18 flights recorded by Greenland white-fronted geese, comprising 557 individuals (see paragraph 10.3.4, ES Volume 2a).

Figure 10.3 (ES Volume 2b) illustrates that flight activity was mostly to the north of the Development, around the area of the proposed Killean Wind Farm, and to the south-east.

These VP surveys confirmed the absence of any flight activity by this species within 500m of a proposed turbine location within the Development Site and therefore a collision risk assessment was not required (see paragraph 10.3.8, ES Volume 2a). Accordingly, no connectivity was established between the Development Site and the Kintyre Goose Roosts SPA (see paragraph 10.4.2, ES Volume 2a).

No likely significant effect was therefore found from the Development on the SPA or on any other Designated European Site.

For completeness, regarding other ecological receptors and bird species which do not form part of the SPA designation:

□ The loss of important local habitats, such as semi-natural woodland and blanket bog, from the construction and widening of access track corridors was initially identified as potentially significant; however mitigation including post consent micro-siting and further design work undertaken in conjunction with a suitably qualified ecologist, as well as compensatory planting, reduced this to not significant (see Table 9.7, ES Volume 2a);

□ The permanent effect of grassland habitat loss within open areas of conifer plantation (local importance) was initially identified as potentially significant, however mitigation relating to Cnoc na Seilg borrow pit (developing the borrow pit only if others fail to yield sufficient materials, phasing its development and producing a restoration plan), reduced this to not significant (see Table 9.7, ES Volume 2a); and,

□ Minor adverse effects were predicted for golden eagle due to a potential increase in collision mortality, however this was found to be of low magnitude and minor significance, as the additional loss of one golden eagle every ten years would not adversely affect the favourable conservation status of the species in the Argyll West and Islands Natural Heritage Zone (NHZ 14) (see paragraph 10.4.25, ES Volume 2a).

Section 10.7 of the ES also presented the results of a cumulative impact assessment considering all windfarms which were operational, consented or subject of a submitted application in NHZ 14 at the time of writing (26 in total). It concluded that there would be no likely significant effect on the potential collision mortality of golden plovers or hen harriers, or on the loss of habitat for golden eagles. The collision mortality on golden eagles from all the wind farms in the

study area were considered to be of low magnitude, representing a minor effect on NHZ 14, with the current conservation status of this species unchanged.

Consultation

SNH responded to the local authority's consultation regarding the planning application for the Development on the 15 June 2016. No objection to the Development was raised and advice was provided which mainly focussed on landscape, visual and cumulative effects.

Section 3.2 of SNH's consultation response deals with European Designated Sites. Although SNH considers there is a likely significant effect on the Greenland white-fronted goose interest feature of the SPA due to the distance to the turbines being within the known foraging range of the geese, SNH concludes that "*there would be no adverse effect on the integrity of the [SPA]*".

In reaching this conclusion, SNH notes no flights were recorded within 500m of the proposed turbine locations and therefore they agree there is a "*very low risk of collisions*." SNH advises that flight activity was found to be mostly following the glen to the south-east and to the north of the Development Site. SNH additionally notes that no geese were recorded feeding or roosting in or near the Development Site, and accordingly advises that there is a "*very low likelihood of any displacement or disturbance effects*" (see section 3.2 of SNH letter, 15 June 2016).

The RSPB also responded to consultation on 25 July 2016 with no objection. In relation to Greenland white-fronted geese, the RSPB acknowledges that flights are all over 1km from the nearest turbine location and are orientated west-east, and so in their opinion "*potential impacts are likely to be low*". The RSPB did not recommend any specific measures in respect of Greenland white-fronted geese.

Taking account of the above, there was no objection to the planning application for the Development based on ecological impact, with Argyll and Bute Council's '*Committee Planning Application Report and Report of Handling*' (8 September 2017) stating:

"In circumstances where the applicant's assessment accords with the views expressed in consultation responses by both SNH and the RSPB it can be concluded that there is an absence of 'reasonable scientific doubt' in this case and that Habitats Directive interests will be safeguarded by this proposal. Consultation advice from SNH and RSPB has informed the Council's conclusion in the matter, which is that it has been demonstrated that this proposal will not adversely affect the integrity of the SPA and that the proposal will not adversely affect the integrity of the site for the qualifying interests."

Conclusions

I trust the above adequately addresses the Reporter's request with regards to a summary of the likely environmental effects of the Development on Designated European Sites.

An 'appropriate assessment' should be just that, and a short and simple AA should be sufficient to allow the Scottish Ministers to determine that the Development will not adversely affect the integrity of the Kintyre Goose Roosts SPA.

The information and advice summarised above demonstrates that the Development is not predicted to have any adverse effect on the integrity of the SPA or any other Designated European Sites, alone or in-combination with other projects.

The Appellant is aware of the recent rulings by the Court of Justice for the European Union ('ECJ') on 12 April 2018 and 25 July 2018 in relation to the Habitats Directive, which confirm mitigation measures cannot be taken into account when "screening" and determining the need for AA5 and clarify the distinction between mitigation (which can be taken into account as part of the AA) and compensation (which cannot)⁶. The conclusions in respect of the Development do not rely on any particular mitigation and therefore these rulings have no implications in this case and do not necessitate any further assessment to be undertaken.

The Appellant is also aware of the ECJ ruling of 7 November 2018⁷ which requires that, where a competent authority rejects the findings in a scientific expert opinion, the AA must include an explicit and detailed statement of reasons. In this case, the conclusion (no adverse effect on integrity) has been supported by SNH, RSPB, and Argyll and Bute Council. Given the consensus of professional opinion, there is no reasonable scientific doubt as to this conclusion.

Yours sincerely

AECOM Infrastructure & environment UK Limited