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21 October 2022

Dear Julie,

**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 ROTHES III WIND FARM IN THE MORAY COUNCIL PLANNING AUTHORITY AREA**

**Application**

I refer to the application made 01 February 2019 (the “Application”) under section 36 of the Electricity Act 1989 (“the Act”) by Natural Power, on behalf of Rothes III Limited (a wholly owned subsidiary company of Fred.Olsen Renewables Ltd, registered at 2nd Floor, 36 Broadway, London, England, SW1H 0BH), a company with registered number SC307540 and having its registered office c/o Harper Macleod LLP, The Cadoro, 45 Gordon Street, Glasgow, G1 3PE, (the “Company”), for the construction and operation of the proposed Rothes III Wind farm, a wind powered electricity generating station, to be located in the Moray Council planning authority area.

The Application proposed 29 turbines, (3 up to 149.9 metres (“m”), 8 up to 200 m, and 18 up to 225 m to blade tip height) and associated ancillary infrastructure including tracks and borrow pits (the “proposed Development”). The generating capacity will exceed 50 megawatts (“MW”), with an anticipated installed capacity of around 137.4 MW.

**This letter contains the Scottish Ministers’ decision to grant consent for the Rothes III Wind Farm, 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 1997 Act”) 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.**

## **Background**

The proposed Development would be sited approximately 4 kilometres to the west of Rothes village and just over 2.5 kilometres north of the village of Archiestown in Moray. The operational Rothes I and II wind farms are located immediately north west of the proposed Development site (now both operational).

The proposed Development site includes the northern and eastern slopes of Carn na Calliche Hill, and land surrounding Mannocho Hill, Hill of Stob, Cairn Cattoch and Hunt Hill and is currently used for commercial forestry and open hill with rough grazing, extending to approximately 1,397 hectares. Access for construction traffic would follow the same route as used for the existing Rothes I and II windfarms, from the A941, then on minor roads by Gedloch and Bardonside, then via the Mannocho Road. During operation, the proposed Development would also be accessed via the existing Rothes I and Rothes II wind farm entrance on the C13E public road to the west of the proposed Development between Dallas and Upper Knockando.

## **Consultation**

Under Schedule 8 to the Act, and the Electricity (Applications for Consent) Regulations 1990 (“the Consents Regulations”) made under the Act, the relevant planning authority is required to be notified in respect of a section 36 consent application. In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 Regulations”) on 1 February 2019 the Company submitted an Environmental Impact Assessment Report (“EIA Report”) describing the proposed Development and giving an analysis of its environmental effects.

In accordance with the Consents Regulations and the 2017 Regulations, a notice of the proposed Development was advertised in the local and national press and the opportunity given for those wishing to make representations to do so. In addition, to comply with the 2017 Regulations, Scottish Ministers were required to consult the relevant planning authority as well as NatureScot, the Scottish Environment Protection Agency (“SEPA”), and Historic Environment Scotland (“HES”) as well as any other public body likely to be concerned by the proposed Development by reason of their specific environmental responsibilities. Notification was sent to Moray Council (the “Planning Authority”) as well as to NatureScot, SEPA and HES. A wide range of other relevant organisations were also notified and consulted.

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations, and the 2017 Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representation on the proposed Development.

### **Public Inquiry**

In terms of paragraph 2(2) of Schedule 8 to the Act, if the relevant planning authority makes an objection to the application and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection.

As set out below, Moray Council, as the relevant planning authority, objected to the Application and did not withdraw that objection. The Scottish Ministers did not consider it possible to overcome the objection, by way of applying conditions to give effect to the Planning Authority's objection and caused a public inquiry to be held.

On the 13 September 2019 the Application was accordingly referred to the Planning and Environmental Appeals Division ("DPEA") for a public inquiry to be held.

### **Alternative Proposal**

Prior to arrangements being finalised in respect of the Public Inquiry, the Company notified the DPEA of its intention to submit additional environmental information ("2019 AI") to address objections from consultees and provide modifications and a reduction to the layout as an alternative to be considered at inquiry in addition to the proposed Development (the proposed "alternative Development").

The 2019 AI provides updated environmental information to enable an assessment of the significant effects, including the assessment of an alternative layout of the proposed Development and its reduction from 29 wind turbines to 23 wind turbines (15 turbines up to 149.9 metres to tip height and 8 turbines up to 175 metres to tip height), comprising of 4 volumes;

- Volume 1, a non-technical summary;
- Volume 2, a written statement;
- Volume 3a and 3b, visualisations and figures; and
- Volume 4, a technical appendix.

In accordance with the 2017 Regulations a copy of the 2019 AI was served on the Planning Authority and the relevant organisations that had previously been consulted on the EIA Report. Notice of the 2019 AI was advertised in the local and national press and the opportunity given for those wishing to make representations to do so.

## **Public Inquiry and its Report**

As a consequence of common issues, particularly in respect of the landscape and visual effects of the proposed Development and its cumulative interactions with Clash Gour Wind Farm, which had also been referred to the DPEA for a public inquiry to be held, the Scottish Ministers considered it expedient to combine the inquiry for the proposed Development with the one to be held into Clash Gour Wind Farm.

The Public Inquiry Reporters thereafter held a conjoined inquiry with Clash Gour Wind Farm (WIN-300-4) from 1 September - 16 September 2020. The Reporters conducted unaccompanied site inspections 4 and 5 February, 23, 24, 25 and 26 July 2020 and 5, 6, 7, 10, 11, 17 and 18 September 2020 and 13 November 2021. The report of that inquiry (“PI Report”) was received by the Scottish Ministers on 25 February 2022.

Supplementary environmental information was requested by the Reporters for the purposes of the inquiry (“March 2020 SI” and “April 2020 SI”). Details of these requests are set out at paragraphs 1.12 - 1.18 of the PI Report.

### **Deletion of Turbine 15 from the proposed Development**

To address concerns raised by SEPA, regarding the location of turbine 15 and its effects on peat in respect of the original proposal (i.e. the proposed Development), the Company proposed at inquiry that it should be deleted. The Reporters take account of this in paragraphs 1.6 and 3.186 and through paragraphs 6.9 – 6.17 in their consideration of the effects of the proposed Development.

The PI Report is arranged on a topic basis and takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the discussion at the inquiry and hearing sessions. It also takes account of the EIA Report, the 2019 AI, the March 2020 SI, the April 2020 SI as well as other environmental information submitted by the parties, and the written representations made in connection with the proposal. The chapters of the PI Report provide the following:

Chapter 1 – Background, consultations and representations

Chapter 2 – Legislative and policy context

Chapter 3 – Landscape and visual effects

Chapter 4 – Ornithology

Chapter 5 – Socio-Economic and Tourism Effects

Chapter 6 – Other matters comprising of:

- Geology, hydrogeology and hydrology (including impacts on peat and downstream flood risk and carbon balance)
- Ecology
- Forestry
- Relative wildness
- Cultural heritage

- Traffic and transport
- Public access to land
- Aviation and communications
- Noise
- Safety

Chapter 7 – Planning conditions (and monitoring)

Chapter 8 – Policy assessment, overall conclusions and recommendations.

**The Reporter’s recommendation is that the Scottish Ministers grant consent under section 36 of the Electricity Act 1989 and direct that planning permission is deemed to be granted; both subject to conditions.**

### **Summary of the Consultation Responses and Representations**

The following summary of consultation responses, unless otherwise stated, reflects the position of consultees in response to the proposed Development as presented originally in the Application as well as any further comments or position following the submission of the 2019 AI as well as the March 2020 SI and April 2020 SI.

#### **Statutory Consultees**

The Planning Authority **originally objected** on the basis that the proposed Development is contrary to relevant policies in the Moray Local Development Plan for the following reasons;

- Many of the turbines would be located close to the edges of, and outwith, the areas of potential for larger turbines within Landscape Character Type (“LCT”) 10. The proposed turbines would by virtue of their size and positions have significant adverse effects and dominate the smaller scale upland fringes in the Upper Knockando area.
- The significant adverse impacts on landscapes and views within Moray. Views from varying distances such as those from Ben Rinnes, Ben Aigen and the A95 south of Aberlour would excessively diminish the recreational and visitor experience where the countryside would be overly populated with windfarm developments.
- The influence of wind energy development on views north from within the Spey Valley Area of Great Landscape Value (“AGLV”). As development must not diminish the landscape quality within this designation the policy directly guides wind energy development proposals to compliance with the 2017 Moray Wind Energy Landscape Capacity Study (“MWELCS”). The proposed Development departing from the MWELCS therefore has an unacceptable impact upon the AGLV where the landscape would be detrimentally affected.
- The significant adverse cumulative effects upon the landscape and upon visual amenity resulting in the creation of a windfarm landscape.

- The submitted information is insufficient to enable Moray Council to consider the feasibility of the proposed Development in terms of the ability to deliver turbine components, the impact on the public road network and the identification of appropriate mitigation/modification or improvements necessary for the proposed Development. Furthermore, additional information would be required in relation to how the volumes of construction stone beyond that gleaned from on-site borrow pits have been calculated.

At PI, the Planning Authority updated but **maintained its objection** (in reference to their now adopted 2020 Local Development Plan), citing that the proposed Development;

- *“would have adverse landscape and visual effects meaning that it is not the right development in the right place”*
- *“It is contrary to national planning policy and the development plan.”*
- *“National energy policy does not tip the balance in its favour. Consent should consequently be refused.”*

The Planning Authority concluded at PI that *“neither the original nor the alternative proposal is the right development in the right place.”*

**HES** does not object to the proposed Development. It advises that the proposed Development does not raise issues of national significance in terms of historic environment interests.

**NatureScot** originally objected to the proposed Development until further detail of mitigation was available to demonstrate there would be no adverse effect on the integrity of Special Protection Areas (“SPA”s) designated for capercaillie. Although not forming part of its objection, NatureScot commented that, *“cumulatively, the proposed Development has the potential to significantly increase and intensify some adverse significant effects on some of the special landscape qualities (“SLQs”) of the Cairngorm National Park (“CNP”) but their limited extent on the north of the Park are unlikely to affect the integrity of the Park.”* NatureScot also advised that the design and scale of the proposed Development *“exceeds the capacity of the local landscape, eroding the effective design logic achieved for the original developments (Rothes I and II).”*

Following submission of the March 2020 SI its objection was withdrawn. It also confirmed the measures proposed in the SI and Habitat Management Plan would allow an appropriate assessment under the Habitats Regulations to conclude that the proposed Development would have no adverse effect on the integrity of the Anagach Woods or Darnaway and Lethen Forest SPAs.

**SEPA** objected to the proposed Development due to a lack of information in relation to peat management, borrow pits, groundwater dependent terrestrial ecosystems, forestry, crane hardstandings and cable trenches.

It maintained its objection to the 2019 AI advising it did not fully address its concerns due to a lack of information in regard to peat.

Of particular concern to SEPA was the location of turbine number 15 (“T15”). To remove its objection SEPA required T15 to be sited approximately 150m to the south of its current location to avoid an area of deep peat.

Following submission of the March 2020 SI, SEPA withdrew its objection to both the proposed Development and the alternative Development subject to the imposition of conditions relating to micro-siting of a number of turbines, a peat-management plan, construction environmental-management plan and habitat-management plan.

**The Scottish Ministers have imposed conditions as appropriate, recommended by the Reporters, which give effect to the requirements of the consultation bodies as set out above.**

#### Internal Scottish Government advisors

**Marine Scotland Science** (“MSS”) recommended the proposed Development be subject to the imposition of conditions requiring an integrated water quality, macroinvertebrate and fish population monitoring programme (based on MSS guidelines) to ensure impacts on salmon and trout populations are minimised and/or avoided. In response to the March 2020 SI, MSS highlighted the proximity of borrow pits A and D to adjacent watercourses and advised that appropriate mitigation measures, including monitoring are implemented to avoid potential impacts on the water quality and fish populations.

**Scottish Forestry** advised that conditions are required in relation to a compensatory planting plan, including details of implementation, monitoring, maintenance and re-stocking.

**Transport Scotland** initially raised concerns about the potential impacts on the A96 trunk road arising from the transportation of abnormal loads and turbine blades at 75 metres in length.

In response to the April 2020 SI Transport Scotland noted that the technologies proposed to transport turbine blades (hybrid trailers and scissor lifts) had not yet been used in Scotland to any great degree and that *“significant work would be required to satisfy Transport Scotland that the proposals can work technically and do not represent any risk to the safe and efficient operation of the trunk road network.”*

Transport Scotland recommended conditions relating to the proposed abnormal loads delivery route, signage or temporary traffic control be applied to any consent granted.

## Advisors to Scottish Government

**The Scottish Government's peat landslide advisor** required further clarifications in response to the Peat Landslide Hazard Risk Assessment ("PLHRA"). Following clarification it advised that no further action was required.

## Consultees who object or have no objection subject to conditions

**Cairngorms National Park Authority ("CNPA")** objects. The reasons for it objecting to the proposed Development are cited in its response to Scottish Ministers as *"it is contrary to Policy 3.3 of the Cairngorms National Park Partnership Plan 2017 - 2022 due to the significant adverse effects on the Special Landscape Qualities (SLQs) of the Cairngorms National Park, in particular the dark skies special landscape quality as a result of aviation lighting, and the cumulative impacts of the development as a result of the scale and siting of the proposed development."*

At inquiry the weight that should be attached to the objection was queried by the Company on the grounds that the terms of the objection submitted does not reflect the resolution of the CNPA's committee.

Consideration of the inconsistencies between the terms of the resolution to object to the proposed Development by the CNPA committee (contrary to the CNPA officer's report to committee) and the reasons given in the objection that was submitted to Scottish Ministers, is given by the Reporters through paragraphs 1.77 to 1.91 of the PI Report.

The Scottish Ministers accept the Reporters' conclusion at paragraph 1.90 that although an objection in the form set out in the resolution was not the one which was made to the Scottish Ministers it is nevertheless *"a material consideration of weight since it conveys the committee's intention to object and its reasons for doing so."*

**Defence Infrastructure Organisation (Ministry of Defence ("MoD"))** objects to the proposed Development unless the technical mitigation proposal (accepted by the MoD) to mitigate adverse impact on the primary surveillance air traffic control radar at RAF Lossiemouth is secured through the imposition of appropriate conditions.

**Highlands and Islands Airports Limited ("HIAL")** has no objection to the proposed Development subject to conditions requiring aviation warning lights at hub height.

**Royal Society for the Protection of Birds Scotland ("RSPB")** objects to the proposed Development in respect of the potential adverse impact on capercaillie and on the integrity of the Darnaway and Lethen Forest and Anagach Woods SPAs.

In response to the March 2020 SI RSPB advised that the Outline Habitat Management Plan ("OHMP") would not be sufficient to mitigate the impact of the proposed Development, and it therefore maintained its objection to the proposed Development.



As consequence of the improved mitigation measures set out in the March 2020 SI, it withdrew its objection to the alternative proposal. It also proposed that a capercaillie advisory officer is included as a member of the Habitat Management Steering Group.

**The Scottish Rights Of Way And Access Society (“Scotways”)** submitted a holding objection to the proposed Development due to concerns about the proximity of some of the turbines to a recorded right of way advising it was difficult to ascertain the separation distance between turbines 8, 11, 12, 13 and 17 and right of way GM7. It recommended a full access plan should be made a condition of the consent if it were to be granted.

**Spey Fishery Board** submitted a holding objection until the Company engages the Board in discussions regarding the development of a fish monitoring programme and fisheries management plan within the Spey catchment.

The Scottish Ministers have imposed conditions where relevant, recommended by the Reporters, which give effect to the requirements and recommendations made by NatureScot, SEPA, Marine Scotland, Scottish Forestry, Transport Scotland, the MoD, Spey Fishery Board and ScotWays.

### Community Councils

**Speyside Community Council**, objected to the proposed Development on the basis that:-

- it was contrary to the 2015 Moray Local Development Plan policy ER1 Renewable Energy Proposals by virtue of the excessive height of the turbines;
- there is limited scope in the Upland Moorland and Forestry LCT for turbines up to 130 metres in height; and
- the Moray Wind Energy Landscape Capacity Study states that *‘turbines over 150 metres are too large to be accommodated in the landscape given the relatively limited extent of the uplands within Moray, with significant effects more widespread and unacceptable on adjacent landscapes.’*

The community council also highlight that the Landscape Capacity Study states that developments should not be near or on landmark hills and that the proposed Development would be near to Càrn na Cailliche, an identified Moray landmark hill.

It additionally advises of concerns regarding the flashing effect of aviation lighting during darkness and the cumulative visual impact of an estimated 273 large scale wind turbines from operational windfarms with at least another four in the planning process and that the proposed Development is not compatible with tourism and recreational interests and facilities with many of the scenic and tourist routes in and out of Moray. Turbines would be introduced into views where, currently, there are none and add to the cumulative clutter of existing windfarms. The B9010 Knockando to Dallas road would be particularly affected if this proposed Development and Clash Gour were to be approved with likely visual and cumulative effects to both the Speyside Way and the River Spey, both popular with either walkers or water sports enthusiasts.

The community council maintained its objection to the alternative proposal.

The following bodies and organisations responded with no objection (either during the initial consultation or through the course of the PI).

Aberdeen Airport, British Horse society, British Telecom, Coal Authority, Findhorn, Nairn and Lossie Fisheries Trust, Highland Gliding Club, NATS (En Route) Public Limited Company (NERL), Scottish Water, Telecommunications Association of the UK Water Industry, UK Fuel and Power Industry and Visit Scotland,

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

### Summary of Public Representations

The Scottish Ministers received 389 representations in objection and one in support to the proposed Development. The Reporters provide details of the representations made to the Scottish Ministers through paragraphs 1.69 to 1.76 of the PI report. The main issues raised in the objections relate to:-

- a) the adverse landscape and visual impacts, impact on peat land hydrology, ecology and tourism and recreational interests;
- b) the adverse, cumulative visual impact of an estimated 273 large scale turbines from operational wind farms and five in planning on the upland landscape of the west Moray Moors, and would potentially result in skylines dominated by large wind turbines on the Malt Whisky Trail's B9010 Upper Knockando to Dallas Road, B9102, B9010, A95 and A941;
- c) the cumulative erosion of Moray's wild-land qualities in the uplands and adverse visual impacts on protected areas attractive to tourism such as Moray landmark hills Ben Rinnes and Ben Aigan, Speyside AGLV, the candidate AGLVs of Ben Rinnes and Spey Valley, the Cairngorms National Park, and recreational routes including the Malt Whisky Trail, the Speyside Way and Dava Way;
- d) the effects in combination with other proposals, the destruction of peat land, and to the degradation of diverse natural habitat detrimental to rare upland breeding birds and birds of prey like the goshawk, merlin, hen harrier and capercaillie;
- e) the height of turbines proposed which would far exceed any others in the area;
- f) the unacceptable cumulative impact has already been breached by the existing wind farms with no further landscape capacity for any more commercial-scale windfarms;
- g) this being the wrong location for this type of large-scale commercial windfarm;
- h) the lack of advertising of the proposed Development in the area; and

- i) the proposed Development is not in accordance with the development plan, nor with national planning policy or Schedule 9 of the Electricity Act 1989 on account of its inappropriate siting, significant adverse visual effects and adverse effects on landscape, ornithology and natural beauty and flora.

The representation in support relates to the regional and local economic benefits of renewable energy construction.

**Details of the representations are available on the Energy Consents website at [www.energyconsents.scot](http://www.energyconsents.scot)**

The Scottish Ministers have considered the matters raised in the consultation responses and in the representations made to them on the Application and are satisfied, having taken into account the EIA Report, the 2019 AI, the March 2020 SI, the April 2020 SI and the PI Report, that the significant environmental impacts of the proposed Development have been appropriately assessed and largely mitigated by design. Further environmental mitigation has been secured by the Scottish Ministers through the imposition of conditions attached to the planning permission.

The remaining impacts, mainly landscape and visual impacts, are considered to be acceptable by the Scottish Ministers in light of the overall benefits of the proposed Development. This reasoning is set out in more detail under the heading “Assessment of Determining Issues” at pages 13 to 22 of this decision letter.

## **The Scottish Ministers’ Considerations**

### **Legislation and Environmental Matters**

The Scottish Ministers have had regard to the matters set out in Schedule 9 of the Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. The Scottish Ministers shall 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 the Scottish Ministers are also required to:

- obtain SEPA advice on matters relating to the 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 obtained and 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 has no objection to the proposed Development subject to the recommendation of specific conditions to minimise the disturbance of

peat and ensure the appropriate reuse and management of peat on site. In its response to the Scottish Ministers it provides regulatory advice and directs the Company to the Regulations section of the SEPA website for advice on regulatory requirements and good practice advice.

The Scottish Ministers are satisfied that the EIA Report, the 2019 AI, the March 2020 SI and the April 2020 SI have been produced in accordance with the 2017 Regulations. The Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the EIA Report, the 2019 AI, the March 2020 SI and the April 2020 SI, representations, consultation responses including those from NatureScot, SEPA, HES and the Planning Authority, and the PI Report into consideration in reaching their decision.

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

The 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.

The Scottish Ministers are satisfied that the proposed Development would not have any adverse effect on fisheries or to stock of fish in any waters.

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and the 2017 Regulations as required, 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 2017**

NatureScot informed the Scottish Ministers of the potential for the proposed Development to have a significant effect on the qualifying interests of the following Natura 2000 sites:

- the River Spey Special Area of Conservation (“SAC”);
- the Darnaway and Lethen Forest Special Protection Area (“SPA”); and
- the Anagach Woods SPA.

In compliance with the Conservation of Habitats and Species Regulations 2017, Appropriate Assessments have been carried out with respect to the above mentioned Natura 2000 sites (Annex 4). The environmental information to inform the assessments was presented in the EIA Report, the 2019 AI, the March 2020 SI and the April 2020 SI which accompanied the Application. The Appropriate Assessments

have therefore been produced using information already advertised in accordance with the 2017 Regulations.

### River Spey SAC

The Scottish Ministers conclude, following advice from NatureScot, and in view of the conservation objectives of the River Spey SAC that, subject to mitigation measures proposed in the EIA Report (chapter 6 – Ecology, paragraphs 6.11.24 to 6.11.35) the proposed Development will not adversely affect the integrity of the site.

### Darnaway and Lethen Forest and Anagach Woods SPAs

Darnaway and Lethen Forest and Anagach Woods SPAs lie within 25 kilometres of the proposed Development site boundary. Following consideration of the EIA Report, the 2019 AI, the March 2020 SI and the April 2020 SI and the PI Report, in conjunction with advice from NatureScot, the Scottish Ministers are satisfied that measures proposed to manage the habitats within the proposed Development site in favour of capercaillie are sufficient to ensure that there would be no adverse effect upon the integrity of Darnaway and Lethen Forest SPA or Anagach Woods SPA.

### Main Determining Issues

Having considered the Application, the EIA Report, responses from consultees and third parties, the 2019 AI, the March 2020 SI, the April 2020 SI, the PI Report and Scottish Government policies, the Scottish Ministers consider, in line with the Reporters, that the main determining issues in respect of the proposed Development are:

- The likely significant landscape and visual effects, including those on Cairngorm National Park and residential properties;
- The likely impacts on ornithology, particularly in respect of capercaillie;
- The benefits of the proposed Development, including its renewable energy generation and net economic impact;
- The extent to which the proposed Development accords Scottish Government policies, the local development plan and other relevant guidance: and
- Whether or not the proposed alternative Development achieves a better balance in respect of the aforementioned main determining issues.

### Assessment of the Determining Issues

#### **Landscape and Visual Effects**

The Planning Authority object on the basis of the proposed Development's "*adverse and unacceptable landscape and visual effects*". A summary of their main points on the landscape and visual impacts of the proposed Development is set out at paragraphs 3.14 - 3.83 of Chapter 3 of the PI Report. In conclusion at paragraph 3.84

they advise as a consequence of landscape and visual impacts that *“neither the original nor the alternative proposal is the right development in the right place.”*

NatureScot did not object to the proposed Development but in a summary of their position, at paragraphs 3.85 – 3.101 of Chapter 3 of the PI Report, it is noted in NatureScot’s view as a consequence of the size of the proposed Development, *“the design and scale of the development exceeds the capacity of the local landscape. It is not in accordance with SNH siting and design guidance.”* NatureScot also advise that although the proposed Development would not have an adverse effect on the integrity of Cairngorms National Park (“CNP”), or the objectives of its designation, it would *“appear prominent in views from the northern fringes of the CNP”* and *“introduce significant effects on the special landscape qualities of the CNP.”*

The Cairngorms National Park Authority (“CNPA”) passed a resolution to object on the basis of the proposed Development’s *“significant adverse effects on the special landscape qualities of the park, including dark skies, and the cumulative impacts of the development as a result of the scale and siting of the development extending the visual envelope of wind turbines around the park”*. A summary of the matters raised in the CNPA’s resolution to object and the purported objection are set out at paragraphs 3.128 - 3.131 of Chapter 3 of the PI Report.

Save Wild Moray (“SWM”) and Speyside Community Council objected on the basis of the proposed Development’s adverse landscape and visual impacts. A summary of SWM’s and Speyside Community Council’s main points on the landscape and visual impacts of the proposed Development are set out at paragraphs 3.102 – 3.111 and 3.112 – 3.116 respectively at Chapter 3 of the PI Report.

The owner of the property at Glenarder (used as a second home and holiday let) and the resident of Tapp Farm, who participated at the inquiry, both cited landscape and visual impacts as well as impacts relating to the setting of their properties and the visual impacts from their properties as reasons for their objections. The main points for each property are set out at paragraphs 3.117-3.120 and paragraphs 3.121-3.124 respectively.

The Scottish Ministers also note that a number of representations have been made which cite the adverse landscape and visual impacts of the proposed Development as the reasons for objecting. A summary of the main points made in representations from the public is set out at paragraphs 3.125 – 3.127.

The Reporters’ considerations of the landscape and visual impacts of the proposed Development are detailed in Chapter 3 of the PI Report (pages 96 – 136) with their overall summary of findings on significant effects set out in the table provided through pages 134 - 136. The table sets out the various scenarios against which the proposed Development (and the alternative Development) were considered which are defined as follows;

- Scenario 1 assessment of the effects of the proposed development on the existing baseline of development.
- Scenario 2 addition of the proposed development to a baseline including existing and consented development.
- Scenario 3 addition of the proposed development to a cumulative baseline including existing, consented and proposed (application stage) development.

At paragraph 8.38 of Chapter 8 of the PI Report the Reporters conclude that the proposed Development (as well as the alternative proposal) “*would have significant adverse landscape and visual effects*”.

The Scottish Ministers have taken account of the EIA Report, responses from consultees and third parties, the 2019 AI, the March 2020 SI, the April 2020 SI, the PI Report alongside the Reporters’ considerations and subsequent conclusions. The Scottish Ministers accept and agree with the Reporters’ conclusions regarding the significance and extent of landscape and visual effects of the proposed Development and adopt them for the purpose of their own decision. The Scottish Ministers are satisfied that the significant adverse landscape and visual impacts, the proposed Development would have, are acceptable in the context of the net economic benefits and significant renewable energy benefits, in support of climate change mitigation, that would arise if the proposed Development were deployed.

### **Impacts on Cairngorms National Park**

The Cairngorms National Park boundary is located approximately 15 km to the south west of the proposed Development. The northern boundary of the Cairngorms National Park is defined by the upland area of Carn na Loine (depicted in VP14 - Figure 8.21 of the EIA Report) and the Hills of Cromdale (depicted in VP8 - Figure 8.27 of the EIA Report) either side of Strathspey.

The Reporters’ consideration of the landscape and visual impacts of the proposed Development on Cairngorms National Park is set out in paragraphs 3.285 – 3.294 of Chapter 3 of the PI Report with their overall summary of findings on the significant effects of the proposed Development on the Cairngorms National Park set out in the table provided through pages 134 - 136. The table sets out the various scenarios against which the proposed Development (and the alternative Development) were considered.

The Reporters conclude at paragraph 8.30 of Chapter 8 of the PI Report that although the proposed Development would result in adverse effects on the Cairngorms National Park at the summit of Càrn a’ Ghille Cheàrr and, over a limited area, on certain of its special landscape qualities they do “*not consider the park’s objectives or overall integrity would be compromised.*”

The Scottish Ministers have taken account the EIA Report, responses from consultees and third parties, the 2019 AI, the March 2020 SI, the April 2020 SI, the PI Report alongside the Reporters’ considerations and subsequent conclusions. The Scottish

Ministers accept and agree with the Reporters' conclusions regarding the significance and extent of the landscape and visual effects of the proposed Development on Cairngorms National Park. The Scottish Ministers are satisfied that the impacts are acceptable and have adopted them for the purpose of their own decision.

### **Visual Effects on Residential Properties**

The Reporters' considerations of the visual impacts of the proposed Development on residential properties in and around the village of Archiestown as well as in relation to the Glenarder and Tapp properties are set out in paragraphs 3.397 – 3.406 of Chapter 3 of the PI Report with their overall conclusion set out at paragraph 3.406. They conclude that the proposed Development would result in significant visual effects from seven residential properties (as assessed in the Company's EIA Report at paragraph A8.5.81 of Residential Visual Amenity Assessment Appendix 8.5) and contribute to a significant cumulative visual impact from the Glenarder property.

The Reporters also acknowledge, at paragraph 3.186, that whilst there would be some minor changes and reductions in visual effect if turbine number 15 were deleted *“these are not of a degree that the overall effects on residential amenity would be reduced.”*

The Scottish Ministers accept and agree with the Reporters' conclusions regarding the significance of the visual impact from these properties noting also their view that *“at none of these properties would the effect be overwhelming or overbearing to an extent that they could reasonably be considered an unattractive place to live.”* The Scottish Ministers are satisfied that the impacts are acceptable and have adopted them for the purpose of their own decision.

### **Impacts on Ornithology**

NatureScot initially objected to the proposed Development until further detail of mitigation was available to demonstrate there would be no adverse effect on the integrity of the Anagach Woods or Darnaway and Lethen Forest SPAs designated for capercaillie. Following submission of the March 2020 SI its objection was withdrawn. It also confirmed the measures proposed in the March 2020 SI and Habitat Management Plan Report would allow an appropriate assessment under the Habitats Regulations to conclude that the proposed Development would have no adverse effect on the integrity of the Anagach Woods or Darnaway and Lethen Forest SPAs.

RSPB also objected to the proposed Development in respect of the potential adverse impact on capercaillie and on the integrity of the Darnaway and Lethen Forest and Anagach Woods SPAs. In response to the March 2020 SI RSPB advised that the proposed habitat management would not be sufficient to mitigate the impact of the proposed Development, it therefore maintained its objection to the proposed Development.

The potential impacts of the proposed Development on ornithology are considered by the Reporters in full at Chapter 4 of the PI Report, including references to consultation



responses and representations raising concerns in relation to the impacts on capercaillie and on the integrity of the Darnaway and Lethen Forest and Anagach Woods SPAs. The Reporters' considerations and conclusions in relation to capercaillie are set out through paragraphs 4.35 to 4.44.

At paragraph 4.42 the Reporters consider that *“given the existing condition of the capercaillie population and the evidence that there is no breeding population left, despite the precautionary assumption of disturbance to capercaillie in the EIA Report, we find it very unlikely there would in fact be disturbance to breeding birds at the lek”*. The Reporters also set out that *“that the mitigation provided by the proposed development is a means by which the population may, over the long-term, be restored to viability”* will regionally benefit capercaillie.

At paragraph 4.54 of Chapter 4 of the PI Report the Reporters conclude that *“the strategic approach of the OHMP, the proposed site-specific management measures and embedded mitigation which includes appointment of an Ecological Clerk of Works (ECoW) to oversee compliance with environmental management and mitigation plans during construction, pre-construction survey checks prior to tree-felling, vegetation-stripping or excavation works; exclusion zones; a Species Protection Plan (SPP), all, if adequately secured by conditions and/or legal agreement, would allow appropriate assessment under the Habitats Regulations to conclude that both the original and alternative proposals would have no adverse effect on the integrity of the Anagach Woods SPA or Darnaway and Lethen Forest SPA.”*

The Scottish Ministers have taken account the EIA Report, responses from consultees and third parties, the 2019 AI, the March 2020 SI, the April 2020 SI, the PI Report alongside the Reporters' considerations and subsequent conclusions. The Scottish Ministers accept and agree with the Reporters' conclusions regarding the impacts of the proposed Development on capercaillie as a qualifying interest of both the Darnaway and Lethen Forest and Anagach Woods SPAs and are satisfied that the measures proposed to manage the habitats within the proposed Development site in favour of capercaillie are sufficient to ensure that there would be no adverse effect upon the integrity of Darnaway and Lethen Forest SPA or Anagach Woods SPA.

## **Renewable Energy Generation and Targets**

National Planning Framework 3 (“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.

The seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority for the Scottish Ministers. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the “2019 Act”) sets a target for Scotland to be carbon-neutral, meaning net-zero CO<sub>2</sub>, by 2045 at the latest.

Additionally, the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

The proposed Development makes a significant contribution towards meeting greenhouse gas emission and renewable electricity targets. The proposed Development will have a generating capacity of approximately 132 MW (taking account of the removal of turbine number 15) based on current technology. The proposed alternative Development will have a generating capacity of approximately 116.8MW based on current technology. The Scottish Ministers agree with the conclusions of the Reporters at page 8 of the PI Report that both the proposed Development and the alternative Development “*would make a significant contribution to meeting targets*” and “*would represent tangible progress to providing the additional onshore-wind capacity that the CCC has found would be necessary to meet the UK and Scottish emissions-reduction targets*” and are therefore satisfied that 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 date for net-zero emissions of all greenhouse gases by 2045.

The carbon payback figures for the proposed Development have been presented in the EIA Report (Technical Appendix 10-5) using the approved Scottish Government carbon calculator. In overall terms the proposed Development, if built, would be expected to have a payback period of 2.3 years if it replaces the fossil fuel mix, 1.2 years if it replaces coal-fired and 3.8 years if it replaces a grid mix of electricity generation. The proposed alternative Development, if built, would be expected to have a payback period of 2.6 years if it replaces the fossil fuel mix, 1.3 years if it replaces coal-fired and 4.7 years if it replaces a grid mix of electricity generation.

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 Reporters also highlight that a number of worst-case assumptions are made, paragraph 6.18 of chapter 6, and that the calculation does not include the deletion of turbine 15 from the proposed Development, which accounts for almost a seventh of the peat that was estimated to be excavated.

The 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.

### **Socio-Economic Benefits**

The Reporters have set out their considerations and conclusions on the socio-economic effects (including effects on tourism) of the proposed Development at Chapter 5, paragraph 5.36 – 5.57 of the PI Report.

Scottish Planning Policy 2014 (“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.

The Scottish Ministers note the overall summary of conclusions at paragraph 8.8 of Chapter 8 of the PI Report that both the proposed Development and alternative Development “*would have a significant net economic benefit over the short term in consequence of value added to the local economy and creation of employment. It would have a non-significant benefit over the longer term.*” The Reporters also conclude that there is no evidence to indicate that “*there would be a significant adverse effect on tourism or recreation*”. The Scottish Ministers are satisfied that overall there is no evidence that there would be significant adverse effects on tourism or recreation and that there would be economic benefits arising from both the construction and operational phases of the proposed Development.

## **Scottish Government Policies and Local Development Plan**

Chapter 2 of the PI Report sets out the policy context against which the proposed Development should be considered and Chapter 8 of the PI Report sets out the Reporters’ consideration and assessment of the proposed Development in the context of relevant national climate change and energy policy, national planning policy and other relevant local planning policy and guidance.

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

Scottish 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. There is also clear support in principle for extending existing sites by making best use of the potential at existing sites.

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 continuing to protect our special places from significant adverse impacts.

SPP contains guidance in respect of the granting of consent for wind farm development and 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 correct 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. At Chapter 8 of the PI Report the Reporters have taken account of the proposed Development against the provisions of SPP where they find at paragraph 8.8 that the proposed Development:

- Would have a significant net economic benefit over the short term and a non-significant benefit over the longer term and would make a significant contribution to meeting renewable-energy targets;
- The additional capacity for renewable-energy generation would represent tangible progress to providing the additional onshore-wind capacity that the CCC has found would be necessary to meet the UK and Scottish emissions-reduction targets;
- Would have some significant adverse effects on the views from individual houses and have a significant cumulative effect on views from the house at Glenarder (with Paul's Hill II and Clash Gour) but not to an unacceptable level;
- Subject to the implementation of mitigation measures would not have significant adverse effect on natural heritage, including capercaillie and other bird species. With overall positive effects regionally on capercaillie and black grouse as a consequence of habitat management.
- Would not have a significant adverse effect on peat;
- Would not have a significant adverse effect on public access on core paths. There would be some significant adverse visual effects for walkers on some core paths and promoted routes, but the effect on the Speyside Way would be very limited;
- Would have no significant effect on the historic environment;
- Would not have significant adverse effect on tourism or recreation; and
- Subject to conditions, would have no significant adverse effect on aviation or defence interests, road traffic or adjacent trunk roads.

They further conclude in respect of paragraph 212 of SPP in respect of the proposed Developments effects on the Cairngorms National Park that *“since there would not be an adverse effect on the designation’s integrity it would not be contrary to SPP paragraph 212”* and that further *“the adverse effects on the park’s special landscape qualities would be outweighed by the environmental benefits arising from the proposed Development’s contribution to meeting the emissions-reduction targets and socio-*

*economic benefits including the investment and job creation for its construction and operation”.*

This leads the Reporters to conclude overall at paragraph 8.37 of chapter 8 that notwithstanding its adverse effects the proposed Development “*would be sustainable*” and “*consequently it would be the right development in the right place.*”

The relevant development plan policies for the proposed Development are contained in the Moray Local Development Plan (“the Moray LDP”) and its relevant associated supplementary guidance.

The Reporters’ conclusions on the plan are found at paragraph 8.35 of Chapter 8 of the PI Report where they conclude the proposed Development “*would be acceptable in terms of Moray LDP policy DP9*” and notwithstanding the location of the turbines on Carn na Cailliche “*is designed sufficiently to reflect the relevant landscape character assessment, and so to accord with Moray LDP policy EP3. Consequently it would accord with the development plan overall*”.

With regards to the policy context more generally, the Scottish Ministers have taken account of the Reporters’ considerations at Chapter 8 of the PI Report, and agree the proposed Development is supported by both national and local planning policies, and adopt this reasoning for the purposes of their own decision.

The Scottish Ministers are satisfied that although the proposed Development will have significant adverse landscape and visual effects and some significant adverse effects on views from houses, these do not overall outweigh the benefits of the proposed Development.

## **Emerging Policy**

Scotland 2045: Our Fourth National Planning Framework Draft (“Draft NPF4”) was laid in Parliament on 10 November 2021. The Draft NPF4 sets out the spatial strategy with a shared vision that is to guide future development in a way which reflects the overarching spatial principles: sustainable places, liveable places, productive places and distinctive places. Relevant policies in Draft NPF4 strengthen the support afforded to renewable energy development proposals which are not sited in National Scenic Areas or National Parks, setting out that renewable energy proposals should be supported in principle unless the impacts identified are unacceptable.

Onshore Wind Policy Statement Refresh 2021: Consultative Draft was published in October 2021. This sets out that additional onshore wind will be vital to Scotland’s future energy mix and in meeting net zero targets.

The Scottish Ministers have considered both Draft NPF4 and Onshore Wind Policy Statement Refresh 2021: Consultative Draft. Taking account that both are at the consultative draft stage the Scottish Ministers have afforded them limited weight.

## **Consideration of the proposed alternative Development**

The Company provided the 2019 AI to enable consideration of an alternative layout (to the proposed Development) comprising 23 wind turbines (15 turbines up to 149.9 metres to tip height and 8 turbines up to 175 metres to tip height). The effects of the proposed alternative Development, following its consultation, was subsequently considered by the Reporters, in parallel to the proposed Development, throughout the course of the PI and has been referenced throughout the PI Report at each chapter.

Overall, there would be a reduction in terms of the impacts on the environment if the proposed alternative Development were to be granted consent instead of the proposed Development. Whilst it acknowledged that the proposed alternative Development avoids the potential for local impacts on capercaillie, the Scottish Ministers are satisfied, given the evidence of the decline in populations and evidence that there is no breeding population left in the vicinity of the proposed Development, that disturbance is highly unlikely. It is further considered that the habitat management measures associated with the proposed Development will provide potential regional benefits for capercaillie in Moray likely to have an overall positive effect regionally on capercaillie. It is also acknowledged that whilst there would be a reduction in some of the significant landscape and visual impacts, including on views from some houses, the proposed alternative Development would still result overall in significant adverse landscape and visual impacts.

Having taken account of the EIA Report, responses from consultees and third parties, the 2019 AI, the March 2020 SI, the April 2020 SI, the PI Report alongside the Reporters' considerations and subsequent conclusions, the Scottish Ministers agree with the Reporters' summing up at page 8 of the PI Report and find that although the proposed Development's adverse landscape and visual effects are substantial (including in particular its cumulative effects with Clash Gour Wind Farm), they are still relatively limited in contrast to its size and are acceptable overall in terms of national policy and the Moray LDP.

The Scottish Ministers do not consider that the limited reduction in significant landscape and visual impacts of the proposed alternative Development would be proportionate to the reduction of 18% in the overall potential renewable electricity production. The Scottish Ministers therefore agree with the Reporters that the larger wind turbines of the proposed Development represent the most efficient use of the site and therefore adopt this reasoning for the purposes of their own decision to grant consent for the proposed Development.

### **The Scottish Ministers' Conclusions**

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

The Scottish Ministers are satisfied that the EIA Report, the 2019 AI, the March 2020 SI, and the April 2020 SI have been produced in accordance with the 2017 Regulations

and that the procedures regarding publicity and consultation laid down in those Regulations have been followed.

The Scottish Ministers have fully considered the EIA Report, responses from consultees and third parties, the 2019 AI, the March 2020 SI, the April 2020 SI, the PI Report alongside the Reporters' considerations and subsequent conclusions and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed and have taken the environmental information into account when reaching their decision.

Taking into account the above assessment, subject to conditions to secure environmental mitigation, the Scottish Ministers consider the environmental effects of the proposed Development are overcome with the exception of significant adverse landscape and visual effects.

The 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. The Scottish Ministers are satisfied that this reasoned conclusion is up to date.

### **Acceptability of the proposed Development**

As set out above, the seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a significant priority for the Scottish Ministers. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the "2019 Act") sets a target for Scotland to be carbon-neutral, meaning net-zero CO<sub>2</sub>, by 2045 at the latest. Additionally, the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

Scotland's renewable energy and climate change targets, energy policies and planning policies are all relevant considerations when weighing up the proposed Development. NPF3, SPP, Scotland's Energy Strategy and the Onshore Wind Policy Statement make it clear that renewable energy deployment remains a priority of the Scottish Government. It remains clear from Draft NPF4, as well as the Onshore Wind - Policy Statement refresh 2021: consultative draft, that this is a matter which should be afforded significant weight in favour of the proposed Development.

The Scottish Ministers consider that the proposed Development, if deployed, would create net economic benefits and deliver significant renewable energy benefits that would support climate change mitigation and are wholly in accordance with Scottish Government's climate change ambitions. These benefits however must be considered carefully in the context of the negative impacts on the natural environment that would result and whether or not, on balance, they are acceptable.

The Scottish Ministers acknowledge that the proposed Development will have significant adverse landscape and visual effects (including some on views from houses), however the Scottish Ministers find that these negative impacts on the natural

environment are acceptable in the context of the net economic benefits and significant renewable energy benefits, in support of climate change mitigation, that would arise if the proposed Development were deployed. As set out above the Scottish Ministers have also considered whether or not a better balance could be struck by consenting the proposed alternative Development but find that that, overall, the proposed Development represents the most efficient use of the site.

The Scottish Ministers therefore consider the Application for consent under Section 36 of the Electricity Act 1989, for the construction and operation of Rothes III Wind Farm located approximately 4 kilometres to the west of Rothes village and just over 2.5 kilometres north of the village of Archiestown in Moray, wholly within the planning authority area of the Moray Council, should be approved.

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

As set out above the Scottish Ministers have considered fully the Reporters' findings and their reasoned conclusions, including their reasoned conclusion on the likely significant effects of the proposed Development on the environment, and adopt them for the purposes of their own decision.

The Scottish Ministers agree with the Reporters' recommendation that section 36 consent should be granted for the construction and operation of Rothes III Wind Farm, and that a direction deeming planning permission to be granted should be given for the Development.

Subject to the conditions set out in Annex 2, Part 1, the Scottish Ministers;

- (a) grant consent under section 36 of the Electricity Act 1989 for the construction and operation of the Rothes III Wind Farm, a wind powered electricity generating station in the Moray Council area, as described at Annex 1
- (b) refuse consent for construction of the turbine numbered 15 (as labelled in the map at Annex 3).

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 Part 1 of Annex 1 subject to the exclusions in Part 2 of that Annex.

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

The consent hereby granted will last for a period of 35 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.

Section 58(1)(a) of the Town and Country Planning (Scotland) Act 1997 requires where planning permission is deemed to be granted, that it must be granted subject to a condition that the permission will expire if has not begun within a period of 3 years.



Section 58(1)(b) of that Act enables the Scottish Ministers to specify that a longer period is allowed before planning permission will lapse. Scottish Government policy is that due to the constraints, scale and complexity of constructing such developments, a 5-year time scale for the commencement of development is appropriate.

The Scottish Ministers consider that 3 years is not to apply with regard to the planning permission granted above, and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction, unless the development to which the permission relates is begun before the expiry of that period. A condition has been imposed stating that development must be begun within 5 years beginning with the date on which the permission is deemed to be granted and if development has not begun at the expiration of that period, the planning permission will lapse in terms of section 58(3) of the 1997 Act.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the Company must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality in which the land to which the application relates is situated.

Copies of this letter have been sent to the public bodies consulted on the Application including the Planning Authority, NatureScot, SEPA and HES. This letter has also been published on the Scottish Government Energy Consents website at <http://www.energyconsents.scot>.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent.

The rules relating to the judicial review process can be found on the website of the Scottish Courts:

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

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

Yours sincerely,

REDACTED

**Ruth Findlay**  
**For and on behalf of the Scottish Ministers**  
**A member of the staff of the Scottish Government**

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- Annex 1 Description of Development;  
Annex 2 (Part 1) Conditions attached to section 36 consent and  
(Part 2) Conditions attached to Deemed Planning Permission;  
Annex 3 Part 1 - Site Layout; and Part 2 (referenced in Condition 12).  
Annex 4 Appropriate Assessments in respect of:
- the River Spey Special Area of Conservation (“SAC”)
  - the Darnaway and Lethen Forest Special Protection Area (“SPA”); and
  - the Anagach Woods SPA

## **Annex 1 Part 1: Description of development**

The wind powered electricity generating station known as Rothes III with a generating capacity exceeding 50MW, as depicted in Figure 1.2 of the EIA Report (attached at Annex 3 – Part 1), subject to the exclusion of the Excluded Development described in Part 2 of this Annex.

The principal components of the wind farm and ancillary development comprise:

- 28 turbines, turbines numbered 9, 13 and 14 will have a maximum tip height of 149.9 metres, turbines numbered 1, 2, 3, 4, 5, 6, 7 and 29 will have a maximum tip height of 200 metres and turbines numbered 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 which will have a maximum tip height of 225 metres and their foundations and associated crane hard standing areas;
- External transformer housing;
- Site tracks;
- Crane pads;
- Two substations;
- Underground electricity cables;
- Temporary construction and storage compounds;
- Up to six temporary borrow pits; and
- Associated works/infrastructure.

## **Part 2- Excluded Development**

The following exclusions are made from this consent:

- 1 turbine, numbered 15, (as depicted on Figure 1.2 of the EIA Report (attached at Annex 3 – Part 1));
- Any access tracks associated with the turbine numbered 15; and
- Any crane hard standing areas associated with the turbine numbered 15.

## Annex 2 part 1 - Section 36 consent conditions

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

- (1) Written confirmation of the date of First Commissioning shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month after that date.
- (2) Written confirmation of the date of Final Commissioning shall be provided to the Planning Authority and the 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 Commencement of the Development shall be no later than five years from the date of this consent, or in substitution, such other period as the Scottish Ministers may hereafter direct in writing.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

**Reason:** *To avoid uncertainty and 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 of the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.
- (2) The company shall notify the Planning Authority in writing of the name of the assignee and principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of their consent to the assignment.

**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, the Company will provide written notification of the nature and timing of the incident to the Scottish Ministers, and confirmation of remedial measures taken and/or to be taken to rectify the breach, within 24 hours of the incident occurring.

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

#### 5. Radar Mitigation

- (1) No wind turbine shall be erected unless and until an \*Air Traffic Control Radar Mitigation Scheme (“ATCRMS”) to address the impact of wind turbines upon air safety has been submitted to and approved in writing by the Scottish Ministers in conjunction with the Ministry of Defence (MOD).
- (2) No wind turbine erected as part of this development shall be permitted to rotate its rotor blades about its horizontal axis, other than for the purpose of testing radar mitigation for this development for specific periods as defined in the approved ATCRMS or otherwise arranged in accordance with provisions contained the in approved ATCRMS, until:
  - (a) those mitigation measures required to be implemented prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis as set out in the approved ATCRMS have been implemented; and
  - (b) any performance criteria specified in the approved ATCRMS and which the approved ATCRMS requires to have been satisfied prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis have been satisfied and Scottish Ministers, in conjunction with the Ministry of Defence, have confirmed this in writing.
- (3) Thereafter the development shall be operated strictly in accordance with the details set out in the approved ATCRMS for the lifetime of the development, provided the Radar remains in operation.

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

\*The Air Traffic Control Radar Mitigation Scheme (“ATCRMS”) is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth (“the Radar”) and the air traffic control operations of the MOD which are reliant upon the Radar. The ATCRMS shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the lifetime of the development provided the Radar remains in operation.

## 6. Aviation Lighting

- (1) Prior to commencing construction of any wind turbine generators, anemometry masts, or deploying any construction equipment or temporal structure(s) 50 metres or more in height (above ground level) the Company must submit an aviation-lighting scheme for the approval of Scottish Ministers in conjunction with the Civil Aviation Authority and the Ministry of Defence defining how the development will be lit throughout its life to maintain civil and military aviation safety requirements as required under the Air Navigation order 2016 and, or, as determined necessary for aviation safety by the Ministry of Defence and, or, as directed by the Civil Aviation Authority.

This should set out:

- (a) Details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with.
  - (b) The locations and heights of all wind turbine generators in the development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used.
- (2) Thereafter, the Company must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the life time of the development.

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

## Annex 2 part 2 - Deemed planning permission conditions

### 7. Commencement of development

- (1) The development must be begun not later than the expiration of 5 years beginning with the date of this permission.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

**Reason:** *To comply with section 58 of the Town and Country Planning (Scotland) Act 1997.*

### 8. Details of the turbines

- (1) No development shall commence until the external finish and colour of the turbines and any anemometry masts have been submitted to and approved in writing by the Planning Authority. No development shall commence until the Planning Authority has approved in writing the sound power and tonality of the turbine model selected. Thereafter, the turbines/anemometry masts shall be installed in accordance with the approved details.
- (2) All wind turbine blades shall rotate in the same direction.
- (3) No wind turbine or anemometry mast shall have any text, sign or logo displayed on any external surface of the wind turbines/anemometry mast unless approved in advance in writing by the Planning Authority or if required by law.

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

### 9. Details of other infrastructure

No development of the substation building, associated compounds, foul drainage provision, water supply, or any construction-compound boundary fencing, external lighting and parking areas shall commence until details of their external appearance, dimensions, and surface materials have been submitted to and approved in writing by the Planning Authority. The development shall not proceed other than in accordance with the approved details.

**Reason:** *To ensure that the environmental impacts of the substation, control building, associated compounds and associated development forming part of the Development*

*conform to the impacts assessed in the Environmental Impact Assessment Report and in the interests of the visual amenity of the area.*

## **10. Decommissioning**

- (1) Upon the expiration of a period of 35 years from Final Commissioning, the wind turbines shall be decommissioned and removed from the site.
- (2) No development shall commence unless and until a Provisional Decommissioning Method Statement (PDMS) has been submitted for the written approval of the Planning Authority. The PDMS shall set out proposals for the removal of all surface elements of the Development except for the access tracks and the turbine foundations more than 1 metre below ground level. The PDMS shall provide for the restoration of the site following the removal of the Development and for the timing of all operations.
- (3) Not later than 24 months before the expiry of this permission a Decommissioning Method Statement in accordance with the principles of the Provisional Decommissioning Method Statement shall be submitted for the written approval of the Planning Authority. The Decommissioning Method Statement shall be implemented as approved.

**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.*

## **11. Bond or other form of financial guarantee**

- (1) No development shall commence unless and until the Company has delivered to the Planning Authority, a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the anticipated cost of performance of the obligations contained in the Provisional Decommissioning Method Statement ("PDMS") submitted in accordance with Condition 10. The bond or other form of financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations.
- (2) The value of the bond or other form of 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, taking into account any salvage value of the development infrastructure, of all decommissioning and restoration and aftercare obligations contained in the PDMS.
- (3) The value of the bond or other form of 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 restoration and aftercare obligations and best practice prevailing at the time of each review.

**Reason:** *To secure the performance of the obligations of the Company as to decommissioning and removal of the Development as well as for any aftercare and restoration of the Development by ensuring that suitable financial provision has been made for the performance of those obligations in the event of the Company's default.*

## 12. Micrositing

- (1) The turbines shall be erected and the site tracks and other infrastructure constructed in the positions indicated in Figure 1.2 of the EIAR save that the location of any turbine, track or associated infrastructure may be varied from the indicated position without further recourse to the planning authority by up to 50 metres, subject to the following restrictions:-
  - (a) No development shall take place until a finalised post-consent layout is approved in writing by the planning authority in consultation with SEPA, having regard to minimising the proposed development's impact on peat. The approved layout may be varied with the consent of the planning authority in consultation with SEPA;
  - (b) No development shall take place within 50 metres of any water course with the exception of any watercourse crossings;
  - (c) The advice of the Ecological Clerk of Works has been sought before any such variation is made;
- (2) Furthermore, the position of Substation 2 may be varied to the position shown on AI Figure 1.2 (attached at Annex 3 – Part 2) or within 50 m of that position.

**Reason:** *to control environmental impacts while taking account of local ground conditions and to ensure the impact on peat is minimised such that the release of its embodied carbon is kept to a minimum.*

## 13. Construction and Environmental Management Plan including Construction Method Statement

- (1) No Development shall commence until a Construction and Environmental Management Plan ("CEMP") which shall include a Construction Method Statement ("CMS")) has been submitted to and approved in writing by the

Planning Authority in consultation with NatureScot, RSPB and SEPA. The CEMP shall include:-

- (a) a site waste-management plan (dealing with all aspects of waste including forestry removal and forest waste other than peat produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
- (b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks (including details of whether tracks are to be cut or floating), car parking, material stockpiles, oil storage, lighting columns, and any construction-compound boundary fencing;
- (c) details of borrow-pit excavation, including excavation times, any noise monitoring required, and proposals to address complaints relating to blasting noise and vibration;
- (d) ) a dust-management plan;
- (e) 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;
- (f) a pollution-prevention and control method statement, including arrangements for the storage of oil and fuel on the site;
- (g) soil storage and management;
- (h) a peat-management plan including peat site investigation to identify areas where floating access track is to be constructed;
- (i) a drainage-management strategy, demonstrating how all surface water and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources including assessment of risk to the private water supply to the dwelling called "Treetops";
- (j) sewage treatment and disposal;
- (k) temporary site illumination;
- (l) the upgrading of the access into the site and the creation and maintenance of associated visibility splays;
- (m) the method of construction of access tracks including floating track design, and construction;
- (n) the method of construction of the crane pads;
- (o) the method of construction of the turbine foundations;
- (p) the method of working cable trenches;
- (q) ) the method of construction and erection of the wind turbines, anemometry and meteorological masts;
- (r) details of watercourse crossings;
- (s) post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound and other construction areas;

- (t) a wetland-ecosystems (Ground Water Dependent Terrestrial Systems) survey and mitigation plan;
- (u) a species-protection plan for goshawk, merlin, capercaillie, black grouse and Scottish crossbill;
- (v) an ornithological-monitoring plan;
- (w) a pre-construction and construction fish-monitoring programme;
- (x) a water-quality monitoring plan;
- (y) measures to protect the boundary stones marked on EIA figure 9.1 as 16a-c and 20a-b during construction; and
- (z) details of all construction works on the site and the timing of these works.

(2) The CEMP shall be implemented as approved.

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

#### 14. Construction traffic management

(1) No development shall commence until a construction-traffic-management plan ("CTMP") has been submitted to, and approved in writing by, the planning authority in consultation with Transport Scotland. The CTMP shall include the following:-

- (a) Information on 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 and the scheduling and timing of abnormal load movements. A communications protocol with stakeholders including the public will also be detailed;
- (b) A scheme for reviewing the condition of the section of road between the A96 / Reiket Lane Roundabout and the site access junction. This shall include requirements for before- and after-construction-traffic reviews of the road and verge infrastructure and shall outline how damage resulting from construction traffic shall be repaired and a programme for making good any damage.

(2) The works shall thereafter be carried out in accordance with the approved CTMP.

**Reason:** *To ensure that construction activities will not have a detrimental effect on the road network or the safety of all road users.*

## 15. Abnormal Load Access

- (1) No abnormal-load deliveries shall be made to site until the following have been provided to the planning authority and the planning authority in consultation with Transport Scotland has given its approval in writing to:-
  - (a) an updated survey of the proposed route for abnormal loads on the trunk- and local-road network and any accommodation measures required including, but not limited to, the removal of street furniture, junction widening and traffic management;
  - (b) a structural survey of the section of the abnormal-load delivery route from the A96 / Reiket Lane Roundabout through to the site access junction;
  - (c) the documented results of a test run undertaken from the Port of Inverness through to the site access; and
  - (d) details of the additional signing or temporary traffic-control measures necessary due to the size or length of any loads being delivered or removed during the delivery period of the wind-turbine construction materials.
- (2) The works shall thereafter be carried out as approved above in part (1) above.
- (3) Where intervention works are required to improve the structural capacity of infrastructure on the section of road referred to in letter (b) of this condition, these shall be delivered by the Company to the standard and specification approved by the planning authority (and the council in its role as roads authority).
- (4) The Roads Authority and Transport Scotland shall be invited to attend the test run referred to in letter (c) of this condition.
- (5) The details supplied in letter (d) of this condition must be provided by a traffic-management consultant whose appointment is approved by the planning authority in consultation with Transport Scotland.
- (6) The Company shall consult all affected road and structure authorities through the abnormal-load permitting process via the ESDAL portal. No abnormal load delivery shall be made to the site until the planning authority in consultation with Transport Scotland has confirmed that the consultation has been carried out to the appropriate standard.

**Reason:** *To ensure that abnormal loads can be transported in safety and to minimise the disruption to other road users, residents and businesses in the area.*

## 16. Ecological Clerk of Works

- (1) No development shall commence unless and until an Ecological Clerk of Works (EcoW) approved by the Planning Authority has been appointed by the Company. The terms of the appointment shall:-
  - (a) Impose a duty to monitor compliance with the ecological and hydrological commitments required in terms of conditions 12, 17 and 13 (“the EcoW Works”) and with legislation on the protection of the environment;
  - (b) Require the EcoW to report to the Company’s nominated construction project manager and Planning Authority any incidences of non-compliance with the commitments monitored as part of the EcoW Works or with legislation for the protection of the environment at the earliest practical opportunity; and
  - (c) Require the EcoW to submit a monthly report to the Planning Authority summarising works undertaken on site and incidents of micro-siting in accordance with condition 11.
- (2) The EcoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity, and for the duration of any period of post-construction restoration works approved as part of the Construction Environment Management Plan under condition 13.
- (3) No later than 18 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent EcoW throughout the decommissioning, restoration and aftercare phases of the Development to the Planning Authority for approval. 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.*

## **17. Habitat Management Plan**

- (1) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the Planning Authority in consultation with NatureScot, SEPA and RSPB.
- (2) The HMP shall set out proposals for the management of the habitat of the windfarm site for enhancement of habitat for capercaillie and woodland grouse during the periods of construction, operation and decommissioning of the Development and during the restoration of the site after the Development has been removed.

- (3) Unless otherwise approved in advance in writing with the Planning Authority, the approved HMP shall be implemented in full.

**Reason:** *In the interests of the protection of the habitats of those species identified in the EIA Report.*

## **18. Programme of Archaeological Works**

- (1) No development shall commence until an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the Planning Authority. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the WSI will be provided and agreed throughout the implementation of the programme of archaeological works.
- (2) Should the archaeological works reveal the need for post-excavation analysis, a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition shall be submitted to the planning authority for its written approval.
- (3) The WSI and any PERD shall be implemented as approved.

**Reason:** *To safeguard and record the archaeological potential of the area.*

## **19. Compensatory Planting**

No development shall commence unless and until a woodland compensatory planting plan (CPP) in accordance with the Scottish Government Control of Woodland Removal Policy (or such replacement as may be in place at the time that the CPP is submitted for approval) has been submitted to and approved in writing by the Planning Authority in consultation with Forestry Scotland (FS). The CPP shall provide details of the planting of woodland within the Site. The CPP shall include:-

- (a) The location and details of the proposed planting, timescales for implementation and its maintenance for the operational period of the Development; and
- (b) A silvicultural proposal for compensatory planting and a protection plan for the life of the development.

**Reason:** *to enable appropriate woodland removal to take place in accordance with the current Scottish Government Control of Woodland Removal Policy.*

## **20. Construction Hours**

- (1) Construction work 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 16.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays or bank holidays (see definitions) other than concrete pouring if started within those hours, turbine erection and emergency works. The Company shall notify the Planning Authority of such works if carried out outside the permitted hours within two working days of their occurrence.
- (2) Heavy Goods Vehicles (HGV) movements to and from the site (excluding abnormal loads) during construction of the wind farm 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 on national public holidays or bank holidays unless otherwise agreed in writing by the Planning Authority.
- (3) Turbine delivery may be made out with these construction hours, where necessary, and as agreed in writing in advance with the Planning Authority.

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

## **21. Aviation Safety**

- (1) Prior to the Commencement of Development the Company shall provide the Planning Authority and Ministry of Defence, Defence Geographic Centre with the following information:-
  - (a) the date of the expected commencement of the erection of the wind turbine generators;
  - (b) the date of the expected commencement of operation of any wind turbine generators;
  - (c) the maximum height of any construction equipment to be used in the erection of the wind turbines generators; and
  - (d) the position of the turbines and any masts in latitude and longitude.
- (2) The Company shall notify Ministry of Defence in writing of any changes to the information supplied in accordance with these requirements and of the completion of the construction of the Development.

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

## **22. Noise (including Excess Amplitude Modulation)**

The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the

relevant integer wind speed set out in or derived from Table 1 attached to these conditions and:

- (a) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the Company shall, at its expense, employ an independent consultant and provide a written protocol to be approved by the Planning Authority. The protocol shall describe the procedure to assess the level and character of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out as far as possible the time or meteorological conditions to which the complaint relates and time or conditions relating to tonal noise or excess amplitude modulation if applicable. Measurements to assess compliance with the noise limits shall be undertaken in accordance with the assessment protocol which shall be approved in writing by the Planning Authority.
- (b) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the protocol within two months of the date of the approval of the protocol by the Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements and analysis, such data to be provided in a format to be agreed with the Planning Authority. Certificates of calibration of the equipment shall be submitted to the Planning Authority with the report.
- (c) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 5 of the attached Guidance Notes, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's initial assessment unless otherwise agreed by the Planning Authority.

**Table 1: At all times – Noise limits expressed in dB LA90,10 minute and apply for standardised 10 m height wind speeds up to 12 m/s as determined within the site averaged over 10 minute periods**

LOCATION	Noise Limit (dB LA90)
Burn of Rothes	31
Heatherlea	34
Lynes	34
Knocknagore	33
Lyne of Knockando	32
Aldivonie	32

**Table 2: Coordinate locations of the dwelling listed in Table 1**



LOCATION	Easting	Northing
Burn of Rothes	325273	847814
Heatherlea	322947	844545
Lynes	321693	844349
Knocknagore	318143	845004
Lyne of Knockando	317602	845267
Aldivonie	317063	845397

Note to Table 2: The geographical coordinate references are provided for the purpose of identifying the general location of dwelling to which the noise limits apply.

**Reason:** *To mitigate and monitor potential noise impacts from the Development.*

### 23. Access Plan

No development shall commence until an Access Plan has been submitted to and approved in writing by the Planning Authority. The Access Plan will include the consideration of the upgrade of the existing tracks, the formation of new tracks and other improvements to provide enhanced access opportunities and improvements to track surfaces across the proposed development area.

**Reason:** *to improve public access to the site.*

## **Guidance Notes for Noise Condition – Condition 21**

These notes are to be read with and form part of the planning condition on noise. The measured data is to be split into bins as described below. The rating level for each bin is the arithmetic sum of the wind farm noise level plus any tonal penalty applied in accordance with 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). IOAGPG is "A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise" or any update of that report current at the time of measurement.

### **Note 1 – Data Collection**

- (a) Values of the LA90,10-minute noise index should be measured in accordance with the IOAGPG. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and to capture data suitable for analysis of excess amplitude modulation for selected periods where a tonal or excess-amplitude-modulation assessment is required.
- (b) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second (m/s) and arithmetic mean wind direction in degrees from north in each successive 10-minutes period in a manner to be agreed in writing with the Planning Authority. The wind speed at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which are correlated with the noise measurements determined as valid. The Company shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle, arithmetic mean rotor revolutions per minute and whether each wind turbine is running normally during each successive 10-minutes period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Universal Time (UT).

### **Note 2 – Data Analysis**

- (a) The independent consultant shall identify a sub-set of data having had regard to:-
  - the conditions (including time of day and corresponding wind directions and speeds) at times in which complaints were recorded;
  - the nature/description recorded in the complaints if available;
  - information contained in the written request from the local planning authority;
  - likely propagation effects (downwind conditions or otherwise);
  - the results of the tonality/excess-amplitude-modulation analysis where relevant.

In cases where it is possible to identify patterns of clearly different conditions in which complaints have arisen additional sub-sets may be considered provided this does not introduce unreasonable complexity in the analysis and can be justified by the independent consultant.

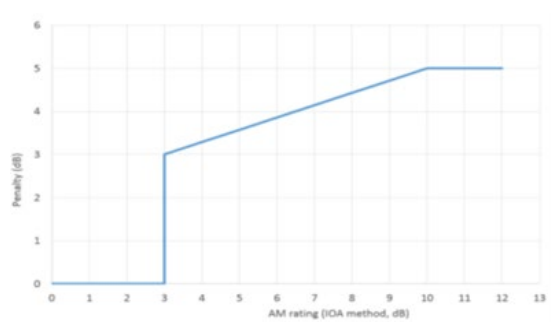
- (b) Within each of the sub-set(s) of data identified, data shall be placed into separate 1 m/s wide wind speed bins.

### **Note 3 – Tonal Penalty**

- (a) Where, in accordance with the protocol, the noise contains or is likely to contain a tonal component, a tonal audibility shall be calculated for each ten-minute period using the following procedure.
- (b) For each 10-minute period for which a tonal assessment is required this 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").
- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted. Where data for a ten-minute period are corrupted, that period shall be removed from the tonal analysis.
- (d) The tone level above audibility for each ten-minute period shall be placed in the appropriate data sub-set and wind speed bin.

### **Note 4 – Amplitude Modulation**

Within 21 days of a written request by the Local Planning Authority, following a complaint to it from a resident alleging noise disturbance at the dwelling at which they reside and where Excess Amplitude Modulation is considered by the Local Planning Authority to be present in the noise immissions at the complainant's property, the Company shall submit a scheme, for the approval of the local planning authority, providing for the further investigation and, as necessary, control of Excess Amplitude Modulation. The scheme shall be based on best available techniques and shall be implemented as approved.



## **Note 5 – Calculation of Rating Level**

- (a) The LA90 sound pressure level for each data sub-set and wind speed bin is the arithmetic mean of all the 10 minute sound pressure levels within that data sub-set and wind speed bin except where data has been excluded for reasons which should be clearly identified by the independent consultant. The tonal penalty for each bin is the arithmetic mean of the separate 10-minute tonal audibility levels in the bin converted to a penalty in accordance with Fig 17 on page 104 of ETSU-R-97. The assessment level in each bin is normally the arithmetic sum of the bin LA90 and the bin tonal penalty.
- (b) If the assessment level in every bin lies at or below the values set out in the Table(s) attached to the conditions then no further action is necessary. In the event that the assessment level is above the limit(s) set out in the Tables attached to the noise conditions in any bin, 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. Correction for background noise need only be undertaken for those wind speed bins where the assessment level is above the limit.
- (c) The Company shall ensure that all the wind turbines in the development are turned off for such periods as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:-
- i. Repeating the steps in Note 1, with the wind farm switched off, and determining the background noise ( $L_3$ ) in each bin as required in the protocol. At the discretion of the consultant and provided there is no reason to believe background noise would vary with wind direction, background noise in bins where there is insufficient data can be assumed to be the same as that in other bins at the same wind speed.
  - ii. The wind farm noise ( $L_1$ ) in each bin shall then be calculated as follows where  $L_2$  is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii. The rating level shall be calculated by adding the tonal penalties to the derived wind farm noise  $L_1$  in that bin.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalties in every bin lies at or below the values set out in the Tables attached to the condition at all wind speeds then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Table(s) attached to the condition then the development fails to comply with the planning condition in the circumstances represented by that bin.

## Definition of terms in conditions and related guidance notes

**"The Application"** means the application submitted by the Company on 1 February 2019.

**"Bank Holiday"** means:

- New Year's Day, unless it is a Sunday, in which case, 3<sup>rd</sup> January;
- 2<sup>nd</sup> January, unless it is a Sunday, in which case 3<sup>rd</sup> January;
- Good Friday;
- The first Monday in May;
- The first Monday in August;
- 30<sup>th</sup> November, 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, 27<sup>th</sup> December; and
- Boxing Day, unless it is a Sunday, in which case 27<sup>th</sup> December.

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

**"the Company"** means Rothes III Limited, company registration number SC307540 and registered address C/o Harper Macleod LLP, The Ca'd'oro, Glasgow, G1 3PE or such other person for the time being entitled to the benefit of the consent under section 36 of the Electricity Act 1989.

**"The Development"** means Rothes III Wind Farm as described in part 1 of Annex 1 and authorised by this consent and deemed planning permission.

**"dwelling"** means a building within Use Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 which lawfully exists or had planning permission at the date of this consent and deemed planning permission.

**"Excess Amplitude Modulation"** means the modulation of aerodynamic noise produced at the frequency at which a blade passes a fixed point and occurring in ways not anticipated by ETSU-R-97, *The Assessment and Rating of Noise from Wind Farms*, at page 68.

**"HES"** means Historic Environment Scotland.

**"Final Commissioning"** means the earlier of (a) 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 (b) the date 18 months after the date of First Commissioning, unless a longer period is agreed in writing in advance by the Planning Authority.

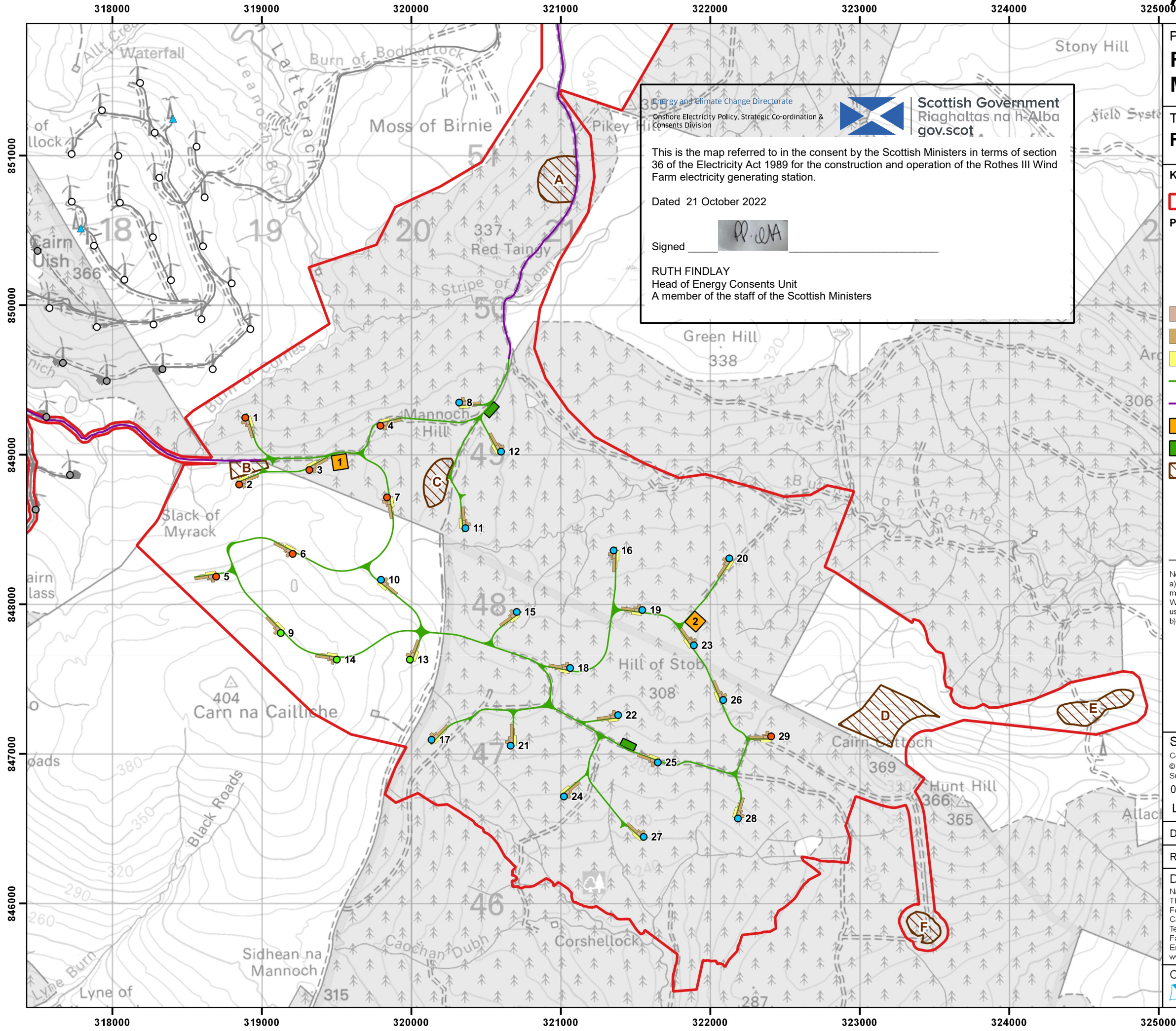
**"First Commissioning"** means the date on which electricity is first exported to the grid on a commercial basis from any of the wind turbines forming part of the development.

**"National Public Holiday"** means Easter Monday and the third Monday in September.

**"NatureScot"** means Scottish Natural Heritage now operating as NatureScot.

**"Planning Authority"** means Moray Council or any successor as planning authority.

**"SEPA"** means the Scottish Environment Protection Agency.

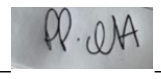


Energy and Climate Change Directorate  
Onshore Electricity Policy, Strategic Co-ordination & Consents Division

Scottish Government  
Riaghaltas na h-Alba  
gov.scot

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 the Rothes III Wind Farm electricity generating station.

















Dated 21 October 2022

Signed 

RUTH FINDLAY  
Head of Energy Consents Unit  
A member of the staff of the Scottish Ministers

Project:  
**Rothes III Wind Farm,  
Moray**

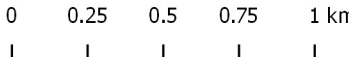

Title:  
**Figure 1.2: Site Layout**

- Key**
-  Proposed Rothes III development area
  - Proposed Rothes III turbine**
  -  149.9 m to tip
  -  200 m to tip
  -  225 m to tip
  -  Proposed Rothes III crane pad
  -  Proposed Rothes III additional crane pad area
  -  Proposed Rothes III blade laydown area
  -  Proposed Rothes III track
  -  Existing track to be upgraded
  -  Proposed Rothes III substation
  -  Proposed Rothes III construction compound
  -  Proposed Rothes III borrow pit search area
  -  Rothes I turbine
  -  Rothes II turbine
  -  Existing anemometry mast
  -  Existing Rothes I & II track

**Notes:**

- a) Information on this map is directly reproduced from digital and other material from different sources. Minor discrepancies may therefore occur. Where further clarification is considered necessary, this is noted through the use of text boxes on the map itself.
- b) For the avoidance of doubt and unless otherwise stated:
  1. where a line recorded in the key demarcates a boundary on this plan, the boundary edge is the outside edge of the line.
  2. where a line or feature recorded in the key of this plan is also shown as a line or feature by the Ordnance Survey, and that line or feature is located in a different position on the ground than shown by the Ordnance Survey, then the line or feature shall be deemed to follow the position as existing on the ground.
  3. this plan should be used for identification purposes only, unless specifically stated above or in accompanying documentation.
  4. Natural Power Consultants Ltd. accepts no responsibility for the accuracy of data supplied by third parties.

**Scale @ A3: 1:25,000**  
Coordinate System: British National Grid  
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Date: 28-11-18    Prepared by: KB    Checked by: CP

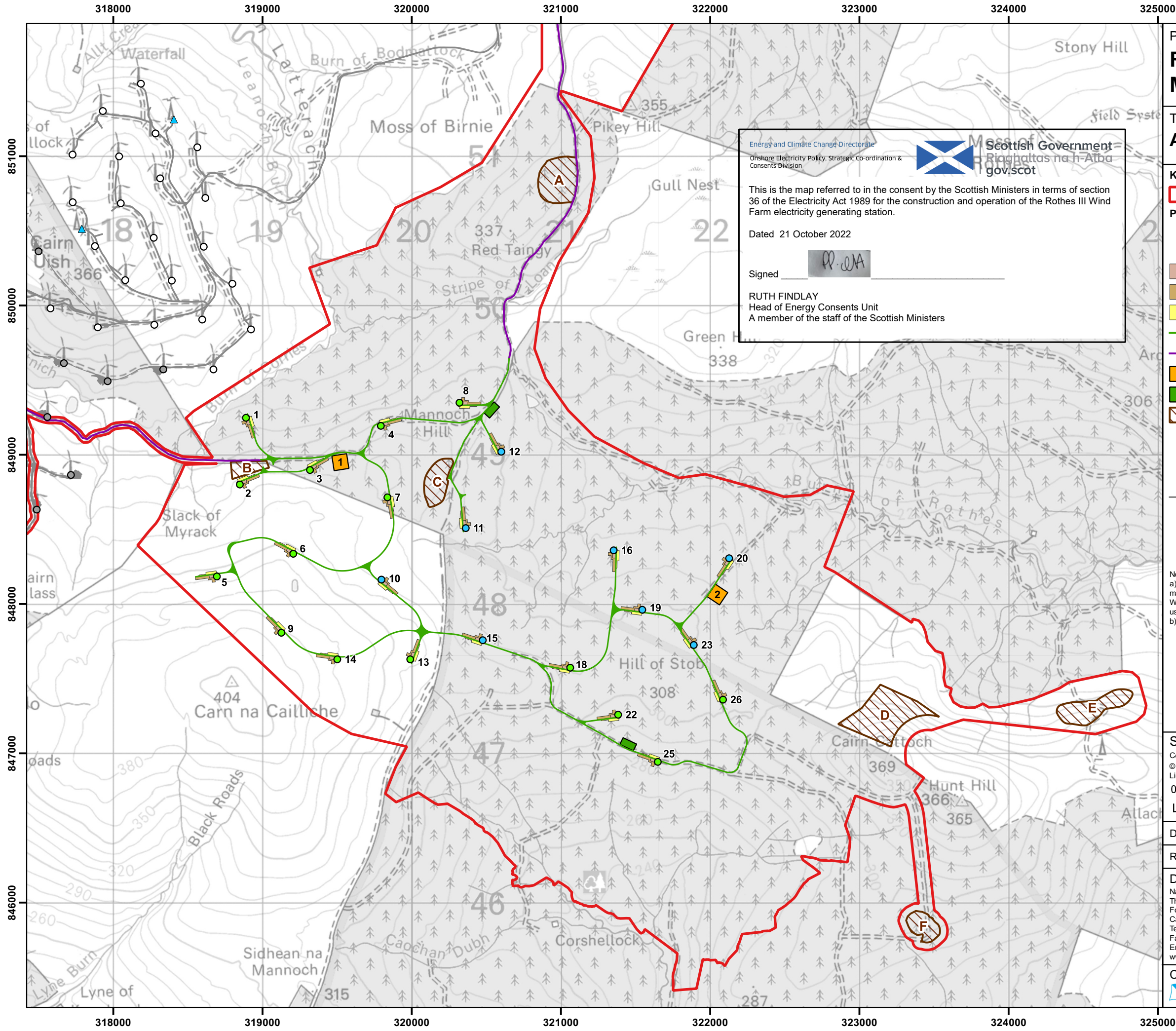
Ref: GB200356\_M\_678\_D    Layout: 60\_050418\_29t\_A

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Client:  


# Annex 3 - Part 2



Energy and Climate Change Directorate  
Onshore Electricity Policy, Strategic Co-ordination & Consents Division

Scottish Government  
Riaghaidas na h-Alba  
gov.scot

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 the Rothes III Wind Farm electricity generating station.
















Dated 21 October 2022

Signed 

RUTH FINDLAY  
Head of Energy Consents Unit  
A member of the staff of the Scottish Ministers

Project:  
**Rothes III Wind Farm,  
Moray**

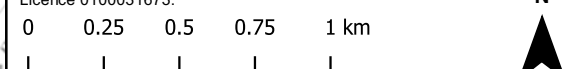

Title:  
**AI Figure 1.2: Site Layout**

- Key**
-  Proposed Rothes III development area
  - Proposed Rothes III turbine**
  -  149.9 m to tip
  -  175 m to tip
  -  Proposed Rothes III crane pad
  -  Proposed Rothes III additional crane pad area
  -  Proposed Rothes III blade laydown area
  -  Proposed Rothes III track
  -  Existing track to be upgraded
  -  Proposed Rothes III substation
  -  Proposed Rothes III construction compound
  -  Proposed Rothes III borrow pit search area
  -  Rothes I turbine
  -  Rothes II turbine
  -  Existing anemometry mast
  -  Existing Rothes I & II track

Notes:

- a) Information on this map is directly reproduced from digital and other material from different sources. Minor discrepancies may therefore occur. Where further clarification is considered necessary, this is noted through the use of text boxes on the map itself.
- b) For the avoidance of doubt and unless otherwise stated:
  1. where a line recorded in the key demarcates a boundary on this plan, the boundary edge is the outside edge of the line.
  2. where a line or feature recorded in the key of this plan is also shown as a line or feature by the Ordnance Survey, and that line or feature is located in a different position on the ground than shown by the Ordnance Survey, then the line or feature shall be deemed to follow the position as existing on the ground.
  3. this plan should be used for identification purposes only, unless specifically stated above or in accompanying documentation.
  4. Natural Power Consultants Ltd. accepts no responsibility for the accuracy of data supplied by third parties.

Scale @ A3: 1:25,000  
Coordinate System: British National Grid  
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Date: 17-10-19	Prepared by: AB	Checked by: SL
Ref: GB200356_M_678_E	Layout: 73_060919_23t_A	

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## Conservation of Habitats and Species Regulations 2017

Assessment of the implications of the proposed **Rothes III Wind Farm** development for the **Darnaway and Lethen Forest Special Protection Area (“SPA”)** in view of the conservation objectives of the SPA

**October 2022**

The following assessment has been prepared by the Scottish Ministers as the Competent Authority for the above proposal.

	Description	
1	Brief description of the project	<p>On 01 February 2019, Natural Power, on behalf of Rothes III Limited (a wholly owned subsidiary company of Fred.Olsen Renewables Ltd) applied, under section 36 of the Electricity Act 1989, for permission to construct and operate the proposed Rothes III Wind farm, a wind powered electricity generating station, to be located 4 kilometres to the west of Rothes village and just over 2.5 kilometres north of the village of Archiestown in the Moray Council planning authority area.</p> <p>The Rothes III wind farm will comprise 28 turbines with blade tip heights of up to 225 metres and its associated ancillary infrastructure including tracks and borrow pits.</p>
2	Brief description of the designated Natura site	<p>Qualifying interest: - capercaillie (<i>Tetrao urogallus</i>)</p> <p>Darnaway and Lethen Forest Special Protection Area (SPA) is designated for its breeding capercaillie population. It consists mainly of commercially managed plantations of conifers, in particular Scots pine (<i>Pinus sylvestris</i>), with larch (<i>Larix</i> spp.), spruce (<i>Picea</i> spp.), Douglas fir (<i>Pseudotsuga menziesii</i>) and other non-native species.</p>
3	Conservation objectives for Darnaway and Lethen Forest Special Protection Area	<p>Conservation objectives are listed in full in the Conservation Advice Package available via <a href="#">SiteLink (nature.scot)</a> and summarised below.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Population of the species as a viable component of the site</li> <li>• Distribution of the species within site</li> </ul>

## ANNEX 4

		<ul style="list-style-type: none"> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> </ul>
4	Is the proposal directly connected with, or necessary to, conservation management of the Natura site?	No
5	Is the operation likely to have a significant effect on the qualifying interest? Consider each qualifying interest in relation to conservation objectives.	In addition to habitat loss and displacement from the proposed development, there is the potential for impacts associated with collision. There are unlikely to be direct impacts to populations of capercaillie as a viable component of the SPA associated with habitat loss and collision. However, fragmentation of dispersal corridors and collision mortality may in the long-term contribute to a reduction in genetic diversity and so to the health of the populations within the SPA.
6	Identify the relevant conservation objectives to consider for the Darnaway and Lethen Forest Special Protection Area	To avoid deterioration of the habitats of capercaillie (the qualifying species) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.
7	Can it be ascertained that the proposal/plan will not adversely affect the integrity of the Darnaway and Lethen Forest Special Protection Area	Yes.  Although the proposed Rothes III wind farm development has the potential to disturb capercaillie due to the greater human activity in the forest during construction and subsequently as a result of increased recreational use arising from use of any new tracks this can be mitigated by the measures set out below which have been secured by imposing relevant conditions on the planning permission.
8	Consider whether mitigation	NatureScot advise that the following measures, proposed in the Supplementary Information, including;

## ANNEX 4

	<p>measures or conditions to be adopted to avoid impacts on site integrity</p>	<ul style="list-style-type: none"> <li>• strategic habitat management measures;</li> <li>• the appointment of an Ecological Clerk of Works (ECoW) to oversee compliance with environmental management and mitigation plans during construction;</li> <li>• pre-construction survey checks prior to tree-felling, vegetation-stripping or excavation works;</li> <li>• exclusion zones; and</li> <li>• a Species Protection Plan (SPP)</li> </ul> <p>which have been secured by conditions imposed on the planning permission (namely condition's 13, 16 and 17) would ensure that there would be no adverse effect on the integrity of the Anagach Woods Special Protection Area or <u>Darnaway and Lethen Forest Special Protection Area.</u></p>
	<p>Conclusion</p>	
<p>9</p>	<p>Can adverse impacts on site integrity be avoided ?</p>	<p>Yes. The mitigation measures outlined above, which have been imposed by conditions attached to consent, will ensure the proposed Development <b>will not adversely affect site integrity of the Darnaway and Lethen Forest Special Protection Area.</b></p>

## Conservation of Habitats and Species Regulations 2017

Assessment of the implications of the proposed **Rothes III Wind Farm** development for the **Anagach Woods Special Protection Area (“SPA”)** in view of the conservation objectives of the SPA

**October 2022**

The following assessment has been prepared by the Scottish Ministers as the Competent Authority for the above proposal.

	Description	
1	Brief description of the project	<p>On 01 February 2019, Natural Power, on behalf of Rothes III Limited (a wholly owned subsidiary company of Fred.Olsen Renewables Ltd) applied, under section 36 of the Electricity Act 1989, for permission to construct and operate the proposed Rothes III Wind farm, a wind powered electricity generating station, to be located 4 kilometres to the west of Rothes village and just over 2.5 kilometres north of the village of Archiestown in the Moray Council planning authority area.</p> <p>The Rothes III wind farm will comprise 28 turbines with blade tip heights of up to 225 metres and its associated ancillary infrastructure including tracks and borrow pits.</p>
2	Brief description of the designated Natura site	<p>Qualifying interest: - capercaillie (<i>Tetrao urogallus</i>)</p> <p>Anagach Woods Special Protection Area (SPA) is designated for its breeding capercaillie population. It consists of a number of contiguous woodlands, adjacent to Grantown-on-Spey. The woodlands are mainly naturally regenerated Scots pine (<i>Pinus sylvestris</i>) with juniper (<i>Juniperus communis</i>) over heather (<i>Calluna vulgaris</i>), cowberry (<i>Vaccinium vitis-idea</i>) and blaeberry (<i>Vaccinium myrtillus</i>). Small areas are predominantly birch (<i>Betula</i> spp.) with occasional other broadleaves including rowan (<i>Sorbus aucuparia</i>) and aspen (<i>Populus tremula</i>).</p>
3	Conservation objectives for Anagach Woods Special Protection Area	<p>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</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> <li>Population of the species as a viable component of the site</li> </ul>

## ANNEX 4

		<ul style="list-style-type: none"> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> </ul>
4	Is the proposal directly connected with, or necessary to, conservation management of the Natura site?	No
5	Is the operation likely to have a significant effect on the qualifying interest? Consider each qualifying interest in relation to conservation objectives.	In addition to habitat loss and displacement from the proposed development, there is the potential for impacts associated with collision. There are unlikely to be direct impacts to populations of capercaillie as a viable component of the SPA associated with habitat loss and collision. However, fragmentation of dispersal corridors and collision mortality may in the long-term contribute to a reduction in genetic diversity and so to the health of the populations within the SPA.
6	Identify the relevant conservation objectives to consider for the Anagach Woods Special Protection Area	To avoid deterioration of the habitats of capercaillie (the qualifying species) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.
7	Can it be ascertained that the proposal/plan will not adversely affect the integrity of the Anagach Woods Special Protection Area	Yes. Although the proposed Rothes III wind farm development has the potential to disturb capercaillie due to the greater human activity in the forest during construction and subsequently as a result of increased recreational use arising from use of any new tracks this can be mitigated by the measures set out below which have been secured by imposing relevant conditions on the planning permission.
8	Consider whether mitigation measures or conditions to be adopted to avoid	NatureScot advise that the following measures, proposed in the Supplementary Information, including; <ul style="list-style-type: none"> <li>• strategic habitat management measures;</li> </ul>

## ANNEX 4

	impacts on site integrity	<ul style="list-style-type: none"> <li>• the appointment of an Ecological Clerk of Works (ECoW) to oversee compliance with environmental management and mitigation plans during construction;</li> <li>• pre-construction survey checks prior to tree-felling, vegetation-stripping or excavation works;</li> <li>• exclusion zones; and</li> <li>• a Species Protection Plan (SPP)</li> </ul> <p>which have been secured by conditions imposed on the planning permission (namely condition's 13, 16 and 17) would ensure that there would be no adverse effect on the integrity of the <u>Anagach Woods Special Protection Area</u> or Darnaway and Lethen Forest Special Protection Area.</p>
	<b>Conclusion</b>	
9	Can adverse impacts on site integrity be avoided ?	Yes. The mitigation measures outlined above, which have been imposed by conditions attached to consent, will ensure the proposed Development <b>will not adversely affect site integrity of the Anagach Woods Special Protection Area.</b>

## Conservation of Habitats and Species Regulations 2017

Assessment of the implications of the proposed **Roths III Wind Farm** development for **River Spey Special Area of Conservation (“SAC”)** in view of the conservation objectives of the SAC

**October 2022**

The following assessment has been prepared by the Scottish Ministers as the Competent Authority for the above proposal.

	Description	
1	Brief description of the project	<p>On 01 February 2019, Natural Power, on behalf of Roth's III Limited (a wholly owned subsidiary company of Fred.Olsen Renewables Ltd) applied, under section 36 of the Electricity Act 1989, for permission to construct and operate the proposed Roth's III Wind farm, a wind powered electricity generating station, to be located 4 kilometres to the west of Roth's village and just over 2.5 kilometres north of the village of Archiestown in the Moray Council planning authority area.</p> <p>The Roth's III wind farm will comprise 28 turbines with blade tip heights of up to 225 metres and its associated ancillary infrastructure including tracks and borrow pits.</p>
2	Brief description of the designated Natura site	<p>The River Spey is a large Scottish east coast river that drains an extensive upland catchment and supports an outstanding freshwater pearl mussel population, considered of great international significance, in its middle to lower reaches. The River Fiddich is present on the western side of the Proposed Development and is part of the Spey.</p> <p>The River Spey is designated as a SAC for the following Annex II species which are a primary reason for site selection:</p> <ul style="list-style-type: none"> <li>• Freshwater pearl mussel;</li> <li>• Sea lamprey;</li> <li>• Atlantic Salmon;</li> <li>• Otter.</li> </ul>
3	Conservation objectives for River Spey Special Area of Conservation	<p>Conservation objectives are listed in full in the Conservation Advice Package available via <a href="https://www.nature.scot">SiteLink (nature.scot)</a> and summarised below;</p> <p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p>

## ANNEX 4

		<ul style="list-style-type: none"> <li>• Population of the species, including range of genetic types for salmon, as a viable component of the site</li> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> <li>• Distribution and viability of freshwater pearl mussel host species</li> <li>• Structure, function and supporting processes of habitats supporting freshwater pearl mussel host species</li> </ul>
4	Is the proposal directly connected with, or necessary to, conservation management of the Natura site?	No
5	Is the operation likely to have a significant effect on the qualifying interest? Consider each qualifying interest in relation to conservation objectives.	A large portion of the proposed Development infrastructure will drain areas of the River Spey's catchment; the Burn of Rothes and Burn of Ballintomb. The site is therefore connected to the River Spey SAC and there is potential for impacts to occur <b>on all of 4 qualifying species.</b>
6	Identify the relevant conservation objectives to consider for the River Spey SAC	<p>The conservation objectives of the River Spey SAC for the qualifying species are:</p> <p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> <li>• Population of the species, including range of genetic types for salmon, as a viable component of the site</li> </ul>



## ANNEX 4

		<ul style="list-style-type: none"> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> <li>• Distribution and viability of freshwater pearl mussel host species</li> <li>• Structure, function and supporting processes of habitats supporting freshwater pearl mussel host species</li> </ul>
7	<p>Can it be ascertained that the proposal/plan will not adversely affect the integrity of the River Spey Special Area of Conservation</p>	<p>The qualifying features of the River Spey SAC include Atlantic salmon, sea lamprey, freshwater pearl mussel and otter. These species depend directly or indirectly on water quality. NatureScot advise that the successful implementation of mitigation which is embedded as part of the proposal will avoid and minimise the risk to the SAC species.</p> <p>The mitigation measures are set out below. In the absence of mitigation measures there is the potential during construction for pollution which could adversely affect the habitat relating to the qualifying species.</p>
8	<p>Consider whether mitigation measures or conditions to be adopted to avoid impacts on site integrity</p>	<p>Mitigation measures to reduce the risk to the SAC are proposed in the EIA Report at paragraphs 6.11.24 to 6.11.35 of Chapter 6 (Ecology) which include:</p> <ul style="list-style-type: none"> <li>• A 15 mile-per-hour speed limit for site traffic to reduce the risk of collision;</li> <li>• Excavations to be fitted with an escape route to allow protected species who enter them to escape;</li> <li>• Open pipe ends to be covered when not being worked on to prevent protected species becoming trapped;</li> <li>• A monitoring programme for trout populations in site watercourses, which would be a surrogate measure of the quality and health of the watercourses during construction;</li> <li>• Implementation of measures to prevent peat slide;</li> <li>• Watercourse protection to prevent siltation and sedimentation; Chemicals to be stored and refuelling to take place in designated areas away from watercourses;</li> <li>• A pollution incident response plan including measures for notification of a pollution incident and provision of spill-containing emergency equipment;</li> <li>• A peat-management plan to minimise excavation and ensure re-use of peat; and</li> <li>• The appointment of an ecological clerk of works to oversee management plans, ensure environmental legislation is adhered to and advise on construction and installation of works in the water environment.</li> </ul>

## ANNEX 4

		The measures outlined above, which have been imbedded in the design or imposed through conditions attached to the planning permission, will ensure impacts on the integrity of the site are avoided.
	<b>Conclusion</b>	
9	Can adverse impacts on site integrity be avoided ?	Yes. The mitigation measures outlined above, which have been imposed in conditions attached to consent, will ensure the Rothes III wind farm <b>will not adversely affect site integrity of River Spey SAC.</b>