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31 August 2023

Our Ref: ECU00002001

Dear Ms Fisher,

REFUSAL OF THE APPLICATION FOR 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 CLAUCHRIE WIND FARM IN THE SOUTH AYRSHIRE COUNCIL PLANNING AREA (WITH ACCESS IN DUMFRIES AND GALLOWAY COUNCIL PLANNING AREA)

Application

I refer to the application made on 20 December 2019 (“the Application”) submitted by ITP Energised Limited on behalf of ScottishPower Renewables (UK) Ltd (“the Company”) incorporated under the Companies Act with the company number NIO28425 having its registered office at The Soloist, 1 Lanyon Place, Belfast, Northern Ireland BT1 3LP, for consent under Section 36 of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of Clauchrie Wind Farm located approximately 5.5 km north-east of Barrhill in South Ayrshire Council planning area.

The Application proposed a wind powered electricity generating station with an expected installed generating capacity of approximately 100 megawatts, plus a 25 megawatt electricity storage facility, comprising of 18 wind turbines with a ground to blade tip height of up to 200 metres (the “proposed Development”). The turbines lie wholly within South Ayrshire Council area, for which Section 36 consent is sought, with the southern part of the access route within Dumfries and Galloway Council planning area.

This letter contains the Scottish Ministers’ decision to refuse the Application.



Consultation

On 20 December 2019, in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) the Company submitted an Environmental Impact Assessment Report (“EIA Report”) describing the proposed Development and giving an analysis of its environmental effects alongside supporting documents including a Non-Technical Summary of the EIA Report, a Planning Statement, Socio-Economic Assessment, Design and Access Statement, and a Pre-Application Consultation Report.

Under paragraph 2(1) of Schedule 8 to the Electricity Act, the Electricity (Applications for Consent) Regulations 1990 (“the Consents Regulations”), and the EIA Regulations, the relevant planning authority is required to be notified in respect of a section 36 consent application. In terms of the EIA Regulations, notifications were sent to the South Ayrshire Council, as the relevant planning authority, NatureScot (formally known as Scottish Natural Heritage “SNH”), the Scottish Environment Protection Agency (“SEPA”) and Historic Environment Scotland (“HES”). Dumfries and Galloway Council as well as a wide range of other relevant organisations were also consulted as bodies likely to be affected by the proposed Development.

In addition, in accordance with the Consents Regulations and the EIA 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.

Public Inquiry

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

As set out below, South Ayrshire Council (the “Planning Authority”) objected to the Application on 25 June 2020. The Scottish Ministers did not consider it possible to accede to the Application subject to modifications or conditions as to give effect to the Planning Authority’s objection, and consequently caused a public inquiry to be held.

Public Inquiry and Report

Additional information was requested by the Reporter for the purposes of the public inquiry (“AI”), and notification of the AI was given to South Ayrshire Council and those party to the inquiry. The AI submitted by the Company on 25 February 2021, comprised a Landscape and Visual Cumulative Update to reflect the up-to-date baseline.

A virtual public inquiry and hearing sessions were held on 24 May 2021 through to 25 June 2021. The Reporter undertook unaccompanied site inspections on 26 November 2020 and 15 & 16 May 2021 as well as an accompanied site visit on 30 June 2021. A

report of that inquiry and its recommendation was submitted to the Scottish Ministers on 08 March 2023 (the “PI Report”).

In each chapter of the PI Report, the Reporter summarises the case for each party, taking account of the precognitions, hearing statements, hearing sessions, the discussion at the inquiry and the closing submissions. The Reporter also takes into account the environmental information included in the EIA Report and the AI as well as the written representations and all of the other information supplied for the inquiry and hearing sessions. The PI Report includes a Summary Report and Preamble and the following chapters:

- Chapter 1 Background, consultations and representations.
- Chapter 2 Legislative and policy context.
- Chapter 3 Landscape and visual impacts, including Wild Land and Aviation Lighting.
- Chapter 4 Hydrology, including Private Water Supplies.
- Chapter 5 Socio-economics and Tourism.
- Chapter 6 Aviation – Radar Mitigation.
- Chapter 7 Noise.
- Chapter 8 Other matters: Peat; Ecology, Biodiversity & Ornithology; Access, Traffic & Transport; Forestry; Shadow Flicker; Health & Safety (Sulphur Hexafluoride); Archaeology & Cultural Heritage.
- Chapter 9 Proposed Conditions.
- Chapter 10 Policy Assessment, Overall Conclusions and Recommendations.

Appendices

- Appendix 1: Recommended Conditions.
- Appendix 2: Core Documents.
- Appendix 3: Appearances and link to webcasts.

The Reporter concluded in the summary of the PI Report *“I have identified the potential damage to the special importance of The Merrick, and to the particular concentration of environmental designations in this location. In my opinion, this damage is so substantial as to render the proposal contrary to 11(e) of NPF4 in that there are significant visual impacts that go beyond the localised and cannot be mitigated, and these impacts are sufficient to outweigh even the significant weight that must be given to the scheme’s potential benefits and the global climate crisis. The scheme would also fail to preserve natural beauty, which is one of the matters Ministers are required to have regard to the desirability of by Schedule 9 of the Electricity Act. On this basis I consider, on balance, that the application should be refused.”*

The Reporter’s recommendation is that consent under section 36 of the Electricity Act 1989 and deemed planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 should be refused by Scottish Ministers.

The Reporter’s overall conclusions, including a summary of findings and assessment, can be found at Chapter 10 Paragraphs 10.8 – 10.44 of the PI Report.

Summary of Consultation Responses

A summary of all consultation responses is provided below. The full consultation responses are available on the Energy Consents Unit website www.energyconsents.gov.scot

Statutory Consultees

The Planning Authority: Objected to the proposed Development for the following reasons:

(a) Landscape and Visual. The proposed Development is contrary to South Ayrshire Local Development Plan (“LDP”) policies 'Wind Energy – Criterion a), b) and c)', 'Sustainable Development' and 'Landscape Quality' and South Ayrshire Council Supplementary Guidance on Wind Energy and South Ayrshire Landscape Windfarm Capacity Study on the basis of significant adverse landscape and visual effects due to the scale and positioning of the proposed Development’s turbines.

(b) Landscape and Visual – Aviation lighting. The proposed Development is contrary to South Ayrshire LDP policies 'Wind Energy' – criteria a) and b), and 'Air, Noise and Light Pollution' by reason that the Company has not demonstrated that aviation lighting would not introduce intrusive and prominent lights into an area important for its dark skies, thus adversely impacting upon views from the Merrick Wild Land Area and core area of the dark sky park.

(c) Landscape and Visual – Tourism and Recreation resource. The proposed Development is contrary to South Ayrshire LDP policies 'Wind Energy – Criterion a), b) and c)', 'Sustainable Development' and 'Landscape Quality' and South Ayrshire Council Supplementary Guidance on Wind Energy and South Ayrshire Landscape Windfarm Capacity Study on the basis of significant adverse landscape and visual effects due to the scale and positioning of the proposed turbines and the associated impacts of these effects on the tourism and recreational resource of the locality including the Merrick Wild Land Area, Galloway Forest Park, Dark Sky Park and Galloway and Southern Ayrshire Biosphere.

(d) Glasgow Prestwick Airport. The proposed Development is contrary to South Ayrshire LDP policies 'Wind Energy – Criterion f', 'Sustainable Development' and South Ayrshire Council Supplementary Guidance on Wind Energy on the basis that the Company has not demonstrated that the proposed Development does not impinge on the current operation of Glasgow Prestwick Airport.

(e) Private Water Supplies. The proposed Development is contrary to South Ayrshire LDP policies; 'Wind Energy', 'Sustainable Development' and 'Water Environment' and South Ayrshire Council Supplementary Guidance on Wind Energy on the basis that there is insufficient information to demonstrate that the private water supplies, their source, and the catchment which feeds the source will not be damaged or destroyed by the proposed Development.

Dumfries and Galloway Council: Did not object to the proposed Development subject to the imposition of conditions relating to transport and archaeology.

SEPA: Did not Object to the proposed Development subject to conditions relating to peat, a construction environmental management plan, a water quality monitoring plan and flood risk issues be attached to the consent.

NatureScot: (Landscape and visual impacts): Originally objected but **withdrew its objection** on 24 February 2023. NatureScot advised that the scale and location of the proposed Development’s wind turbines would result in a distinct step change in the proximity, prominence and visual intrusion of wind farm development resulting in significant adverse effects on the sense of remoteness and sense of sanctuary as identified in the description for Merrick Wild Land Area (“WLA 01”) - Quality 3. It further advised that the required night-time lighting on all 18 turbines (unless otherwise agreed with the relevant aviation authorities) would result in additional significant adverse effects on the perception of “wildness attributes” at dusk and into the night. There would be further and substantial weakening of the attributes and responses highlighted in WLA 01, Qualities 3 and 4. The proposed lights will also have a significant impact on how WLA 01 is experienced after dusk.

NatureScot (designated sites and other ecological interests): Did not Object to the proposed Development subject to a series of detailed planning conditions and measures which are set out in annex 2 of its response dated 1 May 2020. There are natural heritage interests of international and national importance near the site, but NatureScot’s view is that these will not be adversely affected by the proposal.

Historic Environment Scotland: Did not Object to the proposed Development.

Consultees that object

Galloway and Southern Ayrshire Biosphere: Objected stating the proposed Development does not accord with the policies of both Dumfries and Galloway’s and South Ayrshire’s LDPs or the content and guidance set out in the recently revised South Ayrshire Supplementary Landscape Guidance on wind farm development. Due to its scale, sensitive position and impact on the core and buffer areas of the Biosphere, the proposed Development:

- (a) Cannot be accommodated in a manner that respects the main features and character of the landscape.
- (b) Will have significant detrimental visual impacts in views experienced from surrounding residential properties and villages, public roads and paths, significant public viewpoints and important recreational assets and tourist attractions.
- (c) Will have unacceptable cumulative and visual impacts when considered in combination with other wind energy developments existing or approved on designated scenic landscapes.
- (d) Will have an adverse impact on skylines and hill features, including prominent features.
- (e) Does not support the aims of the UNESCO Biosphere.

- (f) Will set an unacceptable precedent of wind energy development in the Buffer Zone of the UNESCO Biosphere.
- (g) Will produce levels of lighting which would adversely affect the Galloway Forest Dark Skies status.
- (h) Will have a significant (adverse) effect on the Merrick WLA.

Glasgow Prestwick Airport: Objected until an agreed radar mitigation is in place and available and maintained for the lifetime of the proposed Development.

Mountaineering Scotland: Objected stating the proposed Development would materially change the perceived character of the landscape as seen from The Merrick range. This is an area of substantial mountaineering significance, containing the highest hill in southern Scotland in a landscape more Highland than elsewhere in southern Scotland. It is also the only major area of upland in southern Scotland that retains a reasonable degree of separation from the wind farm landscapes that, when current consents are built, will occupy most views. The scheme would inflict major harm upon this distinctive range, outweighing its putative benefits.

Scottish Rights of Way and Access Society (Scotways): Objected on the basis that there is a lack of consideration given to public recreational access and the proximity of the proposed Development's turbines to rights of way.

Community Councils

Barrhill Community Council: Objected on the grounds summarised below:

- (a) The number of windfarms already in this area is excessive.
- (b) There are grave concerns about the cumulative impact of so many windfarms in this area, with Arecleoch, Mark Hill and Kilgallioch Windfarms already operational, not to mention the already consented Chirmorie Windfarm to come.
- (c) There are concerns about detrimental noise effects in view of the proximity of the village to the proposed extension and the cumulative effects of surrounding windfarms.
- (d) The scale of the windfarm and height of the proposed turbines is excessive which will result in an unacceptable visual impact.
- (e) There would be further significant adverse effects and cumulative impacts on the environment, in particular landscape and visual effects, which are not justified in the rural location.
- (f) The required aviation lighting of the proposed will impact on the Dark Sky Park. In addition, the area is currently being considered for National Park status.
- (g) There would be a further detrimental impact on wildlife, which has seen its population decline since construction of windfarms commenced in this area some years ago.
- (h) The adverse impacts of the proposed Development will in turn impact on tourism and would result in serious detrimental economic consequences for the area.
- (i) The number of constraint payments to Scottish Windfarms has increased each year as more windfarms are built, resulting in the grid being unable to cope.

The following community councils made a representation to Scottish Ministers:

Colmonell & Lendalfoot Community Council: Objected on the basis of: unacceptable visual impact, including cumulative impact and impact on the special value of Glen Trool and The Merrick. The impact on flora and fauna and failure to address the Planning Authority's wind energy capacity study.

Crosshill, Straiton & Kirkmichael Community Council: Objected. It recognised the importance of renewable energy but noted the conflict with the Wind Capacity Study and the need to protect the Merrick Wild Land Area, our scenic valleys and the Dark Skies Park. The impact on path and cycle networks and the South West 300 coastal route; and jeopardy to the Galloway National Park proposal.

Dailly Community Council: Objected on the basis of: cumulative impact, noise, environmental impact, health impacts, water contamination, impact on tourism and recreation, damage to roads, landscape and visual impact, damage to historical sites, contrary to policy and absence of need.

Consultees who do not object

RSPB Scotland: Did not object to the proposed Development. However, RSPB raises serious concerns about the precedent this development sets, its impact on black grouse, the survey and cumulative assessment work, the habitat management plan, the forest plan and the carbon payback time.

The following consultees have no objection to the proposed Development or have no objection subject to appropriately worded planning conditions:

- **BT**
- **Defence Infrastructure Organisation**
- **Galloways Fisheries Trust**
- **Joint Radio Company**
- **NATS safeguarding**
- **OFCOM**
- **River Cree District Salmon Fishery Board**
- **Scottish Water**

The following organisations were consulted but did not comment or provided no response

Ayrshire River Trust; British Horse Society; Coal Authority; CAA; Fisheries Management Scotland; John Muir Trust; River Stincher Salmon Fisheries Board; Scottish Wild Land Group; Scottish Wildlife Trust; The Crown Estate; Visit Scotland; West of Scotland Archaeology Service; Barr Community Council; Pinmore and Pinwherry Community Council and Cree Valley Community Council.

Scottish Government Internal Advisors

Transport Scotland: Did not Object to the proposed Development subject to the imposition of planning conditions regarding the routing of abnormal loads on the trunk road network and additional signing and temporary traffic control measures.

Marine Scotland: Did not Object to the proposed Development subject to conditions regarding monitoring and mitigation.

Scottish Forestry: Did not Object to the proposed Development subject to planning conditions to ensure that tree felling and restocking approval is limited to that directly required for the construction and operation of the windfarm and associated infrastructure.

Advisors to Scottish Government

Ironside Farrar (Peat): The Energy Consents Unit commissioned Ironside Farrar Ltd to technically appraise the Company's peat slide hazard risk assessment of the proposed Development. Following clarification from the Company, Ironside Farrar concluded that the Company's Peat Landslide Hazard Risk Assessment was satisfactory and sufficiently robust.

Public Representations

Representations made to Scottish Ministers in respect of the proposed Development are available to view in full on the Energy Consents Unit website www.energyconsents.gov.scot

A total of 100 representations have been made, 90 objections and 10 in support.

Key issues raised in objections included the following:

- Landscape and visual impact, including on the Stinchar Valley and the Merrick Wild Land Area. Excessive height of turbines, which should only be entertained offshore.
- Overbearing impact on nearby houses.
- Cumulative impact with existing wind farms including Mark Hill, Killgallioch and Arecleoch.
- Impacts on wildlife (including bird collisions) and habitats.
- Loss of forestry.
- Conflict with local and national policy, including the National Planning Framework.
- Shortcomings in supporting information, including the ornithological and bat surveys.
- Noise, including low frequency noise.
- Shadow flicker.
- Lighting and impact on stargazing/ the Dark Sky Park.

- Potential impact on private water supplies.
- Flood risk.
- Scepticism as to claimed benefits for the local economy.
- Tourism impact, including on the Galloway Forest Park and on local businesses.
- Access difficulties in the construction phase.
- Interference with electronic communications.
- Impact on health and well-being.
- Effect on property prices.
- Policy matters, including the absence of need for further wind power development.
- Suspicion that the proposal is motivated by the prospect of constraints payments when the turbines are switched off rather than the generation of renewable power.
- Lack of detail and shortcomings in the application.
- Concerns regarding the nature and past activities of the Company.
- The Scottish Government having a vested interest by reason of Forestry and Land Scotland's ownership of the site.

Key matters raised in letters of support of the proposed Development indicated the following benefits:

- Provision of jobs.
- Good site with high wind resource.
- Benefits to local community and to local businesses.
- Positive contribution to government targets the climate and providing green energy.

The matters raised in the representations have been considered by the Reporter at paragraph 1.7 – 1.10 of the PI Report and subsequently taken into account by the Scottish Ministers in reaching their decision on the proposed Development.

There were 13 participants in the inquiry process who made representations in objection to the proposed Development. Details of their positions can be found within the relevant chapters of the PI Report.

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 AI, responses to the consultation and the PI Report that the significant environmental impacts of the proposed Development, have been appropriately assessed.

The Scottish Ministers Considerations

Legislation and Environmental Matters

The Scottish Ministers are satisfied that the EIA Report and AI have been produced in accordance with the EIA Regulations and that the applicable procedures regarding publicity and consultation requirements, laid down in the EIA Regulations, have been followed.

The Scottish Ministers have considered fully and carefully the Application, including the EIA Report, the AI, consultation responses, representations, the findings, conclusions and recommendation of the PI Report and all other relevant information and, are satisfied that the environmental impacts of the proposed Development have been assessed and have taken the environmental information into account when reaching their decision.

In accordance with paragraph 3(2) of Schedule 9 to the Act the Scottish Ministers have also had regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest.

Scottish Ministers must have regard to the extent to which the Company has complied with its duty under paragraph 3(1)(b) requiring the Company to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites buildings or objects.

Main Determining Issues

Having considered the Application, the EIA Report, AI, responses from consultees and third parties, the PI Report and all other relevant information, the Scottish Ministers consider that the main determining issues are:

- The likely significance of the proposed Development's landscape and visual effects, including on wild land.
- The potential effects on tourism and recreation.
- The likely significance of the proposed Development's aviation lighting in an area important for its dark skies.
- The likely significance of the proposed Development on private water supplies.
- The potential impact of the proposed Development on Glasgow Prestwick Airport.
- The potential impact of noise on residents.
- The benefits of the proposed Development, including the potential economic benefits and contribution to energy policy objectives.
- The extent to which the proposed Development accords with Scottish Government planning policy and local planning policy.

Assessment of the Determining Issues

The Company set out the landscape and visual effects of the proposed Development at Chapter 6 of the EIA report. The proposed Development's turbines are largely located within the Plateau Moorland with Forestry and Wind Farms Landscape Character Type ("LCT").

The Reporter considered the landscape and visual effects of the proposed Development, including effects on WLAs, as well as the effects of aviation lighting at Chapter 3 of the PI Report. The Reporter's findings are set out under "Reporters Conclusions" section with the following subheadings: "Wild Land", "Aviation Lighting/Night-time Impacts", "Other Landscape Impacts", "Other Visual Effects", "Residential Visual Amenity" and "Cumulative Effects".

The Reporter takes account of the views of the Company, the Planning Authority, NatureScot and the Mountaineering Council of Scotland as well as representations from other parties who raised objections and concerns in respect of impact of the landscape and visual effects of the proposed Development on the surrounding area at paragraphs 3.3 - 3.9 of the PI Report. Glasgow Prestwick Airport also provided its views on aviation safety, in respect of the use of Aircraft Detection Lighting System ("ADLS") or short-range radar in the vicinity of the wind farm cluster to activate the lights for the period of the aircraft passing overhead nearby, in the context of using an ADLS to mitigate the landscape and visual effects of aviation lighting. A summary of the overall conclusions of the Reporter on the proposed Development's landscape and visual effects is set out at paragraphs 3.146 of the PI Report.

Having regard to the effect of the proposed Development on landscapes the Reporter summarises at paragraph 3.146 of Chapter 3 that "*there would be a considerable and detrimental change to the landscape character of much of the southern part of the Rugged Uplands, Lochs and Forest character type (and of the similar neighbouring character type in Dumfries and Galloway, particularly in the vicinity of The Merrick)*" and "*There would be a significant adverse effect on the landscape character of the northern upper sides of the upper Stinchar valley, due mainly to the way several of the turbines would overtop and compete with the bare rounded summits of Fell Hill and Cairn Hill.*"

The Reporter concluded at Paragraph 10.11 of the PI Report "*that the proposed development would serve to diminish the perception of naturalness in the western part of the Merrick Wild Land Area*" however Scottish Ministers agree with the Reporter's conclusion that effects of development outwith wild land areas will not be a significant consideration.

With regard to visual effects, the Reporter sets out in their overall conclusions at paragraph 10.14 of the PI Report that "*The Merrick has a special significance as a visual receptor, due to the numbers of people likely to be there, their probable particular interest in experiencing the view from this point, and the particular status this hill enjoys in the hillwalking community. The proposed wind farm would be experienced as a major unavoidable presence by the large numbers of people climbing The*

Merrick. It would lessen people’s enjoyment of the wild land qualities of the location, and would interrupt certain key views. From the Barr Trails, the turbines would act to diminish the sense of scale of Cairn Hill and Fell Hill in an unfortunate manner that would materially diminish visitors’ sense of enjoyment and constitute a significant adverse effect.”

Scottish Ministers have considered the Reporter’s conclusion on page 6 of the PI Report which states *“this particular location is not suitable for a development of this scale. While the effects on the wild land qualities of The Merrick Wild Land Area can no longer be considered a significant consideration, this is not to say visual impacts on people visiting the area, and in particular climbing The Merrick are not highly significant. The Merrick is an especially important visual receptor in South-West Scotland due to it being the highest mountain south of the Central Belt and an exceptionally popular hillwalk”* and *“The proposed wind farm would be experienced as a major unavoidable presence by the large numbers of people climbing The Merrick, would lessen people’s enjoyment of the qualities of the location, and would interrupt certain key views. Because of the regional significance of The Merrick, these impacts go beyond the merely localised. Due to the elevated nature of this viewpoint, and the scale and number of the turbines themselves, these impacts are not capable of mitigation within the description of the current proposal”*.

The Scottish Ministers agree with the Reporter’s conclusion that the proposed Development would cause unacceptable significant visual impacts, that go beyond being localised, that cannot be mitigated.

Landscape and Visual Effect – Tourism and Recreation Resources

The Planning Authority position is that significant adverse landscape and visual effects will occur due to the scale and positioning of the proposed turbines and the associated impacts of these effects on the tourism and recreational resource of the locality including the Merrick Wild Land Area, Galloway Forest Park, Dark Sky Park and Galloway and Southern Ayrshire Biosphere. It states the significant adverse landscape and visual effects of this wind farm could not be mitigated by reducing the size or number of turbines, and the location of this proposal is inappropriate given the sensitivity of nearby landscapes.

The Reporter summarises his conclusion at page 7 of the PI Report *“The number of overlapping environmental designations that cover the application site, including the Galloway Forest Park, Galloway and Southern Ayrshire Biosphere (buffer zone) and the Galloway Dark Sky Park are strongly indicative of the way in which the area has been recognised and is valued for its relatively natural undeveloped character. The Biosphere in particular has been picked out in NPF4 as being an exceptional environmental asset. It is unlikely that the impact on any one of these designations in isolation would be sufficient to outweigh the benefits of the scheme, but I consider that the loss of naturalness occasioned mainly by the visual impact of the turbines would damage the qualities of these designations cumulatively to a significant extent”*.

The Scottish Ministers agree with the Reporter that the visual impacts would have a significant impact on the overlapping environmental designations that cover the application site, including the Galloway Forest Park, Galloway and Southern Ayrshire Biosphere (buffer zone) and the Galloway Dark Sky Park.

Visual Effects – Aviation Lighting

The Planning Authority’s position is set out at page 11 of the PI Report at Landscape and Visual - Aviation Lighting *“that the applicant has not demonstrated that aviation lighting would not introduce intrusive and prominent lights into an area important for its dark skies, thus adversely impacting upon views from the Merrick Wild Land Area and core area of the dark sky park”*

The Planning Authority did not lead evidence at the inquiry in relation to impacts of aviation lighting and relied upon evidence of NatureScot.

The Reporter considers aviation lighting/night time effects at paragraph 3.41 – 3.73 of the PI Report, and a summary of findings regarding aviation lighting is set out at paragraph 10.12 of the PI Report. The Reporter concludes within paragraph 3.146 of the PI Report that *“The well-established mitigation measures of dimming and directional intensity would address most aviation lighting concerns. However some residual impacts would remain, most notably on the sense of naturalness and remoteness experienced in poor light on the Awful Hand ridge in the Wild Land Area, including on the descent from The Merrick. Some form of further mitigation, in the form of an aviation detection lighting system, would be necessary to avoid significant impacts.”*

The Scottish Ministers acknowledge that the Company has proposed the use of an aviation detection lighting system (“ADLS”) in addition to the mitigation measures of dimming and directional intensity to further reduce the effects of aviation lighting. The Reporter is of the view that an ADLS would be necessary to further reduce the effects of aviation lighting to avoid significant impacts *“on the sense of naturalness and remoteness experienced in poor light on the Awful Hand ridge in the Wild Land Area, including on the descent from The Merrick”*. The Reporter recommended, in the event Scottish Ministers were to disagree with the recommendation to refuse consent, that a condition should be imposed on the grant of consent prohibiting the commencement of development until such times as the Company could provide for the use of an ADLS.

The Scottish Ministers note that there are no current UK regulations or guidance setting out an ADLS policy in the UK nor are there any ADLS in operation in the UK. There is therefore uncertainty regarding the availability and practicality of this mitigation since it is not yet approved for use in the UK by the Civil Aviation Authority (“CAA”) and regulatory and legislative requirements remain to be resolved. Therefore, whilst Scottish Ministers agree it would be appropriate to require the use of the most up to date technological mitigation to reduce the effects of aviation lighting on wind turbines prior to their erection, it would not be appropriate to prohibit development or operation until such times an ADLS could be used. Had the Scottish Ministers disagreed with the recommendation of the Reporter they would have imposed a

condition committing the Company to implement an ADLS, as and when such technology becomes legally, technically and operationally practicable.

Impacts on Private Water Supplies (PWS)

At Chapter 4 of the PI Report, the Reporter considers the impact of the proposed Development on PWS. The Reporter takes account of the consultation responses from the Planning Authority as well as representations from other parties who raised objections and concerns in respect of the potential impact of the proposed Development on PWS. The Reporter's overall summary regarding hydrology and PWS is set out at paragraph 4.32 of the PI Report.

The Reporter agrees with the findings of the EIA Report that significant adverse impacts on hydrology and related issues, including impacts on PWS, would be unlikely to arise. The Reporter considers that water supply issues have been adequately addressed by the Company, including through the mitigation measures proposed. The Reporter concludes on page 5 of the PI Report *"The evidence points strongly to there being no harmful effect on private water supplies that could not be addressed through standard mitigation measures."*

The Scottish Ministers agree with the Reporter that the proposed Development would not have a significant impact on the hydrology and related issues, including impacting on PWS.

Impacts on Glasgow Prestwick Airport

At Chapter 6 of the PI Report, the Reporter considers the impact of the proposed Development on Glasgow Prestwick Airport. The Reporter's findings and conclusions are set out at paragraph 6.4 to 6.33 of the PI Report with the following subheadings: "The need for mitigation", "The type of mitigation required", "Who should bear the cost of mitigation" and "The best mechanism for securing mitigation" take account of the consultation responses from Glasgow Prestwick Airport. The Reporter's overall conclusions are set out at paragraphs 10.20 to 10.22 of Chapter 10 of the PI Report.

At page 5 of the PI Report the Reporter summarises and concludes *"The number of flights in the area is probably very low, but without mitigation the turbines could produce 'clutter' on Glasgow Prestwick Airport's radar screens. This impact therefore requires to be mitigated. However, it would not be appropriate to include an ongoing maintenance component in any radar mitigation scheme, and leaving the scope of mitigation to be determined at a later date through a mitigation services agreement would leave uncertainty as to what was to be required and the potential costs for the developer. Nor would a per-megawatt basis for the calculation of any contribution be appropriate. A condition that sets out the headline mitigation actions that are required is preferred"*.

The Scottish Ministers agree with the Reporter that the proposed Development could have an adverse operational impact on the Airport's air traffic service and a Radar Mitigation Scheme would be required. The Scottish Ministers further agree with the

Reporter's conclusions in respect of the costs associated with specific mitigation measures identified to address the evident impacts of the proposed Development, acknowledging that the sums of these costs should be demonstrably incurred by Glasgow Prestwick Airport, and that there is no basis for ongoing compensatory payments to be made.

Noise Impacts

At Chapter 7 of the PI Report, the Reporter considers the noise impact of the proposed Development on the amenity of nearby residents. The Reporter's findings and conclusions are set out under paragraph 7.9 to 7.39 of the PI Report under "Reporter's Conclusions" with the following subheadings: "Infrasound", "Cumulative Impacts at Shallochwell" and "Other properties and matters". The Reporter takes account of representations from other parties who raised objections and concerns in respect of the potential noise impact of the Proposed Development. The Reporter's overall summary in relation to noise is set out at paragraphs 7.40 of the PI Report.

The Reporter concludes at the Summary of Report on page 6 of the PI Report "*The proposal avoids an unacceptably detrimental effect from noise on the amenity of nearby residents. The potential breach of cumulative noise limits at Shallochwell would be relatively slight, would only occur at certain wind speeds and certain, relatively uncommon, wind directions, and is capable of mitigation through the slowing of turbines in these conditions. Noise levels at Ferter should remain at least 2.9 dB(A) below the upper daytime noise limit of 40 dB(A). There is no basis in current policy to take account of potential infrasound effects, and I am content that no condition is required to address amplitude modulation*".

The Scottish Ministers agree with the Reporter that the proposed Development takes account of noise impacts as expected by national planning policy, and complies with local development plan policy: wind energy, by avoiding an unacceptably detrimental effect from noise on the amenity of nearby residents.

Benefits of the Proposed Development

The benefits of the proposed Development in terms of its economic contribution and renewable energy contribution are set out in Chapter 5 and Chapter 10 of the PI Report respectively.

Economic Benefits

The Scottish Ministers note that Chapter 13 of the EIA Report includes consideration of the socio-economic benefits of the proposed Development on socio-economics, tourism and recreation. The Reporter has set out his considerations and conclusions on the socio-economic effects (including effects on tourism and recreation) of the proposed Development at Chapter 5 paragraph 5.10 to 5.29 of the PI Report.

The Company's assessment of the proposed Development's economic impact found that during the construction and development phase the proposed Development

could generate up to £7.7 million gross value added (“GVA”) and 116 job-years in Dumfries and Galloway and South Ayrshire; and £35.1 million GVA and 542 job-years in Scotland. During the operational and maintenance period, the proposed Development could annually generate up to £0.7 million GVA and 9 jobs in Dumfries and Galloway and South Ayrshire; and £1.1 million GVA and 15 jobs in Scotland. The assessment also highlights that there are no long term significant impacts on recreation and tourism predicted.

The Scottish Ministers note the Reporters’ overall summary at paragraph 5.29 of chapter 5 with regard to socio-economic, recreation and tourism issues and the Reporters overall conclusion at paragraphs 10.18 of Chapter 10 of the PI Report that *“Some economic benefits would arise from the scheme, at the Scottish and regional scale, largely in terms of jobs creation. The real scale of these benefits is largely unknowable at this stage given that the scheme is only at the planning stage and procurement has not yet begun. Significant benefits are more likely to arise during the construction stage (and so be temporary) than during operation.”* and *“Anticipated economic benefits are unlikely to be so significant as to be a major consideration in the overall decision as to whether or not to grant consent.”* In addition at paragraph 10.19 of chapter 10 of the PI Report the Reporter concluded that the adverse visual effects of the wind farm could result in some consequent reduction in visit spend on local accommodation and other services but concluded *“the effect on the local tourism economy would be likely to be relatively small, and so unlikely to be a major consideration in the overall decision as to whether or not to grant consent.”*

Whilst it is always difficult to precisely quantify overall net economic benefits, the Scottish Ministers are satisfied the proposed Development has the potential to bring net positive economic benefits. The Scottish Ministers are also satisfied that there would not be significant adverse impacts on tourism as a consequence of the proposed Development.

Contribution to Renewable Energy Policy Objectives

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 emissions 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 Onshore Wind Policy Statement (“OWPS”) was published in December 2022 and it reaffirms the vital role for onshore wind in meeting Scotland’s energy targets within the context of the Scottish Government’s 2045 net zero emissions commitment. The OWPS sets out the Scottish Government’s position for the ongoing need for more onshore wind development and capacity in locations across Scotland where it can be accommodated in appropriate locations.

The carbon payback figures for the proposed Development have been presented in chapter 14 of the EIA Report referencing the approved Scottish Government carbon

calculator. In overall terms the proposed Development, if built, would be expected to have a payback period of 2.8 years if it replaces the fossil fuel mix and 4.9 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 proposed Development makes a valuable contribution towards meeting greenhouse gas emission and renewable electricity targets. The proposed Development will have a generating capacity of up to 100 MW based on current technology. A battery storage facility would also be installed with storage capacity of around 25 MW.

The Scottish Ministers agree with the overall findings of the Reporter who considered the potential benefits of the proposed Development at paragraph 10.27 and paragraph 10.37 of Chapter 10 of the PI Report, and are satisfied that the deployment of this amount of renewable energy 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, and that significant weight should be placed on such contributions.

Accordance with Scottish Government Planning Policies and Local Planning Policy

Chapter 2 of the PI Report sets out the legislative and policy context against which the proposed Development should be considered and Chapter 10 of the PI Report (where relevant) sets out the Reporter's considerations 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.

National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13th February 2023. NPF4 sets out the spatial principles and by applying these, the national spatial strategy will support the planning and delivery of: sustainable places, liveable places, productive places. The national spatial strategy acknowledges that meeting the climate ambition will require rapid transformation across all sectors of our economy and society. It states that this means ensuring the right development happens in the right place. NPF4 recognises that every decision on future development must contribute to making Scotland a more sustainable place.

NPF4's Energy policy (policy 11) sets out its intent to support proposals for all forms of renewable technologies, including wind farms. Matters that are to be addressed in the design and mitigation of a development include impacts (as well as cumulative) on communities and individual dwellings; significant landscape and visual impacts; historic environment; biodiversity; trees and woodlands; public access; aviation and defence interests; telecommunications and broadcasting; road traffic; water environment; decommissioning of developments and site restoration. Energy policy requires that in considering these impacts, significant weight will be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets.

NPF4 Energy Policy 11 (e) - part ii. - recognises that significant landscape and visual impacts are to be expected for some forms of renewable energy but that where impacts are localised and/or appropriate design mitigation has been applied they will generally be acceptable.

The policies within NPF4 require to be read as a whole and considered and balanced when reaching a decision on applications for wind energy development.

At paragraph 10.36 the Reporter sets out that NPF4 must now take precedence over policies within the South Ayrshire Local Development Plan (“LDP”) (adopted in August 2022) as a consequence of NPF4 *“being the more recently adopted component of the development plan”*.

Chapter 10 of the PI Report sets out the Reporter’s policy assessment and overall conclusions which include a Summary of Findings, Assessment and Recommendation where the Reporter concludes at paragraph 10.43 of Chapter 10 that the identified potential damage to the special importance of The Merrick and to the particular concentration of environmental designations in this location *“is so substantial as to render the proposal contrary to Policy 11(e) of NPF4 in that there are significant visual impacts that go beyond the localised and cannot be mitigated, and these impacts are sufficient to outweigh even the significant weight that must be given to the scheme’s potential benefits and the global climate crisis”*.

Taking account of the Application, the EIA Report and its AI, responses from consultees and third parties, the PI Report, the Scottish Ministers agree, in accordance with the Reporter that the proposed Development is not fully supported by relevant national or local planning policies.

Having considered Chapter 10 of the PI Report, Scottish Ministers agree with the Reporter that the proposed Development is contrary to Policy 11(e) of NPF4 in that there are significant visual impacts that go beyond the localised and cannot be mitigated, and these impacts are sufficient to outweigh even the significant weight that must be given to the potential benefits of the proposed Development.

The Scottish Ministers’ Conclusions

Reasoned Conclusions on the Environment

The Scottish Ministers are satisfied that the EIA Report and its AI have been produced in accordance with the EIA Regulations and that the relevant procedures regarding publicity and consultation laid down in the those Regulations have been followed.

The Scottish Ministers have fully considered the EIA Report, the AI, the consultation responses, representations, the findings, conclusions and recommendation of the PI Report and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed. The Scottish Ministers have taken the environmental information into account when reaching their decision.

Taking into account the above assessment the Scottish Ministers consider there would be significant landscape and visual impacts which cannot be mitigated.

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.

The Scottish Ministers' Determination

As set out above, 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 CO₂, 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. NPF4, Scotland's Energy Strategy and the Onshore Wind Policy Statement make it clear that renewable energy deployment remains a priority of the Scottish Government. These are all matters 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. In those respects, the proposed Development would contribute to sustainable development and this has been taken into account when reaching a decision. These benefits however must be considered carefully in the context of the negative impacts on the natural environment, most notably the visual effects of the proposed Development on the surrounding area and the impact it will have on the large numbers of people climbing The Merrick and whether or not, on balance, they are acceptable.

The Scottish Ministers acknowledge, in accordance with both NPF4 and the OWPS, that meeting our climate ambitions will require a rapid transformation across all sectors of our economy and society, however this does not negate the continuing requirement to ensure that the right development happens in the right place.

The Scottish Ministers, having considered the Application, the EIA Report, the AI, consultation responses and public representations alongside the Reporter's considerations and subsequent conclusions, agree with the Reporter's findings, reasoning and conclusion in respect of the detrimental visual impacts of the proposed Development on The Merrick, a very important visual receptor in South-West Scotland, which go beyond being experienced locally and which cannot be mitigated. The proposed Development would also fail to preserve natural beauty, which is one of the matters Scottish Ministers are required to have regard to the desirability of by virtue of Schedule 9 of the Electricity Act.

Although Scottish Ministers consider that the detrimental local landscape effects, impacts on the qualities of a number of environmental designations and locally significant effects on users of the Barr Trails would be acceptable in the context of the net economic benefits and the significant renewable energy benefits that would be delivered if the proposed Development were to be deployed, the significant visual impacts on The Merrick, would not. Even taking into account the significant support assigned by NPF4 to the proposed Development and its status as national development, this ultimately leads the Scottish Ministers to the conclusion that despite the many factors in favour of the proposed Development, this is not the right development in the right place and the proposed Development is therefore not acceptable overall.

The Scottish Ministers therefore consider the Application for consent under Section 36 of the Electricity Act 1989 for the construction and operation of Clauchrie Wind Farm located approximately 5.5 km north-east of Barrhill in South Ayrshire, should be refused.

In accordance with regulation 23(4) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the Company must publicise their determination on a website maintained for the purpose of making information publicly available, in the Edinburgh Gazette and in 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 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 – [Court of Session Rules \(scotcourts.gov.uk\)](http://scotcourts.gov.uk)

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

Yours faithfully

PP Nikki Anderson

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