

Appendix 4.2 – EIA Screening Opinion

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15th May 2018

Dear Stuart

**ELECTRICITY ACT 1989
THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND)
REGULATIONS 2017**

Thank you for your letter dated 19th February 2018 requesting a screening opinion in respect of the proposed application by Sandy Knowe Wind Farm Ltd ('the Company') under Section 36 of the Electricity Act 1989 to construct and operate the Sandy Knowe Wind Farm at Rigg Farm by Kirkconnel, in the planning authority area of Dumfries and Galloway Council. The proposed generating station would have a maximum generating capacity in excess of 50 megawatts, therefore the construction and operation of such a generating station would require the consent of Scottish Ministers.

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

The request was made under regulation 8 (1) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ('the Regulations').

The Regulations set out (at 8(2)) the information that must accompany any screening request. The screening request was accompanied by the following documentation:

- A screening report;
- An Environmental Statement which was submitted to Dumfries and Galloway Council in 2015 as part of an application for planning permission ('the planning application') under the Town and Country Planning (Scotland) Act 1997 to construct and operate Sandy Knowe Wind Farm, having a generating capacity of 48MW;
- The decision notice granting planning permission for the 48MW proposal;
- A minute of agreement between the Company, Dumfries and Galloway Council and the landowners under Section 75 of the Town and Country Planning Act ;

- Consultation responses received by Dumfries and Galloway Council in respect of the planning application;
- A letter from Dumfries and Galloway Council granting a non-material variation to permit an increase to the turbine heights and rotor diameters;
- Correspondence regarding purification of suspensive planning conditions with Dumfries and Galloway Council;
- The pre-application consultation report submitted in support of the planning application;
- Site layout and location plans in respect of the Section 36 proposal;
- Dumfries and Galloway Development Plan Supplementary Guidance Part 1 Wind Energy Development: Development Management Considerations.

Regulation 8 (3) states that the request may also be accompanied by a description of any features of the proposed development, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment. A range of mitigation measures are presented throughout the Environmental Statement which accompanied the request.

The information presented with the request, by virtue of the inclusion of an Environmental Statement, has been compiled taking into account the schedule 3 selection criteria and the available results of such relevant assessments as were carried out for the planning application.

The screening report submits that the proposal would not constitute development within the meaning of Section 26 of the Town and Country Planning Act 1997 ('the 1997 Act') 'because of the terms of the planning permission'. The terms of a planning permission do not alter the definition of development within the 1997 Act. What is proposed within the screening report constitutes development within the meaning of the 1997 Act and the Regulations.

The screening report further states that a Direction under Section 57 (2) of the 1997 Act is not required due to the extant planning permission. Scottish Ministers retain the discretion to make a Direction under 57 (2) should Section 36 consent be granted, in order that they may exercise their own judgment on any mitigation measures to be secured by planning conditions.

Appendix 1 of the screening report which accompanies the screening request contains a comparative analysis of likely significant effects of the development which has planning permission against the development for which Section 36 consent is sought. It is confirmed that the development proposal for consideration by Scottish Ministers is the whole development and a 'gap analysis' is not appropriate. It is incumbent on Scottish Ministers, should a Section 36 application be submitted, to consider the development in its entirety and take account of the environmental information in respect of the proposed development.

Statutory Consultation

Under regulation 8 (5) of the Regulations, Scottish Ministers are required to consult the planning authority within whose land the proposed application is situated. Dumfries and Galloway Council made their views known on 30th April 2018 advising that, in their view, the proposal subject to this request **is EIA development** likely to have significant effects on the environment.

Scottish Ministers' EIA Considerations

EIA development is defined in the regulations, in respect of an application for Electricity Act consent, as Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

As the development proposed in the screening report is the carrying out of development to provide a generating station, the proposal falls under Schedule 2 development.

In adopting a screening opinion as to whether the proposed development is EIA development, the Scottish Ministers must in all cases take into account such of the selection criteria as are relevant to the development, and the available results of any relevant assessment.

Scottish Ministers have taken the selection criteria and all of the information submitted in respect of the screening request into account, and have taken account of the views of the planning authority.

The planning authority's response to the screening consultation is attached to this letter at Annex 1. In accordance with regulation 7(2), this opinion is accompanied by the following written statement with reference to the selection criteria within Schedule 3 of the Regulations as are relevant to the development. In accordance with the Regulations, a copy of the screening opinion has been sent to the planning authority.

The Proposed Development

The proposal is for the development of a wind powered generating station with a maximum generating capacity in excess of 50MW, comprising 24 turbines up to a maximum height from ground to blade tip of 125.5 metres with a maximum rotor diameter of 101 metres, on a site located approximately 1.7 kilometres south of Kirkconnel and Kelloholm in Dumfries and Galloway. A number of ancillary elements are proposed, including two temporary construction compounds, permanent hardstandings adjacent to the wind turbines for maintenance and decommissioning cranes, external transformers, internal access tracks, underground cables between turbines, an on-site substation and maintenance building with welfare facility, and a permanent meteorological monitoring mast. A proposed site layout in respect of the Section 36 proposal was included within the documentation accompanying the screening request.

Written Statement

Scottish Ministers have had regard to the selection criteria in Schedule 3 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017; the relevant characteristics of the proposed development are its size and design, and cumulation with other existing and/or approved development. In terms of the location of the development and the environmental sensitivity of geographical areas likely to be affected by the development, Scottish Ministers have had regard to the existing and approved use of the land, and landscape impact.

Ministers have, in adopting this screening opinion, taken account of the measures proposed within the Environmental Statement which are envisaged to avoid or prevent significant adverse effects on the environment.

The development site is in an environmentally sensitive location. The characteristics of the potential landscape and visual impact of the development in respect of the magnitude and spatial extent, the nature and duration of the impact, and the impact in cumulation with other existing and approved developments, are likely to be significant. The Environmental Statement which accompanies the screening request identifies that such effects cannot be avoided, prevented or effectively reduced by way of mitigation.

The main reasons for the conclusion by Scottish Ministers that the proposed development is EIA development are as follows. Having regard to the size and design of the proposed development, in cumulation with other existing and approved developments, there are likely to be significant landscape and visual effects and such effects in cumulation with other developments.

To confirm, Scottish Ministers consider that **the proposed development is EIA development, and that any application submitted to Scottish Ministers under Section 36 of the Electricity Act must be accompanied by an EIA report.**

Yours sincerely



Alan Brogan
Energy Consents Unit

As authorised to sign on behalf of the Scottish Ministers

Annex 1 (overleaf) – Response from Dumfries and Galloway Council

Your Ref:
Our Ref: 18/0336/ENQ
Date: 30 April 2018

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THE ELECTRICITY ACT (1989)
THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT)
(SCOTLAND) REGULATIONS 2017

PROPOSAL: CONSULTATION FROM SCOTTISH GOVERNMENT ENERGY
CONSENTS UNIT REGARDING SCREENING OPINION FOR
PROPOSED SANDY KNOWE WIND FARM
LOCATION: Sandy Knowe Windfarm Site, Near Kirkconnel

Dear Sir/Madam

I refer to your correspondence dated 07 March 2018 consulting the planning authority in respect of a screening opinion that has been requested by Jones Lang LaSalle (JLL) acting on behalf of the prospective applicant, Sandy Knowe Wind Farm Ltd, to Scottish Ministers under the provisions of Regulation 8(1) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. The request seeks a screening opinion as to whether the development of a wind farm at the above location that would have a generating capacity in excess of 50MW constitutes EIA development.

As stated in the submitted Screening Report, this Council previously determined and subsequently approved a planning application (reference 15/P/3/0279) for a wind farm on the site comprising 24 wind turbines (maximum height 125m to blade tip) and associated infrastructure and works. This proposal was subject to Environmental Impact Assessment under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 due to the characteristics of the development and the location of the development, where the characteristics of the potential impact of the development were considered to be potentially significant.

The proposed wind farm subject to this request would be identical to the previously approved planning permission comprising the same number and size of turbines, at the same locations and with the same access and electrical infrastructure but with a greater generating capacity in excess of 50MW, likely to be a minimum of 72MW.

Notwithstanding the approved planning permission, the proposed development is seeking, and would require, a new consent under Section 36 of the Electricity Act 1989 where any application would require to be assessed on its own merits against up-to-date policies and legislation. Therefore, it is considered that the screening opinion is undertaken in respect of the whole development i.e. as a generating station under Part (1) of Schedule 2 of the Regulations, as opposed to a comparison approach in respect of the planning permission, as suggested in the applicant's Screening Report, which is a permission under a different consenting regime.

Taking into account the selection criteria in Schedule 3 of the Regulations, it is considered that the proposed generating station (wind farm) subject to this request is EIA development likely to have significant effects on the environment due to:

- the characteristics of the development in respect of:
 - the size and design of the development;
 - cumulation with other existing (i.e. operational) development and/or approved development;
 - use of natural resources; and
 - pollution, and
- the environmental sensitivity of the location of the development, which contains a SSSI running south to north in the western part of the site, areas of ancient, semi-natural ancient and commercial woodland, areas of upland habitat and proximity to populated areas,

where the characteristics of the potential impact of the development in respect of spatial extent of the impact, the nature of the impact, the duration of the impact, the cumulation of the impact with other development existing and approved development and the possibility of effectively reducing impacts are likely to be significant.

In respect of the change to the development solely in respect of the generating capacity, taking into account the selection criteria contained in Schedule 3 of the Regulations, the proposal would not result in any change to the characteristics of the development, the location of the development and the characteristics of the potential impact. It is therefore considered that the proposal would not result in any additional environmental impacts over that previously assessed.

Based on the above, it would be expected that any new application seeking Section 36 consent would be accompanied by an appropriate EIA Report taking into account up-to-date potentially significant environmental impacts and circumstances. As a minimum, it is considered that the submission of the original ES accompanied by Further Environmental Information, produced in accordance with the requirements of the 2017 Regulations, may be sufficient to meet these requirements. Regard should however be

had to the comments made in this Council's response to Scottish Ministers Scoping Opinion issued on 27 July 2017.

I trust the above suitably provides the planning authority's response to this consultation request such that it allows Scottish Ministers to adopt its screening opinion under Regulation 9 of the Regulations.

Should you wish to discuss the content of this letter further, please contact the case officer, Andrew Robinson, at the above details.

Yours faithfully,

Robert Duncan

Team Leader (Major Developments)