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24 May 2019

Dear Mr Watt,

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THAT ACT ON 4 APRIL 2012 TO CONSTRUCT AND OPERATE THE VIKING WIND FARM LOCATED IN SHETLAND ISLANDS COUNCIL PLANNING AUTHORITY AREA AND FOR A DIRECTION UNDER SECTION 57 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR PLANNING PERMISSION TO BE DEEMED TO BE GRANTED IN RESPECT OF THE PROPOSED VARIED DEVELOPMENT

Application

I refer to the application (the "Variation Application") made under section 36C of the Electricity Act 1989 ("the Act") by Viking Energy Wind Farm LLP a company registered under the Companies Act with company number SO305400 and having its registered office at The Gutters' Hut, North Ness Business Park, Lerwick, Shetland, ZE1 0LZ ("the Company") for

- variation of the consent granted under section 36 of the Act on 4 April 2012 for construction and operation of the Viking wind farm electricity generating station, comprising of 103 wind turbines of up to 145 metres in height, located in the planning authority area of Shetland Islands Council ("the section 36 consent"); and
- a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 for planning permission deemed to be granted in respect of the proposed varied development.

This letter contains Scottish Ministers' decision to vary the section 36 consent

Planning Permission

On varying a consent under section 36 of the Act, the Scottish Ministers may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for—

- a) so much of the operation or change of use to which the consent relates as constitutes development; and
- b) any development ancillary to the operation or change of use to which the consent relates.

This letter contains the Scottish Ministers' decision to give a direction for deemed planning permission to be granted for such development.

The Section 36 Consent

On 19 May 2009, the Viking Energy Partnership applied for section 36 consent to construct and operate Viking wind farm comprising of 150 turbines.

On 4 April 2012, Scottish Ministers granted consent for 103 wind turbines, following the removal of turbines in both the Delting and Collafirth quadrants to take into account effects of the development on key ornithological species and aviation issues.

On 22 December 2015, Scottish Ministers authorised the assignation of the section 36 consent to Viking Energy Wind Farm LLP, a 50:50 business partnership between Viking Energy Shetland LLP and SSE Viking Ltd (which is a subsidiary of SSE plc),

An extension to the implementation of the section 36 consent was authorised by Scottish Ministers in March 2017, extending the implementation period of the section 36 consent to 4 April 2020.

Nature of Variation Sought

The Variation Application seeks to vary the physical parameters of the wind turbines described in Annex 1 of the Section 36 Consent. The proposed changes specifically relate to the description of the maximum tip height and rotor diameter of the wind turbines stated within the description of development in the section 36 Consent and comprises of the following changes:

- an increase in the maximum tip height of the wind turbines from 145m to 155m; and
- an increase in the rotor diameter of the wind turbines from 110m to 120m.

In addition to varying the maximum tip height and rotor diameter of the wind turbines, changes are sought to the following aspects of the ancillary development, namely:

- an increase in height of 7 temporary anemometry masts from up to 90m to 96.5m.

Application

The procedure for variation of a section 36 consent is set out in the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (“the Variation Regulations”). In cases where the proposed varied development amounts to EIA development, the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) also apply.

Regulation 4 of the Variation Regulations sets out that an applicant must publish a copy of their Application for Variation on a website, serve a copy of it on the Planning Authority and advertise by public notices in the Edinburgh Gazette and one or more local newspapers and one or more national newspapers. Ministers are satisfied that these and other requirements of Regulation 4 have been met.

Public Local Inquiry

Regulation 6 of the Variation Regulations makes provision for the holding of a public local inquiry (PLI) into a variation application and applies certain provisions of Schedule 8 to the Act (relating to public inquiries) with modifications. In accordance with Regulation 6 of the Variation Regulations, Scottish Ministers may cause a public inquiry to be held if it is deemed appropriate to do so having considered the representations received and all other material considerations.

Scottish Ministers have considered the objections raised and have taken all material considerations into account and are satisfied that it is not appropriate in this case to cause a PLI to be held. The objections have been fully considered when weighing up the impacts of the proposed varied development. Impacts on ornithological interests, on peat and on the landscape have been adequately considered in the Environmental Impact Assessment Report (EIA Report) and consultation responses. Scottish Ministers are satisfied that both the public and the consultative bodies have been afforded ample opportunity for their objections to be made and that the positions of parties have been sufficiently clearly set out in representations without the need for further examination of the issues in the forum of a PLI. Ministers therefore consider that all interested parties have had an opportunity to make detailed representations on the proposed varied development and have sufficient information to be able to make an informed decision on the Variation Application without the need for a PLI.

EIA Regulations, Environmental Information and Other Environmental Requirements

Regulation 28(1) of the EIA Regulations sets out that Scottish Ministers must not vary a section 36 consent, or when varying a section 36 consent, direct that planning permission is deemed to be granted, in respect of EIA development, unless an environmental impact assessment has been carried out.

Ministers are satisfied that environmental information, including an EIA report has been produced in accordance with the EIA Regulations and that the applicable

procedures regarding publicity and consultation laid down in those EIA Regulations have been followed. Ministers have taken the environmental information into consideration in reaching their decision.

Ministers have assessed the environmental impacts of the proposed varied development and have taken into consideration the environmental information, including the EIA Report, responses to the consultation on the Variation Application from the consultation bodies, Scottish Natural Heritage (SNH), Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland, the response from the Planning Authority, Shetland Islands Council and all other public bodies consulted on the Variation Application

Ministers have taken account of their obligations under EU legislation including the Wild Birds Directive. Ministers do not consider that the grant of consent for the proposed varied development would prejudice the fulfilment of any duties arising under the Wild Birds Directive.

East Mainland Coast Shetland pSPA

SNH advised of the connectivity between the proposed varied development and the East Mainland Coast Shetland proposed Special Protected Area (pSPA). Paragraph 210 of Scottish Planning Policy sets out that authorities should afford the same level of protection to pSPAs (i.e. sites which have been approved by Scottish Ministers for formal consultation but which have not yet been designated) as they do to sites which have been designated, therefore the relevant provisions of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) have been applied as they would be to the site as designated.

A Habitats Regulation Appraisal (HRA) has been carried out. The environmental information to inform the appraisal was presented in the EIA Report which accompanied the Variation Application. The HRA has therefore been produced using information already advertised in accordance with the EIA regulations.

Ministers conclude, following advice from SNH and in view of the proposed conservation objectives of the East Mainland Coast Shetland pSPA, that the results of survey work and collision risk analysis demonstrate that the proposed varied development will not, either alone or in combination with other developments in Shetland, adversely affect the integrity of the site.

Consultation

Statutory Consultees

Shetland Islands Council, the relevant planning authority, considered the Variation Application and advised they had no objection subject to the imposition of planning conditions considered necessary to make the proposed varied development acceptable, in compliance with Shetland Local Development Plan (2014) policy. The Planning Authority concluded that the proposed varied development will have an impact on Shetland in terms of landscape and habitat interests but that on balance “the economic and environmental benefits of carbon reduction outweigh the impact on

the landscape and habitat interests tempered with the knowledge that well designed mitigation measures will go some way to reduce any negative impacts.” Ministers have imposed conditions, attached to Part 2 of Annex 2 of this decision letter, which take account of the Planning Authority’s specific requests in respect of the acceptability of the proposed varied development in relation to Shetland Local Development Plan (2014) policies.

SEPA did not object to the Variation Application subject to conditions to be attached to the planning permission to take account of updated guidance and requirements. They also requested the inclusion of conditions in relation to groundwater dependent terrestrial ecosystems (GWDTEs), monitoring GWDTEs and the management of peat on the site. Full details of SEPA’s requirements are set out in annex 2 to their consultation response dated 21 December 2018. Ministers have imposed conditions at part 2 of Annex 2 to this decision letter to take account of SEPA’s requirements, and conditions have been included to mitigate and offset, as far as is possible, the significant effects of the proposed varied development on the environment, in particular the impacts on peat and GWDTEs.

SNH did not object to the Variation Application. They advised that, although there are natural heritage interests of international importance adjacent to the proposed wind farm, these will not be adversely affected by the proposed varied development. SNH highlighted the need for an assessment of the potential effects of the development on the East Mainland Coast Shetland pSPA. A HRA has been undertaken by Scottish Ministers which concludes that granting the Variation Application **will not** adversely affect the integrity of the East Mainland Coast Shetland pSPA.

SNH also advised on the potential for the proposed varied development to impact on wild birds and in particular on Shetland’s population of whimbrel. This is considered in greater detail below. SNH noted that the increase in turbine height will likely displace one additional pair of whimbrel but did not consider this to be significant. They also noted that, following further work undertaken since 2010 to refine the collision risk assessment, the collision mortality for the proposed varied development is likely to be less than that on which the grant of section 36 consent was based. Although they accepted these revised figures, in their letter of 20 December 2018, they expressed the view that the proposed varied development would be likely to significantly exacerbate the risk of a decline to the Shetland whimbrel population.

SNH additionally advised that the increased scale and visibility of the proposed varied development is unlikely to result in a significant change to the impact on the surrounding landscape to that which was previously considered when the section 36 consent was granted. They concluded that the proposed varied development will continue to have significant landscape and visual impacts and that the requirement for aviation lighting will introduce a new impact on the dark sky qualities of Shetland which will be significant at a local level but that they do not consider these effects, in isolation, raise issues of national importance. They recommended that if the proposed varied development is granted consent, consideration should be given to mitigating the impacts of the aviation lighting on the dark sky qualities of Shetland. Ministers have imposed a condition which requires the Company to explore a suitable aviation lighting mitigation scheme to reduce the effects of aviation lighting on the surrounding area as far as is possible in accordance with CAA requirements.

Historic Environment Scotland (HES) did not object to the Variation Application, they stated that the proposal did not raise historic environment issues in the national interest.

In terms of potential impacts on the Hayfield cairn, they considered that the proposed varied development would have a setting impact which is likely to be greater than the 'minor' impact predicted in the EIA Report. On balance however, HES remain of the view that the proposed turbines, even with their height increased by 10 metres, do not raise issues of national significance. HES welcomed the proposal to adopt a heritage strategy, although they considered this forms a compensatory mitigation measure which does not avoid or reduce the likely effects of the proposed varied development. Ministers have ensured that conditions have been imposed to ensure the protection and recording of any archaeological features on the site.

Internal Scottish Government advisors

Transport Scotland did not object to the Variation Application as there are no trunk roads on the Shetland Isles and turbine components will be transported by sea.

Marine Scotland (MSS) did not object to the Variation Application. They requested that the Company carry out up to date electrofishing, macroinvertebrate and hydrochemical surveys such that baseline pre-construction surveys take place at least 12 months prior to construction commencing. Information from these surveys can be used to inform appropriate site specific mitigation measures e.g. fish requirements for the proposed watercourse crossings and to establish a robust integrated water quality (hydrochemical and macroinvertebrate) and fish monitoring programme before, during and for at least 12 months after construction is complete, with the latter time period being dependent on the results obtained during the construction phase.

MSS recommended the developer incorporates their advice when carrying out hydrochemical, macroinvertebrate and fish population survey/monitoring work. Ministers can confirm that these recommendations have been accounted for in the imposition of a condition to protect fish stocks and the aquatic environment.

Advisors to Scottish Government

A M Geomorphology, Scottish Ministers' advisor on peat stability assessments, reviewed and appraised the Peat Stability Assessment (PSA) provided in respect of the proposed varied development and identified a number of shortcomings relative to current best practice. It was advised that minor revisions are required prior to commencement of construction. Ministers have secured the required revisions by way of imposing conditions attached to the planning permission to further minimise the risk of peat failure arising from the proposed varied development.

Non-Statutory Consultees

BT do not object to the proposed varied development.

Crown Estate Scotland do not object.

Defence Infrastructure Organisation (DIO) (part of the Ministry of Defence - **MoD**) initially objected to the Variation Application because of the unacceptable interference that the turbines would cause to the air defence radar at RRH Saxa Vord, in Shetland. In a letter to Scottish Ministers, dated 18 March 2019, the DIO confirmed that following reconsideration of the proposal they wished to withdraw their objection.

Health & Safety Executive did not object.

Highlands and Islands Airports Limited (HIAL) did not object.

John Muir Trust objected to the Variation Application. They advised the visual, landscape and cumulative information provided for the Variation Application is seriously inadequate. In particular, they considered that the Muckle Roe National Scenic Area was not included. They considered that the previously consented Viking wind farm, of 103 turbines at 145 metres, was unacceptable in its visual, landscape and cumulative impacts and that this proposed varied development would have further impacts. In addition they advised that the requirement for lighting on the turbines would potentially cause significant issues with visual impact at night, in an area known for its dark sky and views of the Northern Lights, this could significantly impact on the growing tourism economy.

Joint Radio Company (JRC) initially objected to the Variation Application stating several wind turbines would interfere with radio systems. They confirmed that the Company were aware of the situation and giving consideration to mitigation options. JRC subsequently withdrew their objection on 10 April 2019 as they did not foresee any potential problems based on known interference scenarios on the data provided. JRC advised that there may be effects which are as yet unknown or inadequately predicted and that they could not therefore be held liable if, subsequently, problems arise which they have not predicted.

NATS Safeguarding did not object to the Variation Application. They require to be consulted further if there are any changes to the proposed varied development.

The Royal Society of the Protection of Birds (RSPB) Scotland objected to the Variation Application, stating that they considered that the EIA Report had been informed by inadequate bird survey work; had been insufficiently precautionary; had underestimated and not adequately assessed the effects of the proposed varied development and that insufficient mitigation and offsetting measures had been proposed to address the potentially significant effects of the proposed varied development on several nationally and internationally important bird species.

Scottish Water did not object to the Variation Application.

Shetland Bird Club objected to the Variation Application. They considered the proposed varied development would cause serious damage to red-throated diver, whimbrel, curlew, golden plover, great skua (bonxie), marlin, important peatland and other habitats and further increase the severity of the damage to these important bird populations and habitats. Shetland Bird Club considered mitigation measures should be improved and updated if Ministers are minded to approve the Variation Application.

Sustainable Shetland objected to the Variation Application. They advised that they are a local environmental group with over 800 members who are concerned about the possible proliferation of large scale wind developments on Shetland.

Lerwick Community Council did not object. They advised that they discussed the Variation Application at a meeting at which their members raised no comments or objections.

Sandsting and Aithsting Community Council objected to the Variation Application on the grounds of the increased visual impact on some parts of their area, especially Aith, due to the increased height and rotor diameter of the proposed turbines.

Tingwall, Whiteness and Weisdale Community Council objected to the Variation Application on the grounds of the increased disturbance to visual amenity.

The following parties were consulted but provided no response to the Variation Application:

Civil Aviation Authority
CSS Spectrum Services
Fisheries Management Scotland
Lerwick Port Authority
OFCOM
Mountaineering Council of Scotland
Promote Shetland
Seafood Shetland
Scottish Rights of Way Society
Scottish Wildlife Trust
Shetland Amenity Trust
Shetland Anglers Association
Nesting and Lunnasting Community Council
Delting Community Council

Public Representations

Scottish Ministers have received 34 public representations, 11 in support and 23 objecting to the proposed varied development.

The issues raised in the objections include: requests for a public inquiry to be held to take full account of the environmental issues raised; that the additional visual impact of the increased size of the wind turbines, including the addition of aviation lighting, is unacceptable; that the wind farm would have an unacceptable adverse impact on tourism; peat and birds; and that the noise and vibration as a consequence of the larger wind turbines would be unacceptable.

Representations made in support cite: the economic benefits that will arise as a consequence of the development; the need for the project to support the interconnector; the renewable energy benefits; and support for the variation to procure better, more efficient wind turbines.

Main Determining Issues

Having considered the Variation Application, the EIA Report, responses from consultees and third parties and Scottish Government policies, Ministers consider that the main determining issues are:

- the extent to which the proposed varied development accords with and is supported by Scottish Government policy;
- the environmental impacts of the proposed varied development, in particular the impacts on birds, the impacts on peat and the landscape and visual impacts; and
- the estimated net socio-economic effects of the proposed varied development.

The Policy Context

Climate Change and Renewable Targets

The seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority for Scottish Ministers.

The Climate Change (Scotland) Act 2009, passed by the Scottish Parliament in 2009, sets out the targets for reducing greenhouse gas emissions as an interim 42% reduction target for 2020 and an 80% reduction target for 2050.

The Scottish Government's 2020 Route map for Renewable Energy in Scotland published in June 2011 and updated in September 2015 confirms that the Scottish Government's target for renewable electricity generation is for renewables to generate at least the equivalent of 100% of gross annual consumption by 2020.

The Scottish Government's ambitions for renewables and the delivery of clean electricity in Scotland go beyond the current 2020 targets. The Scottish Government has set a 2030 decarbonisation target, to achieve a carbon intensity of 50g CO₂/kWh of electricity generation in Scotland.

The publication of BEIS Energy Trends data published on 28 March 2019 show that 2018 was a record year for renewable electricity generation in Scotland with provisional figures indicating that 74.6 % of electricity demand met by renewable sources, up from 70.3% in 2017, which means we remain above our interim 2015 target of 50% showing progress towards our target of 100% by 2020.

Data as at March 2019 shows that Scotland had 10.9 GW of installed renewable electricity generation capacity, with an additional 12 GW of capacity either under construction or consented, the majority of which are wind generation projects. However, not all consented schemes will progress to implementation for a variety of reasons.

Scotland's Third National Planning Framework (NPF3)

NPF3 is the spatial expression of the Scottish Government's economic strategy. It brings together plans and strategies across sectors to provide a coherent vision of how Scotland should evolve over the next 20 to 30 years. It sets out the Scottish Government's commitment to establishing Scotland as a leading location for the development of renewable energy technology.

NPF3 sets out the strategic spatial policy context for decisions and actions by Scottish Government and its agencies, and all planning authorities are required to reflect this in their strategic and local development plans. Amongst its wide-ranging policies, NPF3 sets out the need for a strategy to reduce reliance on fossil fuels and emphasises not just the challenges in embracing a renewable and low carbon economy while protecting and sustaining environmental assets but also the wider benefits that this will bring, especially in employment creation. It also sets out that onshore wind will continue to make a significant contribution to diversification of energy supplies.

NPF3 together with SPP further sets out what is expected of the planning system, including a spatial strategy for a low carbon place where an 80% reduction in greenhouse gas emissions is achieved by 2050.

Ministers are satisfied that the proposed varied development makes a considerable and valuable contribution towards meeting greenhouse gas emissions and renewable electricity targets, as well as the diversification of energy supplies.

Scottish Planning Policy (SPP)

The Scottish Government supports onshore wind energy development in appropriate locations. SPP introduces a presumption in favour of development that contributes to sustainable development. Supporting economically and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. SPP sets out that policies and decisions should be guided by certain principles, including: giving due weight to net economic benefit; supporting delivery of infrastructure, including energy, and; protecting natural heritage, including landscape and the wider environment. SPP also states that the planning system should support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity.

Paragraph 169 of SPP outlines Scottish Government planning policy on Renewable Energy Development, citing that proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms. Considerations will vary relative to the scale of the proposal and area characteristics but are likely to include impacts on: landscapes and visual amenity (including wild land); natural heritage (including birds); carbon rich soils; public access (including long distance walking, cycling and scenic routes identified in NPF); historic environment; tourism and recreation; road traffic; adjacent trunk roads; the water environment (including flood risk); communities and individual dwellings; aviation; telecommunications; noise; shadow flicker; greenhouse gas emissions; and any cumulative impacts that are likely to arise. It also makes clear that, where relevant, the following should be a material consideration when considering an application: net economic benefit; the scale of contribution to renewable energy generation targets; opportunities for energy storage;

the need for conditions relating to decommissioning and site restoration; and the need for robust planning obligations to ensure site restoration is achieved.

In respect of development on peat and other carbon rich soils, applicants should assess the effects of a development on carbon dioxide emissions and, where peatland is drained or disturbed, development should aim to minimise this release.

In respect of protected species, SPP advises that the presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications. If there is evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish their presence. The level of protection afforded by legislation must be factored into the planning and design of the development and any impacts must be fully considered prior to the determination of an application.

Ministers are satisfied that matters pertaining to SPP have been addressed in the Variation Application, the EIA Report and responses to the consultation by the Planning Authority, SEPA, SNH, HES and other relevant bodies.

Ministers have considered the fact that this proposed varied development will have impacts on the landscape character of Shetland as well as on peat and birds. Ministers are however satisfied that the design of the proposed varied development has taken account of the presence of deep peat and carbon rich soils as well as the presence of a range of local, national and internationally important bird species. Avoidance of deeper peat has been factored into the design to reduce carbon emissions as far as possible and the wind turbines have been sensitively located to take account of the presence of birds.

Ministers acknowledge that impacts on peat because of the size and scale of the proposed varied development, in a location where deep peat is predominately present, are inevitable. However, careful micro siting of the infrastructure during construction, as well the mitigation measures built into conditions of the deemed planning permission will mitigate, as far as is possible, these effects. The Habitat Management Plan additionally presents a significant opportunity to restore an extensive area of peatland habitat with resulting compensatory peatland benefits as well other ecological benefits.

The proposed varied development, whilst impacting on local landscape characteristics, is not impacting on National Scenic Areas or National Parks nor is it considered there are significant impacts on national or internationally protected bird species.

The proposed varied development with a generating capacity of approximately 450 MW of renewable electricity, makes a significant contribution towards meeting greenhouse gas emissions and renewable electricity targets. Ministers are satisfied that there is potential, if the proposed varied development is implemented, for there to be substantial positive net economic benefits both to Shetland and Scotland. Ministers consider that these socio-economic benefits and opportunities are important to an area that is seeking to further diversify its economy which currently relies on the fisheries, aquaculture and the oil and gas sectors. There is also the potential for the area to

take advantage of the resulting opportunities if a renewable energy sector can be established.

Ministers consider that the proposed varied development is supported by SPP.

Scottish Energy Strategy

The Energy Strategy sets out a vision for the future energy system in Scotland through to 2050. It sets out the priorities for an integrated system-wide approach that considers the use and supply of energy for heat, power and transport. The strategy sets out two new targets for the Scottish energy system by 2030: (1) the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources; (2) an increase by 30% in the productivity of energy uses across the Scottish economy. The Onshore Wind Policy Statement (OWPS) reaffirms the vital role for onshore wind in meeting Scotland's energy targets. The statement sets out the Scottish Government's position for the ongoing need for more onshore wind development and capacity in locations across Scotland where it can be accommodated. As set out in the OWPS, the Scottish Government remains committed to overcoming barriers to deployment to support the growth in onshore wind where possible to help meet climate change and renewables targets.

The Energy Strategy specifically references 'island wind' projects and the need to provide a route to market, 'offering a new opportunity for island communities to participate in the energy transition'.

Ministers are content that the proposed varied development will contribute to these strategic priorities by improving the viability of the project in commercial terms, thus enabling the Company to pursue a route to market through the forthcoming Contracts for Difference (CfD) auction. The proposed varied development will make a valuable contribution to the achievement of the UK and Scottish Government 'whole system' targets to de-carbonise energy consumption and bring a variety of potential socio-economic benefits to the Shetland Islands community, including the creation of jobs and opportunities for local businesses and suppliers during the construction phase and for the lifetime of the project.

Compatibility with Local Development Plan and Supplementary Guidance

Shetland Islands Council in their response to Scottish Ministers, raised no objection. Having assessed the proposed varied development against their Shetland Local Development Plan (2014) policy and Shetland Islands Council Onshore Wind Energy Supplementary Guidance 2018, they considered that the economic and environmental benefits of carbon reduction outweighed the impacts on the landscape and habitat interests, tempered with the knowledge that well designed mitigation measures will go some way to reduce any negative impacts. Shetland Islands Council concluded that the proposed varied development is, on balance, acceptable under the relevant criteria subject to the imposition of planning conditions which they attached to their response. Ministers accept and agree with the Council's view that the proposed varied development is broadly supported by their Local Development Plan and Supplementary Guidance and have imposed the relevant conditions as required by the Planning Authority to provide:

- an Aviation Lighting Landscape and Visual Impact Mitigation Plan to minimise and ensure there is no unacceptable adverse effects on the surrounding area that are attributable to aviation lighting, and to comply with Policy GP3 of Shetland Local Development Plan 2014;
- a Habitat Management Plan which protects the interests of the protected species and in compliance with Policies NH2 and NH3 of the Shetland Local Development Plan (2014);
- a Bird Protection Plan in the interests of the protection of protected bird species and in compliance with Policies NH2 and NH3 of the Shetland Local Development Plan (2014);
- a Site-specific Environmental Management Plan (SEMP) which is updated to take account of SEPA's response and is in compliance with Shetland Local Development Plan (2014) Policies GP2, WD2 and WD3;
- a Peat Management Plan to minimise and offset disturbance of peat and ensure the appropriate reuse and management of peat on site, in compliance with Shetland Local Development Plan (2014) Policies GP3 and NH5;
- an Access Strategy and Traffic Mitigation Plan to comply with Shetland Local Development Plan (2014) Policy TRANS 3; and
- an Outdoor Access Plan to enable the objective assessment of recreational use and mitigate the likely impact on communities and the long term impacts on amenity including outdoor access, recreation and tourism opportunities, and optimise the use of both existing infrastructure and that to be constructed as part of the Development to provide safe and convenient opportunities for walking, cycling equestrianism for both recreation and active travel, in compliance with Shetland Islands Council Onshore Wind Energy Supplementary Guidance 2018 Policy DC4.

In a letter to Scottish Ministers, dated 18 March 2019, the DIO confirmed, following a reconsideration of the proposed varied development, that they wished to withdraw their objection in respect of impacts on the operation of their air defence radar at RRH Saxa Vord. Therefore the Planning Authority's request for a condition to mitigate the impact of the operation of the wind turbines on the air defence radar to comply with Policy GP2 of their Local Development Plan (2014) is no longer required.

Determining Issues

Renewable Energy Produced and Contribution to Targets and Carbon Payback

NPF3 is clear that planning must facilitate the transition to a low carbon economy. 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. Spatial priorities range from extending heat networks in our cities and towns to realising the potential for renewable energy generation in our coastal and island areas.

Policy Principles set out in SPP state that the planning system should:

Support the transformational change to a low carbon economy, consistent with national objectives and targets, including deriving:

30% of overall energy demand from renewable sources by 2020;
11% of heat demand from renewable sources by 2020; and
the equivalent of 100% of electricity demand from renewable sources by 2020;

Support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity.

With an expected nominal installed capacity of approximately 450 MW the proposed varied development would make a significant contribution towards meeting greenhouse gas emission and renewable electricity targets. Using Scottish Government's renewable electricity output calculator it is anticipated that an installed capacity of 450MW will likely produce, on an annual basis, electricity equivalent to the demands of approximately 248,985 average households. The deployment of this amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for the equivalent of 100% of Scotland's electricity demand to be met from renewable sources by 2020.

Carbon Payback

The carbon payback for the proposed varied development has been re-evaluated and presented in the EIA Report using the approved Scottish Government carbon calculator. The results of the carbon calculator confirm that the payback would be improved through the proposed variation and in overall terms the proposed varied development if built would be expected to provide a net carbon dioxide reduction after 1.65 years of operation (or 3.85 years on worst case expectations).

Whilst noting the limitations of any such calculations (as referenced in representations made by parties in objection to the proposed varied development), the online carbon calculator provides the best available means by which carbon calculations can be provided in a consistent and comparable format.

Ministers are satisfied that the proposed varied development would provide carbon savings, and that these savings would be of an order that weighs in favour of the proposed varied development. There is no evidence to suggest that the proposed varied development would not offer substantial carbon savings.

Landscape and Visual Impacts

When granting section 36 consent for 145 metre high wind turbines, Ministers accepted that Viking wind farm would lead to significant changes to the landscape character for a considerable area of Shetland and would have detrimental visual impacts.

SNH, in their response to the proposed varied development, advised there would be an increase in the magnitude of the landscape and visual impacts as a consequence of the 10 metre increase in turbine height and corresponding increase in the swept area of the blades but that these "*were unlikely to result in a significant change to the*

assessed impact of the consented scheme". SNH considered that the addition of lighting (a CAA requirement for structures in excess of 150m in height) would introduce continuous change into the Shetland landscape for the lifetime of the wind farm. They advised that although this change is likely to be significant at the local level they did not consider that the effects of lighting in isolation (over and above the significance of effects previously consented) raised issues of national importance.

Shetland Islands Council also acknowledged that, like the consented Viking wind farm, the proposed varied development would have significant landscape and visual impacts. They raised no objection on the basis of the landscape and visual impacts subject to a condition to secure an Aviation Lighting Landscape and Visual Impact Mitigation Plan to minimise and ensure there are no unacceptable adverse effects on the surrounding area that are attributable to aviation lighting.

Ministers accept both SNH's and Shetland Islands Council's views that the proposed varied development will have significant landscape and visual impacts but consider that these impacts are not substantially greater than the visual impacts of the consented wind turbines at 145 metres. Ministers agree with SNH that the addition of aviation lighting will further impact on the dark sky qualities of Shetland's landscape and consider it appropriate to impose a condition to mitigate, as far as is possible, the effects of aviation lighting of the dark sky qualities of Shetland. Having considered all of the information, Ministers consider the landscape and visual impacts to be acceptable in the context of the benefits of the varied development.

Ornithological Impacts

Red-Throated Diver

The EIA Report sets out that surveys of red throated diver to determine the number of breeding pairs, the breeding success and the location of the breeding lochs and lochans in the vicinity of the proposed varied development were conducted annually from 2003-2018 (with the exception of 2015). The results of the collision risk assessment, presented in Table 5-9 of the EIA Report, predicts that out of the 814 breeding population of Shetland, the proposed varied development will result in a further 0.32 deaths per year in addition to a baseline of annual mortality of 114.

SNH advised in their response to Ministers that "*set against the estimated background mortality for the pSPA population of 58 per annum this represents only a 0.03% increase in mortality*". They also highlighted the requirements for SPAs and Natura sites in relation to the East Mainland Coast Shetland pSPA and advised, in their view the potential for impacts on the red throated diver, a qualifying interest of this pSPA, meant that a HRA should be carried out. They further advised, based on the information provided to date, as set out above, that the proposal would not adversely affect the integrity of the site.

RSPB raised an objection to the Variation Application on the basis that: the EIA had been informed by inadequate bird survey work; had been insufficiently precautionary; had underestimated and not adequately assessed the effects of the proposed varied development and that insufficient mitigation and offsetting measures have been proposed to address the potentially significant effects of the proposed varied

development on several nationally and internationally important bird species. In respect of the red-throated diver they advised that *“the EIA Report does not demonstrate that the proposed varied development would not have significant effects on various bird species of nature conservation importance including red-throated diver”*.

Shetland Islands Council recognised that the EIA Report had been prepared by professional experts in relation to ornithological interests but acknowledged that there was a conflict of opinion on the predicted impacts of the proposed varied development variation and on how this opinion was reached in terms of the survey work undertaken and mitigation measures proposed. Ministers note that they have no objection to the proposed varied development subject to the provision of a Habitat Management Plan which protects the interests of the protected species (which includes the red throated diver) and a Bird Protection Plan in the interests of the protection of protected bird species to comply with relevant Policies, NH2 and HN3, of the Shetland Local Development Plan (2014).

Ministers note that SNH are in agreement with the use of recent survey work (as presented in the EIA Report) and the current agreed 99.5% avoidance rate (as opposed to the previously used avoidance rate of 98%), which was an increase recommended by SNH in response to the results of studies that were undertaken in the vicinity of the proposed varied development which provided evidence that the red throated diver had very strong avoidance behaviour (Furness 2015; SNH, 2017). SNH also advised that there would be no adverse effects on the integrity of the pSPA (with the red-throated diver as a qualifying species of this pSPA) as a consequence of the proposed varied development. A HRA has been undertaken by Scottish Ministers, which concludes that granting the application for variation will not adversely affect the integrity of the East Mainland Coast Shetland pSPA.

Having considered the information, Ministers concur with SNH’s view that natural heritage interests of international importance adjacent to the proposed wind farm, which include the red-throated diver, will not be adversely affected by the proposed varied development.

Ministers agree that the proposed varied development should be subject to conditions to secure a Habitat Management Plan which protects the interests of the protected species (which include the red throated diver) and a Bird Protection Plan in the interests of protected bird species and these have been imposed accordingly at part 2 of Annex 2 of the decision letter.

Whimbrel

Neither the Shetland nor the UK breeding whimbrel populations meet the criteria for international importance, however Ministers recognise that Shetland is important for whimbrel as it supports over 95% of the UK’s declining population. Ministers also note that the receptor population of the whimbrel is categorised as having medium sensitivity to collision mortality on the basis that there is evidence that they are either declining or recovering from previous decline.

The assessment presented in the EIA Report establishes that since 2011 the Shetland whimbrel population has remained stable. The UK population of 600 (300 breeding pairs) is used as the baseline receptor. Annual baseline mortality from other causes (including predation), for the whimbrel is calculated as 72 birds per year.

The EIA Report acknowledges that the collision mortality of breeding whimbrel, when the application for section 36 consent was under consideration, was an issue of major concern. In response to this, additional studies were undertaken on whimbrel flight behaviour and improved flight activity estimation methods developed. Based on these studies and data from monitoring whimbrel numbers, two estimates of baseline flight activity were calculated for collision risk modelling (CRM), each derived by a different method. ¹ Method 2 is considered by the Company to be most likely to give a more reliable measure of long-term flight activity.

The Company highlight in their EIA Report that there have been no empirical studies on the avoidance behaviour for most of species considered in their EIA Report and therefore avoidance rates for species such as the whimbrel are unknown. As such, SNH recommend the use of the default avoidance rate of 98% for assessing the impact of collision mortality. However, the EIA Report sets out that a 98% rate for whimbrel is considered to be unnecessarily conservative with experience from operational windfarms elsewhere indicating that true rates are likely to be higher (Whitfield, 2007) It is also considered that smaller and more agile species, such as the whimbrel, are likely to be more capable of avoiding turbine rotors. Given the uncertainty regarding the most appropriate rate to use, collision mortality estimates are presented in the EIA Report using 98%, 99% and 99.5% avoidance rates.

Using method 2, considered by the Company to be the most reliable, the estimated mortality of the whimbrel is predicted to be between 0.4 – 1.69 birds per annum (using between 99.5% and 98% avoidance rates respectively). Ministers note that this is significantly lower than the losses predicted when Viking wind farm was granted consent in 2012 whereby the predicted mortality was taken to be 3.7 birds per year.

The EIA Report notes that for the UK whimbrel receptor population the impact of collision mortality, resulting from the proposed varied development, using the SNH default 98% avoidance rate, is judged as being of borderline “low” significance. However, the impact of collision mortality on the UK whimbrel receptor population when predicted using a more plausible avoidance rate of 99% (as set out above) is judged to be of “negligible” significance. This is reached because collision deaths are predicted to result in a proportional increase to the baseline mortality rate of less than 2%, a change so small that is considered not likely to have a detectable effect on the receptor population.

The EIA Report concludes that the borderline low significance of the collision mortality, using the worst case 98% avoidance rate, when considered alongside the benefits of

¹ Collision modelling for whimbrel was undertaken for estimates of flight activity derived from two methods. Method 1 is based on the density of breeding territories in the vicinity of turbines as determined from surveys undertaken between 2014 and 2018 (this is the same method used for the other wader and skua species). Method 2 is based on the density of all records (not territories) of breeding birds (mean number of records per survey visit) using all survey data from 2005 to 2018.

the Habitat Management Plan (HMP) which has a range of measures to protect and enhance whimbrel breeding habitat and therefore their populations at the Central and West Mainland Shetland management sites, leading to:

- improved whimbrel breeding success there;
- increased whimbrel breeding densities locally; and
- protection and recognition of the importance of these sites for whimbrel and thereby lessen the likelihood that inappropriate incidental management (e.g. through agricultural change) will be deleterious to whimbrel

mean that the proposed varied development will not significantly affect the breeding population of the whimbrel. The EIA Report further sets out that if the more plausible avoidance rate of 99% is used then the collision mortality is “negligible” and effects on the breeding population of the whimbrel will not be detectable.

SNH summarised in their response to Ministers that the increase in turbine height will likely displace one additional pair of whimbrel but they did not consider this significant. They also accepted that following further work undertaken since 2010 to refine the collision risk assessment, the collision mortality for the enlarged scheme is likely to be less than that on which the current consent was based. They queried if the collision risk had been reduced by a factor of 50% for displacement (which is contrary to their methods of assessment) citing that the displacement of the species is already accounted for in the avoidance rate. They concluded that even although the mortality rate for the proposed varied development is likely to be less than that which was originally predicted for the consented Viking wind farm, it would be likely to significantly exacerbate the risk of a decline in the Shetland whimbrel population.

As a consequence of SNH’s response, clarification was sought from the Company with regard to whether or not the 98% avoidance rate had factored in an additional 50% displacement, as queried by SNH in their response to Ministers. In their reply, the Company confirmed that no additional displacement had been factored into the 98% avoidance rate. Officials in ECU advised SNH of this confirmation, following which SNH clarified that the whimbrel mortality “*causes concern given the vulnerable status of whimbrel population on Shetland*”. They further reiterated their doubt, which was raised originally in their consideration of the consented development, regarding the likely effectiveness of the HMP.

RSPB objected to the proposed varied development, citing that the EIA has been informed by inadequate bird survey work; has been insufficiently precautionary; has underestimated and not adequately assessed the effects of the proposed varied development and that insufficient mitigation and offsetting measures have been proposed to address the potentially significant effects of the proposed varied development on several nationally and internationally important bird species of nature conservation importance, including the whimbrel. They advised that Shetland is particularly important for whimbrel as it supports over 95% of the UK population of this declining species and there is evidence of further declines within other parts of Shetland.

Ministers acknowledge that the assessment of the effects on the whimbrel is largely unqualified, with “actual” avoidance rates for the whimbrel unknown. Ministers accept

the assessment of collision mortality ranges between 0.4 – 1.69 birds per year. On an assessment based on the most precautionary collision avoidance rate of 98% this would mean that an estimated worst case scenario of 1.69 collisions per annum which the EIA Report records as being of borderline low significance.

Ministers have again considered the potential for impacts on whimbrel and the relevant environmental information and representations relating to that matter. Ministers note that this information indicates that the impact of the whimbrel is less than predicted at the time of the consideration of the application for the section 36 consent. Ministers also note SNH's concern, despite accepting that the predicted numbers of whimbrel that may be affected by the proposed varied development are less than that which were originally predicted, regarding the potential that the proposed varied development could significantly exacerbate the risk of a decline of Shetland's population of whimbrel. Ministers do not consider that the estimated mortality presents such an impact. Ministers, having taken account of all of the available information, consider that even accepting the most precautionary assessment of predicted mortality rates, this scenario would result only in a (borderline) low significance of impacts on the whimbrel population. In addition, Ministers consider that the HMP can be expected to provide benefits which will have counter balancing positive effects. Further reassurance is gained from the commitment to ongoing development and improvement built into the HMP as understanding of its effect improves, and from the fact that this commitment will be required by condition.

Impacts on Peat

The majority of the proposed varied development site has been mapped as 'class 1' in the SNH Carbon-rich soils, deep peat and priority peatland habitat mapping. This mapping indicates the likely presence of 'nationally important carbon-rich soils, deep peat and priority peatland habitat' likely to be of high conservation value, as referenced in SNH guidance on Spatial Planning for Onshore Wind Turbines (2015). The extensive surveying carried out to inform the HMP's potential restoration areas identified that approximately 25% of the peatland habitats on the proposed varied development site have upwards of 20% bare peat and are considered to be degraded.

Scottish Ministers accept the Company's conclusion that the nature of the site is such that it is impossible to avoid priority peatland habitat. Almost the entire proposed varied development site is considered to have either medium or high sensitivity to impacts on peatland habitat.

As set out in the Variation Application and EIA Report, the focus of the design has been to, as far as possible, avoid identified areas of higher sensitivity peat.

The Company highlights in their EIA Report that the footprint of the proposed varied development has not changed from that of the consented Viking wind farm. The EIA Report establishes that, since Viking wind farm was originally granted consent, further peat surveys have been undertaken to gather site-specific information of the presence and condition of peaty soils and/or peat. The ground conditions have been assessed by using peat depths recorded as a consequence of additional peat probing undertaken in 2018 in accordance with the relevant guidelines to determine the depth of peat associated with turbines and infrastructure.

Based on the findings of the 2018 survey it was confirmed that, where practicable, the locations of proposed turbines and associated infrastructure have been sited such that, where possible, the identified areas of deep peat (greater than 1.5 m in depth) are avoided. During construction, micro siting will be used as far as possible to further reduce effects on peat associated with the turbines and supporting infrastructure (i.e. tracks, hardstandings, and cable routes).

The EIA Report also includes an updated Peat Management Plan, which has been prepared based on an improved baseline understanding of the peat extent and depth.

In their assessment of effects, the Company concludes that, following the consideration of proposed mitigation, including measures set out in a Site Environmental Management Plan (Technical Appendix 2.2.), all activities with potential to affect hydrology, hydrogeology, geology, soils and peat would be appropriately managed and there would be no significant effects associated with the proposed varied development.

Subject to conditions, SEPA have not raised an objection to the proposed varied development. They note that the EIA Report re-iterates the conclusions drawn in the environmental statement provided for the consented Viking wind farm application that *“all activities with potential to affect hydrology, hydrogeology, geology, soils and peat would be appropriately managed and there would be no significant effects.”* SEPA advise that, given the scale and nature of this development, and its site-specific circumstances, they do not agree with this conclusion. They consider that realistically, significant impacts are inevitable, and it is therefore crucial that measures to minimise and offset such impacts are implemented. SEPA have requested, in order for the development to follow up-to-date best practice, that requirements in respect of planning conditions (detailed in their response to Scottish Ministers), be attached to any consent.

Shetland Islands Council, in their assessment of the Variation Application, considered that the approach from SEPA is a reasonable one, which satisfies the requirements of Shetland Islands Council’s Policy NH3, which is designed to protect the natural environment. They were generally content with the assessment of the effects on the habitat as set out in the EIA Report and they concluded that the economic and environmental benefits of carbon reduction outweigh the impact on the landscape and habitat interests, tempered with the knowledge that well designed mitigation measures will go some way reduce any negative impacts.

Ministers agree with SEPA that impacts on peat as a consequence of the size and scale of the proposed varied development, in a location where deep peat is predominately present, are inevitable. However, Ministers are satisfied that further careful micro siting of the infrastructure during construction, as well the mitigation measures built into the conditions of the deemed planning permission will largely overcome these effects and any residual impacts which remain are outweighed by the benefits the development will bring. The Habitat Management Plan further presents a significant opportunity to restore an extensive area of peatland habitat, 260ha in total, providing carbon benefits as well as other ecological benefits.

Socio-Economic Benefits

SPP advises that proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms where these are relevant. Considerations will vary relative to the scale of the proposal and area characteristics but are likely to include, as well as a number of other considerations, net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.

The transition to a low carbon economy is an opportunity for Scotland to take advantage of our natural resources to grow low carbon industries and create jobs.

The Company sets out in the Planning Statement, that the overall capital investment associated with the proposed varied development would be approximately £611 million. It is estimated that up to 8% of the overall value of contracts could be realised in Shetland, with up to 27% realised in the rest of Scotland (RoS), and a further 21% in the rest of the United Kingdom (RoUK). The supply chain opportunities for UK companies are estimated to be worth at least £342 million for the proposed varied development with significant indirect socio-economic benefits including job creation and skills training opportunities, especially for those within the North East oil and gas industry who have key transferable skills and expertise.

It is anticipated that the direct job creation would comprise approximately 790.9 job years in Shetland, 1,449.9 job years in RoS and 1054.5 job years in RoUK. It is anticipated that around 35 permanent operational and maintenance related jobs would be created in the operational phase of the development for both the consented Viking wind farm and the proposed varied development. Although it is noted that the employment, skills and training benefits are likely to be the same for both the consented Viking wind farm and the proposed varied development, the purpose of the Variation Application is to improve the economics of the scheme in order to find a route to market, such that the likelihood of the socio-economic benefits being realised is materially increased.

There are also anticipated indirect and strategic socio-economic benefits associated with the proposed marine HVDC cable grid connection to the UK mainland. While this grid connection does not form part of the Variation Application, it is likely that the connection would be unviable without the proposed varied development or a similar development of comparable size. The grid connection would provide strategic grid benefits for the UK including security of supply, diversification of the UK's electricity generation mix, and the possibility of encouraging further inward and cross-border investment in trans-European interconnector projects and new marine technologies (floating offshore wind, deep water offshore wind and wave and tidal).

Shetland Islands Council's Economic Development Service confirm that, if deployed, the proposed varied development will provide substantial intergenerational economic and social benefits, helping to increase the socio-economic benefit to Shetland from the increased value of construction contracts with local contracts in the construction of the project estimated to increase from £40.94 million to £48.88m.

Whilst it is difficult to precisely quantify overall net economic benefits, given direct and indirect effects and timescales, Ministers are satisfied the proposed varied development has the potential for very substantial positive net economic benefits both to Shetland and Scotland. Ministers agree that these socio-economic opportunities are important to an area, which is seeking to further diversify its economy, which currently relies heavily on the fisheries, aquaculture and the oil and gas sectors and take advantage of the resulting opportunities if a renewable energy sector can be established.

Conclusions

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

The NPF3 sets out the Scottish Government's commitment to establishing Scotland as a leading location for the development of renewable energy technology. NPF3 describes how, in our more remote areas, this will bring new employment, reverse population decline and stimulate demand for development and services, and also that onshore wind will continue to make a significant contribution to diversification of energy supplies. In Scotland there has been significant progress towards low carbon objectives whilst we have continued to protect our special places from significant adverse impacts.

SPP contains guidance in respect of the granting of development consent for wind farm development. SPP is to be read and applied as a whole. It sets out overarching Principal Policies to be applied to all development and Subject Policies which set out guidance in respect of development management.

An overarching principle of SPP is that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. This means that decisions and policies should be guided by certain principles including, among others, giving due weight to net economic benefit; supporting the delivery of infrastructure; supporting climate change mitigation and protecting natural heritage. There are inevitable tensions between the aims of these policies which require to be considered and balanced when reaching a decision on the application.

In terms of Subject Policy: A Low Carbon Place, the merits of an individual proposal for a wind farm development are to be considered against a range of impacts. A non-exhaustive list of such considerations is given in paragraph 169. This paragraph sets out considerations which are to be taken into account when considering proposals for energy infrastructure development, including wind farms. These considerations include, along with the economic benefits and scale of contribution to renewable energy generation targets, the landscape and visual impacts of the proposed development and impacts on natural heritage (including birds) and carbon rich soils. Ministers have had regard to those factors when considering this application.

Subject Policy: A Natural, Resilient Place, also contains policy considerations to be taken into account for the purposes of development management, in particular paragraph 214, concerning protected species (including birds). Paragraph 214 advises that the presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications. If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, steps must be taken to establish their presence. The level of protection afforded by legislation must be factored into the planning and design of the development and any impacts must be fully considered prior to the determination of an application.

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

Having examined the EIA Report, Ministers conclude that the proposed varied development is likely to have significant impacts on the landscape, on peat and on ornithological interests as well as habitat interests, albeit that these are tempered to a degree by mitigation measures which will reduce negative impacts.

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

Ministers have given consideration to the impacts of the proposed varied development on nationally important carbon rich soils and consider that the significant effects can be largely overcome by adopting in full the mitigation measures embedded in the proposed design, further secured by a restricted infrastructure micro-siting allowance, the measures provided in the updated Construction Environmental Management Plan which adopts best practice guidance and advice from SEPA and the implementation of the proposed Habitat Management Plan which aims to restore more than 250 ha of degraded blanket bog. Those impacts that remain are acceptable in the context of the significant carbon benefits that the proposed varied development will bring.

Ministers accept that, like the previously consented Viking wind farm, the proposed varied development will have significant landscape and visual impacts leading to a significant change to the landscape character of Shetland. The introduction of aviation lighting would lead to further impact, particularly on the dark sky qualities of Shetland. Whilst acknowledging that there are no designated landscapes that will be affected by the proposed varied development, Ministers consider it appropriate that a condition should be imposed to mitigate, as far as is possible, the effects of aviation lighting on the dark sky qualities of Shetland.

Ministers consider, in line with advice from SNH, that there would be no adverse effects on the integrity of the pSPA (with the red-throated diver as a qualifying species of this site) as a consequence of the proposed varied development.

Having carefully considered the information, Ministers consider that the natural heritage interests of international importance adjacent to the proposed wind farm, which include the red-throated diver, will not be adversely affected by the proposed variation.

The whimbrel population remains in decline in Shetland. The collision mortality to the whimbrel as a consequence of the proposed varied development represents a very small additional mortality, compared to the baseline annual mortality for the whimbrel. Ministers are satisfied this additional mortality will not significantly exacerbate the risk of decline of Shetland's whimbrel population. Ministers are further satisfied that the measures proposed by the HMP are likely to have a positive effect to the conservation status of the whimbrel on Shetland and that the inclusion of a Bird Protection Plan, in the interests of protected bird species, will additionally counteract the relatively small estimated whimbrel mortality.

The proposed varied development, if deployed, would significantly contribute to renewable electricity targets and towards reducing greenhouse gas emissions. Substantial economic benefits to the local Shetland and Scottish economy are anticipated as well as further economic opportunities, which may arise as a consequence of the proposed varied development being deployed. Ministers consider that these socio-economic opportunities are of particular importance to Shetland, which is seeking to further diversify its economy and take advantage of the resulting opportunities if a renewable energy sector can be established.

Scottish Ministers are satisfied that other environmental issues can be appropriately addressed by way of mitigation, and that any impacts which remain are outweighed by the benefits the proposed varied development will bring. Having considered the benefits and cost of this proposal, Ministers are satisfied that this proposed varied development contributes to sustainable development and should therefore be supported. Conditions have been imposed to give effect to the relevant mitigation and compensatory measures outlined in the EIA Report and referenced in consultation responses.

Duration of Deemed Planning Permission

Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Ministers to direct that a longer period is allowed before planning permission lapses. 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 the development is appropriate. A direction by Scottish Ministers under section 58(2) of the Town and Country Planning (Scotland) Act 1997 has therefore been made as part of the determination for this consent.

The Scottish Ministers' Determination

The Scottish Ministers **hereby vary the section 36 consent** in accordance with the modifications set out in Part 1 of Annex 1; and

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 is deemed to be granted** in respect of the development described in Part 1 of Annex 2 .

The Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply with regard to that planning permission but that the 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.

For illustrative purposes a consolidated version of the varied section 36 consent (with variations and additions shown in tracked changes for ease of reference), is provided at Part 2 of Annex 1 attached to this letter.

In accordance with the EIA Regulations, the applicant (in this case the Company) must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land to which the Variation Application relates is situated.

Copies of this letter and the varied consent have been sent to the Planning Authority. This letter has also been published on the Scottish Government Energy Consents website.

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 – <http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=8>

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

Yours sincerely

REDACTED

William Black

For and on behalf of the Scottish Ministers

A member of the staff of the Scottish Government

ANNEX 1

Part -1

The section 36 consent is varied in accordance with the modifications set out in the following Table.

Annex or condition	Alteration, Addition or Deletion
In ANNEX 1	<p>(a) for “figures A4.1.1. and A4.1.2. (of the Environmental Statement Addendum) excluding the Delting Parish turbines D5-7, D9-18 and D23- 33” substitute “Figure 1.2 of the EIA Report”.</p> <p>(b) for “with a maximum generating capacity of 457MW” substitute “with a generating capacity in excess of 50MW”.</p> <p>(c) in item 1 for “145m” substitute “155m, with a rotor diameter not exceeding 120m”</p> <p>(d) in item 3 –</p> <p style="padding-left: 40px;">(i) for “ES Addendum table A4.5” substitute “Table 2.1.1 in Technical Appendix 2.1 of the EIA Report”</p> <p style="padding-left: 40px;">(ii) for “90m” substitute “96.5”.</p> <p>(e) in item 5 for “ES addendum table A4.8 with the deletion of pits DBP02 and DBP03” substitute “Figure 1.2 of the EIA Report”.</p> <p>(f) delete “and” following item 9</p> <p>(g) in the paragraph after item 9 for “Application, the Environmental Statement and the Supplementary Environmental Information Addendum, (excluding the Delting Parish area turbines D5-7, D9-18 and D23-33 and ancillary developments inclusive)” substitute “Variation Application, the EIA Report”.</p>
In ANNEX 2 Part 1	<p>(a) In condition 2 –</p> <p style="padding-left: 40px;">(i) for “the date of this consent” substitute “24 May 2019”; and</p> <p style="padding-left: 40px;">(ii) for “Partnership” substitute “Company”.</p> <p>(b) in condition 3, for “Partnership” substitute “Company”.</p>

	<p>(c) delete condition 4.</p> <p>(d) delete condition 5.</p> <p>(e) in Condition 6, substitute “Partnership” for “Company”.</p> <p>(f) in condition 7, in paragraph (1), for “construction works associated with the Affecting Turbines other than those agreed with the Airport Operator shall commence, and no erection shall commence of the towers and blades of the Affecting Turbines” substitute “wind turbines forming part of the Development shall be erected”.</p> <p>(g) in condition 7, in paragraph (2)— (i) delete the definition of “Affecting Turbines”</p> <p>(h) in the definition of “Aviation Mitigation Scheme” for “Partnership” substitute “Company”</p> <p>(i) in the definition of “Airport Operator” for “Serco Defence, Science and Nuclear” substitute “Serco UK & Europe”</p>
<p>In ANNEX 2</p> <p>Definitions (relevant to s36 consent)</p>	<p>(a) for the definition of “Partnership” substitute—</p> <p>““Company” means Viking Energy Wind Farm LLP (company registration number SO305400) having its Office at The Gutters’ Hut, 7 North Ness, Lerwick, Shetland, ZE1 0LZ and its permitted successors and assignees;”</p> <p>(b) for the definition of “Application” substitute—</p> <p>““Variation Application” means the variation application submitted by the Company on 14 November 2018”</p> <p>(c) after the definition of “Environmental Statement” insert—</p> <p>““EIA Report” means the Environmental Impact Assessment Report submitted by the Company on 14 November 2018;”</p> <p>(d) for the definition of “Final Commissioning of the Development” substitute —</p> <p>““Final Commissioning” means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with the section 36 consent and the planning permission deemed to be granted upon varying that section 36 consent or (ii) the date falling 24 months from the date of First Commissioning”</p>

	<p>(e) after the definition of “final Commissioning” insert—</p> <p>““First Commissioning” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development</p>
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Annex 1

Part 2

An illustrative consolidated version of the varied section 36 consent.

Description of the Development

The development as indicated on **Figure 1.2 of the EIA Report** ~~figures A4.1.1. and A4.1.2. (of the Environmental Statement Addendum) excluding the Delting Parish turbines D5-7, D9-18 and D23-33 and associated ancillary developments inclusive, with a generating capacity in excess of 50MW with a maximum generating capacity of 457MW,~~ and comprising a wind-powered electricity generating station including:

1. not more than 103 turbines each with a maximum tip height of 155m, with a rotor diameter not exceeding 120m ~~145m~~, and associated crane pads;
2. all site tracks and foundations;
3. 7 permanent anemometry masts (as detailed in **Table 2.1.1 in Technical Appendix 2.1 of the EIA Report** ~~ES Addendum table A4.5 with the deletion of masts at Duddin Hill and Hill of Neegarth~~) for monitoring wind farm (free standing lattice masts up to **96.5** ~~90~~m tall);
4. substation at Moo Field and associated control buildings and compounds and a central sub-station/control building and workshop adjacent to Scottish Hydro Electric Transmission Ltd's converter station in the Kergord valley;
5. up to 10 borrow pits for the excavation of rock; (as detailed in **Figure 1.2 of the EIA Report** ~~ES addendum table A4.8 with the deletion of pits DBP02 and DBP03~~);
6. temporary turbine component laydown areas;
7. underground power cables;
8. watercourse crossings;
9. temporary construction compound areas providing site offices, welfare facilities and storage for plant and materials and satellite construction compounds; and concrete batching plants; ~~and~~

all as specified in the **Variation Application** Application, the **EIA Report** ~~Environmental Statement and the Supplementary Environmental Information Addendum, (excluding the Delting Parish area turbines D5-7, D9-18 and D23-33 and ancillary developments inclusive),~~ and references in this consent and deemed planning permission to "the Development" will be construed accordingly.

Conditions applying to section 36 consent

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

1. The consent is for a period from the date of this consent until the date occurring 25 years after the Final Commissioning of the Development. Written confirmation of the date of the Final Commissioning of the Development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that event.

Reason: To define the duration of the consent.

2. The Commencement of Development will be no later than 5 years from **24 May 2019** ~~the date of this consent~~, or such other period as the Scottish Ministers may hereafter direct. If this does not occur by the end of such period, then by no later than the date occurring 6 months after the end of the period, the site and the ground will be fully reinstated by the **Company Partnership** to the specification and satisfaction of the Scottish Ministers following consultation with the Planning Authority.

Reason: To ensure construction is commenced within a reasonable time period.

3. The **Company Partnership** will not be permitted to assign the consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may grant consent (with or without conditions) or refuse authorisation as they may, in their own discretion, see fit. The consent will not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

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

~~4. In the event that any wind turbine installed and commissioned fails to produce electricity on a commercial basis to the public network for a continuous period of 6 months, then unless otherwise agreed in writing with the Scottish Ministers, after consultation with the Planning Authority and SNH, such wind turbine will be deemed to have ceased to be required. If deemed to have ceased to be required, the wind turbine and its ancillary equipment will be dismantled and removed from the site by the Partnership within the following 6 month period, and the ground reinstated to the specification and satisfaction of the Scottish Ministers after consultation with the Planning Authority and SNH.~~

~~**Reason:** To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection.~~

~~5. In the event of the Development, not generating electricity on a commercial basis to the grid network for a continuous period of 12 months from 50% or more turbines installed and commissioned from time to time, the Partnership must immediately notify the Scottish Ministers in writing of that situation and shall, if the Scottish Ministers direct, decommission the Development and reinstate the site to the specification and satisfaction of Scottish Ministers. The Scottish Ministers shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on~~

~~decommissioning following discussions with the Partnership, the Planning Authority and other such parties as the Scottish Ministers consider appropriate.~~

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

6. In the event of a serious health and safety, environmental or construction incident occurring on site during the period of consent, the **Company Partnership** must notify Scottish Ministers within 24 hours of the incident occurring.

Reason: To ensure compliance with Health and Safety legislation.

7. (1) No **wind turbines forming part of the Development shall be erected** ~~construction works associated with the Affecting Turbines other than those agreed with the Airport Operator shall commence, and no erection shall commence of the towers and blades of the Affecting Turbines, until-~~

(a) an Aviation Mitigation Scheme has been submitted to, and approved by Scottish Ministers in consultation with the Planning Authority and the Airport Operator;

(b) any necessary technical requirements identified within the approved Aviation Mitigation Scheme as necessary to deliver the appropriate revised Instrument Flight Procedures have been installed and are operational at Scatsta Airport; and

(c) confirmation has been provided by the Airport Operator to Scottish Ministers that the Aviation Mitigation Scheme has been implemented and is operational.

(2) In this condition-

~~“Affecting Turbines” means the following turbines as identified on figure A4.1.2. (of the Environmental Statement Addendum) attached to this consent: K42, K43, K44, K45, K46, K47, K48, K50, K51, K52, K53, K54, K55, K56, K57, K58, K59, K73, K75, K76, K77, K81, K82, K83, K84, N107, N109, N117;~~

~~“Aviation Mitigation Scheme” means a scheme agreed between the **Company Partnership** and the Airport Operator setting out measures to mitigate the impact of the Development on the safety of flights arriving and departing from Scatsta Airport and which-~~

(a) identifies and designs the adjustments which are necessary to the Instrument Flight Procedures for Scatsta Airport to maintain the safety of flights arriving and departing at Scatsta Airport (such as the installation of a localiser/distance measuring equipment);

(b) sets out the process which will be undertaken for the adjusted Instrument Flight Procedures to be approved by the Airport Operator and the Civil Aviation Authority; and

(c) sets out the process by which these adjusted Instrument Flight Procedures will be implemented once approved.

“Airport Operator” means ~~Serco UK & Europe Serco Defence, Science and Nuclear~~ who operate the Scatsta Airport or such other airport operator licensed to operate the Airport at the relevant time.

Reason: To mitigate the impacts of the development on safety of flights landing and taking off at Scatsta Airport

Definitions (Relevant to the section 36 consent)

In this consent and ~~deemed planning permission:-~~

~~“Partnership” means Viking Energy Partnership (A Scottish General Partnership) having its Office at The Gutters’ Hut, 7 North Ness, Lerwick, Shetland, ZE1 0LZ and its permitted successors and assignees~~

“Company” means Viking Energy Wind Farm LLP (company registration number SO305400) having its Office at The Gutters’ Hut, 7 North Ness, Lerwick, Shetland, ZE1 0LZ and its permitted successors and assignees”

~~“Variation Application” means the variation application submitted by the Company on 14 November 2018 “Application” means the application and Environment Statement submitted by the Partnership on 20 May 2009 and the subsequent addendum on 29 September 2010~~

“the Development” means the wind powered electricity generating station on the Shetland Islands, North of Lerwick, as defined in Annex 1

“Commencement of Development” means the date on which development will be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997.

~~“Final Commissioning of the Development” means the date on which all wind turbines generators forming the Development have supplied electricity on a commercial basis or such earlier date as the Scottish Ministers deem the Development to be complete;~~

“Final Commissioning” means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with the section 36 consent and the planning permission deemed to be granted upon varying that section 36 consent or (ii) the date falling 24 months from the date of First Commissioning

“First Commissioning” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development

“EIA Report” means the Environmental Impact Assessment Report submitted by the Company on 14 November 2018“Environmental Statement” means the Environmental Statement submitted by Viking Energy Partnership on the 20 May 2009;

“Planning Authority” means Shetland Islands Council

ANNEX 2

Part 1

Description of Development for the purpose of the s36 consent, granted on 4 April 2012 and varied on 24 May 2019 and planning permission deemed to be granted for that varied s36 consent on 24 May 2019;

The Development as indicated on figure 1.2 of the EIA Report and associated ancillary developments inclusive, with a generating capacity in excess of 50MW, and comprising a wind-powered electricity generating station including:

1. not more than 103 turbines each with a maximum tip height of 155m with a rotor diameter not exceeding 120m, and associated crane pads;
2. all site tracks and foundations;
3. 7 permanent anemometry masts (as detailed in Table 2.1.1 in Technical Appendix 2.1 of the EIA Report) for monitoring the wind farm (free standing lattice masts up to 96.5m tall);
4. substation at Moo Field and associated control buildings and compounds and a central sub-station/control building and workshop adjacent to Scottish Hydro Electric Transmission Ltd's converter station in the Kergord valley;
5. up to 10 borrow pits for the excavation of rock; (as detailed in Figure 1.2 of the EIA Report);
6. temporary turbine component laydown areas;
7. underground power cables;
8. watercourse crossings;
9. temporary construction compound areas providing site offices, welfare facilities and storage for plant and materials and satellite construction compounds; and
10. concrete batching plants;

All as specified in the Variation Application and the EIA Report and references in this consent and deemed planning permission to "the Development" will be construed accordingly.

ANNEX 2

Part 2

Conditions applying to the deemed planning permission granted in respect of the Development described in Part 1 of this Annex

1. Redundant turbines

In the event that any wind turbine installed and commissioned fails to produce electricity on a commercial basis to the public network for a continuous period of 6 months, then unless otherwise agreed in writing with the Planning Authority, after consultation with SNH, such wind turbine will be deemed to have ceased to be required. If deemed to have ceased to be required, the wind turbine and its ancillary equipment will be dismantled and removed from the site by the Company within the following 6 month period, and the ground reinstated to the specification and satisfaction of the Planning Authority and SNH.

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

2. Redundant turbines

In the event of the Development not generating electricity on a commercial basis to the grid network for a continuous period of 12 months from 50% or more turbines installed and commissioned from time to time, the Company must immediately notify the Planning Authority in writing of that situation and shall, if the Planning Authority direct, decommission the Development and reinstate the site to the specification and satisfaction of Planning Authority. The Planning Authority shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on decommissioning following discussions with the Company, the Scottish Ministers and other such parties as the Planning Authority consider appropriate.

Reason: *To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration of the site and in the interests of safety, amenity and environmental protection*

3. Planning Monitor Officer (PMO)

(1) No development shall commence unless and until the Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant to assist the Planning Authority in monitoring compliance with the terms of the deemed planning permission and conditions attached to this consent (a Planning Monitoring Officer, "PMO"). The terms of appointment shall;

- (a) impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
 - (b) require the PMO to submit a monthly report to the Planning Authority summarising works undertaken on site; and
 - (c) require the PMO to report to the Planning Authority any incidences of non-compliance with the terms of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.
- (2) The PMO shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post construction restoration works.

Reason: *To enable the Development to be suitably monitored to ensure compliance with the consent issued.*

4. Construction and Environmental Management Plan

- (1) No development shall commence unless and until a Construction and Environmental Management Plan (“CEMP”) containing site specific details of all on-site construction works, post-construction period reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to (at least 5 months prior to the intended commencement of construction works), and approved in writing by, the Planning Authority (in consultation with Shetland Regional Archaeological Service, SNH and SEPA).
- (2) The CEMP will define good practice as well as specific actions required to implement mitigation requirements as identified in the EIA Report the planning process and/or other licensing or consenting processes, will incorporate “good practice” methods from the Scottish/UK wind farm industry, including best practice methods associated with developments on peatland, and SEPA guidance documents in relation to pollution prevention and control and other issues addressed within the CEMP and shall include (but is not limited to)—
- (a) a programme detailing the phasing of construction activity, together with the sequence of the development in particular the creation of the on-site tracks;
 - (b) a Site Waste Management Plan, including information on expected waste streams and volumes, management of each waste stream (including excavated materials which may be classed as waste under the Management of Extractive Waste (Scotland) Regulations 2010), waste contractors, storage locations, and waste documentation;
 - (c) details of the temporary construction site compound(s), including, boundary fencing, surfacing, both surface and foul water drainage provisions, lighting, any temporary structures to be erected, and of

- wheel cleaning equipment to prevent the transfer of mud to the public highway;
- (d) dust suppression and management;
 - (e) site specific details for management and operation of any concrete batching plant/production on site (including disposal of pH rich waste water and substances);
 - (f) any works to public roads (inclusive of any junction re-alignments);
 - (g) a Pollution Prevention Plan, including oil spill contingencies and foul drainage arrangements, arrangements for liquid/chemical storage areas etc;
 - (h) access, signing and re-routing arrangements, including those for recreational users during construction activity;
 - (i) a Water Quality Monitoring Plan, including information on monitoring programmes pre, during and post construction in relation to water quality chemistry, visual observations, sampling and analysis and the actions that will be taken if monitoring indicates a deterioration in water quality;
 - (j) a Drainage Management Plan, including details on permanent and temporary drainage and silt pollution mitigation measures (as far as not covered within CEMP or Pollution Prevention Plan (part (g) of CEMP);
 - (k) method of defining track route and location (pegging out in advance of operations);
 - (l) site specific details of measures for the delivery of cultural heritage/archaeological mitigation on the site;
 - (m) details on track design approach: Maps of tracks indicating approved locations for double and single tracks and position of passing places. Full extent of anticipated track 'footprint(s)' including extent of supporting geogrid below roadstone and cabling at edges of the track;
 - (n) details on track construction including floating track construction over peat >1m deep and gradients of 1:10 or less;
 - (o) methods to deal with failing roads, sinking/sunken roads, peat rotation at road edges etc. during the processes of constructing and decommissioning of the Development;
 - (p) timing, extent, design, treatment and reinstatement of embankments, track edges and other areas affected by track construction;
 - (q) details of on-site cabling (to be located in disturbed areas adjacent to tracks unless agreed with the Planning Authority);
 - (r) procedure for the monthly reporting to the Planning Authority in writing of all departures from the agreed method statement and design parameters for the tracks;
 - (s) an Environmental Incident and Emergency Response Plan;
 - (t) provision of a water supply and a sufficient number of water bowsers and/or dust suppression equipment;

- (u) a Watercourse Crossing Plan, including details on type and design of crossings, locations, required consents/licences and specific mitigation measures;
- (v) requirements for details and method statements (including timings) for the post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas to be provided no later than 6 months prior to the date of first commissioning unless otherwise agreed in writing by the Planning Authority. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details, following consultation with SEPA, should include all seed mixes to be used for the reinstatement of vegetation;
- (w) information on how Scheme Amendments and variations will be recorded including micro siting (change control);
- (x) an Environmental Communication Plan detailing roles and responsibilities as well as lines of communication (to include the Planning Authority);
- (y) information on environmental checks and audits to be undertaken during and post construction;
- (z) information on a Site Induction Schedule;
- (aa) an Ecological (Habitats and Species) Protection Plan, including information on monitoring and mitigation measures in relation to species and habitat protection as identified in the EIA Report and other relevant documents relating to this consent;
- (bb) an Excavated Materials and Reinstatement Plan, including a site plan indicating all the areas which will be subject to reinstatement and proposed reinstatement objectives in terms of final ground conditions, details on type and volumes of materials to be excavated and areas, volumes and methodology for reinstatement. Furthermore any areas that may be subject to further disturbance during the operation of the windfarm, within the terms of the defined description of the Development for the Section 36 consent and deemed planning permission, should be detailed including the likely frequency of disturbance and rational for disturbance;
- (cc) details of the minimum buffer between all infrastructure, to include access tracks (but excluding access tracks leading to watercourse crossings) to be set at 50m. Exceptions to this by agreement of the Ecological Clerk of Works (ECoW) and in consultation with the Planning Authority and SEPA where necessary;
- (dd) a scheme of site specific buffer distances which are determined by the sensitivity of the soil, terrain, vegetation and other site specific characteristics including water dependent habitats, applying a

minimum buffer to at-risk watercourses of 50 m. A map showing the demarcation of identified hydrologically sensitive areas will be included, together with a rationale for the different buffer distances;

- (ee) contingency planning measures for storm events or the risk of localised peat slide, which may increase the rate of sediment transport and cause damage to fish habitats and populations;
- (ff) the terms of appointment, roles, responsibilities and powers (including the stopping of construction and reinstatement/restoration activities) of the Ecological Clerk of Works (ECoW), Geotechnical Clerk of Works (GCoW), Archaeological Clerk of Works (AcOW) and other roles relating to the implementation and monitoring of this consent and compliance with the terms of its relating documents, particularly the CEMP; and
- (gg) information on environmental auditing and monitoring during construction (in relation to e.g. environmental, ecological and geotechnical monitoring pre, during and post-construction, independent monitoring and auditing), to include frequency, methodology and details of parties to be invited to participate, which shall include the Planning Authority.

(3) Within 6 months of the Final Commissioning of the Development, any remaining temporary laydown and construction compound areas not already reinstated in accordance with part (2)(v) of this condition will be removed from the site and these uses discontinued, unless otherwise agreed in writing with the Planning Authority.

(4) The approved CEMP shall be implemented in full by the Company unless otherwise approved in advance in writing by the Planning Authority (in consultation with SNH and SEPA) and shall throughout the construction period be maintained and updated with the Planning Authority's agreement.

Reason: *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, is in compliance with Shetland Local Development Plan (2014) Policies GP2, WD2 and WD3, and that the mitigation measures contained in the EIA Report accompanying the application, or as otherwise agreed, fully implemented.*

5. Financial Bond

(1) No development shall commence unless and until a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 6 is submitted to the Planning Authority, and is either found to be acceptable by the Planning Authority or,

failing agreement, has been determined by a suitably qualified independent professional under part (2) of this condition.

- (2) The form, value and terms of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 6.
- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 6.
- (4) The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.
- (5) In the event the parties are unable to agree upon a suitably qualified independent professional either party may apply to the Chair of the Royal Institution of Chartered Surveyors Scotland to appoint the same.
- (6) Any determination made in parts (1), (2) and (4) of this condition, by a suitably qualified independent professional acting as an expert in matters pertaining to the form, value and terms of any financial agreement in respect of this condition, shall be accepted by the Company and the Planning Authority as final and binding.

Reason: *To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.*

6. Site Decommissioning, Restoration and Aftercare

- (1) The wind turbines and associated infrastructure shall be decommissioned and cease to generate electricity by no later than the date falling twenty-five years from the date of Final Commissioning (“Decommissioning Date”). The total period for restoration of the Site in accordance with this condition shall not exceed three years from the Decommissioning Date (“Decommissioning Period”) without the prior written approval of the Planning Authority in consultation with the Scottish Ministers.

- (2) No development shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the Planning Authority (in consultation with SNH and SEPA). The strategy shall outline measures for the decommissioning of the Development and restoration and aftercare of the site, and shall include proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.
- (3) No later than three years prior to the Decommissioning Date of the Development or the expiry of the section 36 consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the Planning Authority in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include (but is not limited to):
- (a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
 - (b) a traffic management plan to address any impact issues during the Decommissioning Period;
 - (c) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
 - (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 and management of oil and fuel on the site;
 - (g) details of measures for soil storage and management;
 - (h) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
 - (i) details of measures for sewage disposal and treatment;
 - (j) temporary site illumination;

- (k) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- (l) details of watercourse crossings;
- (m) a species protection plan based on surveys for protected species (including birds) carried out no longer than eighteen months prior to submission of the plan; and
- (n) details of the method, frequency and duration of all ecological monitoring, particularly of water courses, throughout the Decommissioning Period of the Development.

(4) 6 months prior to the earlier of the Decommissioning Date of the Development or the expiry of the section 36 consent, and at any other subsequent point as appropriate, the decommissioning, restoration and aftercare plan shall be reviewed by the Company and the Planning Authority, and any alterations deemed appropriate and mutually acceptable shall be made accordingly.

(5) The Development shall be decommissioned, the site restored and aftercare undertaken in accordance with the approved plan, unless and until otherwise agreed in writing in advance with the Planning Authority (in consultation with SNH and SEPA).

Reason: *To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

7. Construction Timetable and Notifications

No development shall commence unless and until a timetable for the Construction Period has been agreed in writing with the Planning Authority. It will include written notification of a start and finish date, noting that the work will not extend beyond a period of six years from the date of Commencement of Development unless with the express written consent of the Planning Authority.

Reason: *In order to define the terms of this consent, to minimise the level of visual intrusion, and to minimise any adverse impacts as a result of the construction phase of the Development*

8. Borrow Pits – Scheme of Works

(1) No development shall commence unless and until a scheme for the working and restoration of each borrow pit has been submitted to, and approved in writing by, the Planning Authority (in consultation with SEPA). The scheme must take account of the borrow pit recommendations set out at paragraph 2.12 of SEPA's letter dated 21 December 2018 and shall include but not be limited to:

- (a) a detailed working method statement based on site survey information and ground investigation findings, including measures to prevent excavation below groundwater level where borrow pits convey hydrological connectivity to Sandwater Loch SSSI;
- (b) details of the handling of any overburden (including peat, soil and rock);
- (c) drainage measures, including measures to prevent surrounding areas of peatland, water dependant habitats and Ground Water Dependent Terrestrial Ecosystems (GWDTE) from drying out;
- (d) a programme of implementation of the works described in the scheme; and
- (e) details of the reinstatement, restoration and aftercare of the borrow pits to be undertaken at the end of the construction period, including topographic surveys of pre-construction profiles and details of topographical surveys to be undertaken of the restored borrow pit profiles.

(2) The approved scheme shall be thereafter be implemented in full.

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

9. Construction - Noise

Construction work with potential to create a nuisance as measured from the boundary of any noise-sensitive receptor will only take place between the hours of 07.00 to 19.00 on Monday to Friday inclusive, 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on local or national public holidays. Outwith these said hours, development at the site will be limited to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, or construction work that is not audible from any noise-sensitive property located outwith the application site unless otherwise approved in writing by the Planning Authority. The receipt of any materials or equipment for the construction of the Development hereby permitted, by track, other than turbine blades, nacelles and towers, is not allowed outwith the said hours, unless otherwise agreed by the Planning Authority with it having been given a minimum of 2 working days' notice of the occurrence of the proposed event. Deliveries to site (excluding abnormal loads) during construction of the wind farm will be limited to 08.00 to 18.00 Monday to Friday, and 09.00 to 12.00 on Saturdays, with no deliveries taking place on a Sunday or on local or national public holidays.

Reason: *In the interests of local amenity.*

10. Construction – site compounds and laydown areas

No development shall commence unless and until plans to a scale of 1:500 (or at an appropriate scale as agreed between the Planning Authority and the Company) have been submitted to the Planning Authority and SEPA for approval in writing showing the location of the temporary construction site compounds and laydown areas required temporarily in connection with the construction of the Development. Each plan will:

- (a) indicate the location of any buildings, car parking, material stockpiles, oil storage, lighting columns, wheel cleaning and lorry sheeting facilities, and boundary fencing;
- (b) detail the surfacing of each site compound, the means of drainage and dust suppression within the compound, the arrangement for the on-site storage of fuel oil, the maximum heights to which materials will be stockpiled, and will set out the activities that will take place within the compound; and
- (c) also demonstrate how environmental sensitivities in proximity to the site are to be protected during construction.

Reason: *To ensure compliance with all commitments made in the EIA Report to minimise pollution risks arising from construction activities.*

11. Construction - Publication of programme information

- (1) The Company shall publicise the programme for the commencement and duration of construction, provide details of the project programme, and provide named contacts for daytime and out-of-hours by means of a public notice placed in a paid newspaper circulating in the locality prior to Commencement of Development of the site.
- (2) The Company shall convene at least every six months during the process of constructing and commissioning the Development, a liaison committee and invite representatives of the Company and its site contractors, the Planning Authority, SEPA, relevant Community Councils the Shetland Windfarm Environmental Advisory Group (SWEAG), and interested local residents including at least one appropriate local group/ecological interested party, for the purpose of exchanging information and comment about the construction of the Development.

Reason: *To ensure programme information is made available to the local community.*

12. Construction – cables

All electricity and control cables between the turbines, substations and control buildings will be laid underground alongside tracks which are to be constructed on the site unless otherwise agreed with the Planning Authority.

Reason: *In the interests of visual amenity and to minimise disruption to habitats.*

13. Borrow Pits – Blasting

- (1) Subject to paragraph (2), blasting shall only take place on the site between the hours of 10.00 to 16.00 on Monday to Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on a Public Holiday or without the prior approval of the ECoW.
- (2) Blasting may take place at other times if approved in advance in writing by the Planning Authority.
- (3) Ground vibration from blasting shall not exceed a peak particle velocity of 6mm/second at agreed blasting monitoring locations to be agreed and approved in writing, in advance of blasting, by the Planning Authority. The measurement is to be the maximum of three mutually perpendicular directions taken at the ground surface.

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

14. Borrow Pits - Use of Materials

Material extracted and removed from the borrow pits authorised by the deemed planning permission shall only be used in the construction of the Development.

Reason: *In order to define the terms of this permission, and to ensure that borrow pit excavation is controlled in the interests of local amenity.*

15. Design and operation of wind turbines

- (1) No development shall commence unless and until full details of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the Planning Authority.

- (2) The wind turbines shall be consistent with the candidate wind turbine or range assessed EIA Report and the tip height shall not exceed 155 metres above ground level.
- (3) The wind turbines shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the Development is decommissioned.
- (4) All wind turbine blades shall rotate in the same direction.

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

16. Micro siting

- (1) All wind turbines, buildings, masts and tracks shall be constructed in the locations shown on Figure 1.2 Site Layout. However, wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro siting within the redline boundary (approved in Annex 3 – Figure 1.2 site layout) but micro siting is subject to the following restrictions:
 - (a) written approval is required from the Planning Authority and NATs prior to the erection of any wind turbine whose foundation, as a consequence of micrositing, is to be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on Figure 1.2 Site Layout;
 - (b) except as permitted by (c) below no wind turbine, building, access track, mast shall be moved more than 50m from the position shown on Figure 1.2 site layout;
 - (c) any micro siting between 50 metres and 100 metres shall only be permitted following written approval of the Planning Authority (in consultation with SNH/SEPA/HES);
 - (d) no micro siting shall take place within areas of peat of greater depth than the original location; unless otherwise agreed with the Planning Authority in consultation with SEPA;
 - (e) no micro siting shall take place within areas hosting Ground Water Dependent Terrestrial Ecosystems; unless otherwise agreed with the Planning Authority in consultation with SEPA;
 - (f) all micro siting permissible under this condition shall be approved in advance in writing by the Ecological Clerk of Works (“ECoW”) and Archaeological Clerk of Works (“ACoW”); and

(g) no micro siting shall locate a turbine closer than 2km to a residential property unless the Planning Authority has given their prior written approval;

(2) No later than one month after the date of Final Commissioning an updated site plan showing the final position of all wind turbines, buildings, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development shall be submitted to the Planning Authority. The plan shall also specify areas where micrositing has taken place and, for each instance, be accompanied by copies of the ECoW and ACoW or Planning Authority's approval, as applicable.

Reason: *To control environmental impacts while taking account of local ground conditions*

17. Signage

No symbols, signs or logos or other lettering, other than those required for health and safety and for traffic management, shall be displayed on any part of the turbines nor any other building or structures without the written consent of the Planning Authority.

Reason: *In the interests of visual amenity.*

18. Design of Substation and ancillary development

Full details of the proposed substation building and associated control buildings, and the control & maintenance buildings in the Kergord valley, including external finishes, colour, dimensions and orientation proposed will be submitted to and approved in writing by the Planning Authority at least 3 months prior to construction of the aforementioned structures. The substation and operations and maintenance buildings will be implemented in accordance with such details as have been so approved.

Reason: *In the interests of visual amenity.*

19. Ecological Clerk of Works

(1) No development shall commence unless and until the Company appoint an Ecological Clerks of Works (ECoW), at its own expense, for the period from the Commencement of Development until the Final Commissioning of the Development and again from the commencement of the decommissioning of the Development until the completion of the restoration of those parts of the site to be restored in accordance with the approvals given under the terms of conditions of this consent. The Ecological Clerk of Works will be a member of the Institute of Ecology and Environmental Management or equivalent. He/she

will be appointed by the Company, subject to the approval of the Planning Authority, following consultation with SNH.

(2) The scope of the work of the Ecological Clerk of Works will include:

- (a) monitoring compliance with the ecological, hydrological and other environmental mitigation works that have been approved in this consent;
- (b) advising the Company on adequate protection of nature conservation interests on the Site, and prevention of off-site adverse environmental impacts;
- (c) checking for new recordings of protected species with any additional mitigation required;
- (d) directing the micro siting and placement of turbines and tracks; and
- (e) monitoring the compliance with mitigation, reinstatement and restoration measures approved by this consent.

Reason: *To protect the natural heritage of the area.*

20. Aquatic Environment

(1) No development shall commence unless and until an additional pre-construction baseline survey, to be undertaken by the Company in streams likely to be impacted and at control sites at least 12 months prior to the commencement of construction, with details to be agreed with the Planning Authority in consultation with SEPA, MSS and SNH beforehand, in order to assess natural annual variation in fish abundance and to support establishment of a baseline for post-construction monitoring. This survey will include but not be limited to:

- (a) an assessment of artificial barriers to fish passage as identified within the EIA Report;
- (b) proposals to remove or modify those structures which result in poor ecological status as part of a habitat management plan;
- (c) details of baseline Hydrochemistry, Macroinvertebrates and fish population surveys (in accordance with advice provided by MSS in their consultation response dated 13 December 2018) and submit the findings, along with details of all monitoring programmes, including control sampling sites and additional quantitative fish survey sites, to which the Company have agreed upon, to Marine Scotland Science (MSS) for review; and
- (d) provision of a map outlining the Development's infrastructures and proposed sampling sites.

- (2) Any crossing works to a watercourse and waterbody must not restrict migratory fish and must be designed and constructed to protect fish interests.
- (3) There will be no commencement of construction works to any standing water within the site boundary unless fully agreed with the ECoW and in accordance with statutory requirements.

Reason: *In the interests of ensuring minimal disruption to habitats and to protect fish stocks and aquatic environment.*

21. Shetland Wind Farm Environmental Advisory Group (SWEAG)

- (1) No development shall commence unless and until details of the constitution, terms of reference (including procedures for the review of the Habitat Management Plan) membership (which will shall include, but not be limited to, representatives from RSPB Scotland and Scottish Natural Heritage) and working arrangements of the SWEAG have been submitted to and approved in writing by the Planning Authority in consultation with SNH, and the first meeting of SWEAG held.
- (2) The approved details must, within 2 months of such approval, be published in accordance with the publicity requirements set out under Planning Condition 11

Reason: *In the interests of ensuring minimal disruption to habitats.*

22. Habitat Management Plan

- (1) No development shall commence unless and until a Habitat Management Plan (HMP) has been:
 - (a) prepared in accordance with this condition and in consultation with SNH and SEPA;
 - (b) that the proposed HMP has been submitted to the Planning Authority for approval;
 - (c) the Planning Authority have, in consultation with SNH and SEPA, approved the HMP in writing; and
 - (d) all Necessary Consents have been granted or have been obtained by the Company.
- (2) The HMP is to set out measures and works to mitigate the impacts of the Development by enhancement, restoration and conservation measures for priority species (in particular whimbrel, red-throated diver and merlin) and priority habitats (especially blanket bog), over the lifetime of the Development, and in particular is to include:

- (a) an implementation programme, including details of the baseline surveys, initial phase of works and monitoring for the first 3 years of implementation;
 - (b) provisions requiring annual summary progress reports to be submitted to the Planning Authority and the Shetland Wind Farm Environmental Advisory Group (SWEAG); and
 - (c) provisions requiring a review of the HMP which are to include provisions;
 - i. requiring periodic reviews of the operation and effectiveness of the HMP to be carried out and submitted to SWEAG;
 - ii. requiring such reviews to be carried out at recurring intervals of no more than 3 years commencing from the date of initial approval of the Habitat Management Plan;
 - iii. for implementation of works on a phased basis between reviews;
 - iv. requiring (in addition to the regular reviews) the monitoring of implementation works and how this will (including all monitoring outputs) be reported to SWEAG; and
 - v. for adaptation and modification (with the written approval of the Planning Authority in consultation with SNH, SEPA and SWEAG) of the management techniques and monitoring, within the approved Habitat Management Plan in the light of monitoring and reviews.
- (3) Following a review of the operation and effectiveness of the HMP any proposed modifications to the HMP are to be submitted to the Planning Authority for approval in writing.
- (4) The HMP prepared and approved in accordance with paragraph (1) (or such Plan as amended following any modifications approved under paragraph (3)) shall be implemented to the satisfaction of the Planning Authority in consultation with SNH, SEPA and SWEAG.
- (5) In this condition “Necessary Consents” means;
- (a) any consent or permission required by an enactment to enable the approved Habitat Management Plan (or as the case may be, (or such Plan as amended following any modifications approved under paragraph (3)) to be implemented;
 - (b) any right of ownership or right or permission to use or take access over land required by the applicant in order to implement the Habitat Management Plan (or amended Plan); and
 - (c) references to SWEAG are references to the bodies comprising the Shetland Wind Farm Environmental Advisory Group constituted by virtue of condition 21.

Reason: *In the interests of the protected species and in compliance with Policies NH2 and NH3 of the Shetland Local Development Plan (2014).*

23. Water Assets Protection Scheme

- (1) No development shall commence unless and until a Water Assets Protection Scheme, prepared in accordance with part (2) of this condition, has been submitted to, and approved by the Planning Authority in consultation with the Scottish Water.
- (2) The Water Assets Protection Scheme is a Scheme setting out measures to protect against the risk of contamination of water or damage to water infrastructure in the course of the construction and operation of the Development and is to include;
 - (a) measures relating to the location of works, including the placement of plant or excavated materials, in relation to water mains or other water assets;
 - (b) arrangements for, and specification of works relating to, the altering of the level of any chambers;
 - (c) details of how any excavation or pumping in the proximity of a water main is to be undertaken; and
 - (d) details of how any piling or other construction methods which create vibrations in pipelines or ancillary apparatus are to be carried out.
- (3) The Development shall be carried out in accordance with the approved Water Assets Protection Scheme.

Reason: *For the protection of public water assets from the risk of contamination and damage.*

24. Bird Protection Plan

- (1) No development shall commence unless and until a preconstruction ornithological survey is completed, a report of that survey and a Bird Protection Plan (BPP) has been submitted to, and approved in writing by, the Planning Authority following consultation with Scottish Natural Heritage (SNH).
- (2) The preconstruction ornithological survey shall cover the area of both the consented infrastructure and an area of 600 metres in all directions from consented infrastructure and the report of survey shall include mitigation measures where any impact, or potential impact, on protected birds or their habitat has been identified.
- (3) Construction and any other operation works at the site shall progress in accordance with any mitigation measures contained within the approved BPP and the timescales contained therein until decommissioned.

Reason: *In the interests of the protection of protected bird species and in compliance with Policies NH2 and HN3 of the Shetland Local Development Plan (2014).*

25. Ornithological Monitoring

(1) Prior to final commissioning of the Development, a programme of ornithological monitoring, on and around the Development site ('ornithological monitoring and reporting programme') has been submitted to and approved in writing by the Planning Authority. The ornithological monitoring programme shall include:

- (a) details of the monitoring of whimbrel, red-throated diver, merlin, golden plover and curlew;
- (b) details of a programme of monitoring to be carried out during the Development's operational years, in accordance with best practice, and the reporting of the results of that monitoring, which will be reported on as soon as practicable in writing to the Planning Authority and SWEAG.

(2) The approved ornithological monitoring and reporting programme shall be implemented in full.

Reason: *To monitor the effectiveness of habitat management and related ornithological mitigation measures set out in the EIA Report.*

26. Access Strategy and Traffic Management Plan

(1) No development shall commence unless and until an Access, Strategy and Traffic Management Plan (ASTMP) for all vehicle movements associated with the construction and operation of the Development shall be submitted to and approved in writing by the Planning Authority following consultation with the Roads Authority. The ASTMP shall include the following:

- (a) the routing of all site traffic, with appropriate policing/supervision procedures being specified and place;
- (b) arrangements for the control of contractors/sub-contractors;
- (c) provision of appropriate signing/lining arrangements;
- (d) arrangements for emergency vehicle access; and
- (e) identification of a nominated person to whom any road safety issues can be referred.

(2) The Development shall be implemented in accordance with the approved ASTMP.

Reason: *In order to comply with Shetland Local Development Plan (2014) Policy TRANS 3.*

27. Road Safety - Abnormal Loads

- (1) Prior to abnormal loads accessing the Development site, a plan for such access including further information in respect of the length/width/weight/axle configuration of all extraordinary traffic accessing the site shall be submitted to and approved in writing by the Planning Authority (in consultation with the Roads Authority and Police Scotland).
- (2) All abnormal loads must thereafter be comply with the approved plan at part (1) of this condition.

Reason: *In the interests of road safety.*

28. Road Safety – Road Cleaning

- (1) No development shall commence unless and until a scheme for the provision of road cleaning / sweeping measures to deal with any mud, silt or other loose material trafficked onto the road as a result of the Development has been submitted to and approved in writing by the Planning Authority.
- (2) The scheme will be implemented as approved.

Reason: *In the interests of road safety.*

29. Archaeological Clerk of Works

- (1) No development shall commence unless and until the terms of appointment of an independent Archaeological Clerk of Works ("ACoW"), qualified to a minimum of ACIfA level have been submitted to, and approved in writing by, the Planning Authority in consultation with Historic Environment Scotland and Shetland Regional Archaeological Service. The scope of the ACoW's appointment shall include:
 - (a) monitoring compliance with the archaeological mitigation works that have been approved in this consent;
 - (b) advising on adequate protection of archaeological interests on the site;
 - (c) checking for new records of archaeological interests for which additional mitigation may be required;
 - (d) approving in writing any micro siting and the placement of wind turbines and tracks;
 - (e) monitoring the compliance with mitigation, reinstatement and restoration measures approved in this consent; and

- (f) reporting any breaches of the mitigation, reinstatement and restoration measures approved in this consent, as soon as is practicable after the event, to the Planning Authority in writing.

All as detailed in Appendix 11.5 of the EIA Report – ACoW Roles and Responsibilities

- (2) The ACoW shall be appointed on the approved terms from Commencement of Development, during any period of construction activity and during any period of post construction restoration works approved under condition 4
- (3) No later than eighteen months prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier), details of the terms of appointment of an independent ACoW throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for approval in consultation with Historic Environment Scotland.
- (4) The ACoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

Reason: *To ensure the protection or recording of archaeological features on the site.*

30. Archaeology

The Company will give the Shetland Regional Archaeological Service at least 15 working days' notice prior to the beginning of the archaeological work on site. The Company will keep the Shetland Regional Archaeological Service informed of the timetable and progress of the archaeological work and ensure they are informed of significant discoveries immediately. The Company will afford the Shetland Regional Archaeological Service reasonable access at all times.

Reason: *To ensure that Shetland Regional Archaeological Service has appropriate access to monitor the archaeological component of the Development on behalf of the Planning Authority to ensure the protection or recording of archaeological features on the site. Speedy access and good communication will facilitate efficient working and timely resolution of archaeological issues.*

31. Heritage Strategy

- (1) No development shall commence unless and until a Heritage Strategy has been submitted to and approved in writing by the Planning Authority in consultation with Historic Environment Scotland.
- (2) This Heritage Strategy will include measures to improve public access, improve knowledge base and interpretation of the agreed archaeological assets, in

consultation with Historic Environment Scotland and the Shetland Regional Archaeological Service.

(3) The Heritage Strategy will be implemented as approved.

Reason: *To improve the knowledge base and secure the appropriate recording of certain archaeological assets affected by the development and to improve access to and interpretation of these assets, in mitigation of the indirect impact on the amenity value of these assets and visual impact of the wind farm on visitors.*

32. Aviation Lighting

(1) No development shall commence unless and until an Aviation Lighting Landscape and Visual Impact Mitigation Plan (ALLV IMP) has been submitted to and approved in writing by the Planning Authority following consultation with the Civil Aviation Authority.

(2) The mitigation plan shall provide for the use of radar activated lighting (RAL), or a visually acceptable alternative, and shall also set out and confirm:

- (a) The extent of reduction of lighting intensity during good meteorological visibility as allowed within the CAA policy statement;
- (b) The extent of cardinal or strategic lighting of selected turbines;
- (c) The timescale of and parameters for the periodic review of the operation and effectiveness of the ALLVIMP following its approval over the lifetime of the Development, to allow for adaptation and modification (with the written approval of the Planning Authority in consultation with the Civil Aviation Authority) in light of monitoring, reviews and changes in technology and relevant policy.

(3) The approved ALLVIMP shall be fully implemented until decommissioning of the Development, unless otherwise approved in writing by the Planning Authority as a result of a periodic review.

Reason: *To minimise and ensure there are no unacceptable adverse effects on the surrounding area that are attributable to aviation lighting, and to comply with Policy GP3 of Shetland Local Development Plan 2014.*

33. Aviation safety

No development shall commence unless and until the Company has provided the Ministry of Defence, Defence Geographic Centre, and NATS with the following detailed information:

- (a) the date of expected commencement of each phase of construction;
- (b) the date of expected completion of each phase of construction;

- (c) the height above ground level of the tallest structure;
- (d) the maximum extension height of any construction equipment;
- (e) the anticipated position of the turbines and met masts in latitude and longitude; and
- (f) site lighting if appropriate.

Reason: *To ensure that the Development is notified to relevant consultees and the position of tall plant and infrastructure is properly recorded.*

34. Television and Radio Reception

Prior to the installation of the wind turbines forming part the Development, the Company will commission a survey measuring existing television reception quality, which will be submitted to the Planning Authority. In the event that the Development is found to cause interference to television reception in the vicinity, following a complaint made to the Planning Authority within one year of the Final Commissioning of the Development, the Company will take whatever action the Planning Authority (acting reasonably) deem necessary to remedy such impairment and alleviate the problem, to the satisfaction of the Planning Authority.

Reason: *For the protection of amenity of local residents.*

35. Outdoor Access Plan

No development shall commence unless and until an 'Outdoor Access Plan' shall be submitted to and approved in writing by the Planning Authority. The Outdoor Access Plan will detail:

- (a) on a map the existing paths, Core Paths, Access Routes, Public Rights of Way and desire lines on or adjacent to the site;
- (b) the consultation undertaken with local communities, local access forum and relevant recreational user groups with respect to both informal and formal access use in the area and it's development, to optimise the use of, and creation, of links to existing infrastructure and points of interest;
- (c) any new routes and proposed changes, including: a map detailing the diversions and management of access required during and after construction; path construction specifications; structures, fitting and signage specifications; and a project and delivery plan; and
- (d) a future path maintenance plan, including an outline of: responsibility for funding path maintenance; responsibility and timescale for path maintenance; and the path maintenance schedule (monitoring, vegetation control and furniture replacement).

Reason: *To enable the objective assessment of recreational use and mitigate the likely impact on communities and the long term impacts on amenity including outdoor access, recreation and tourism opportunities, and optimise the use of both existing infrastructure and that to be constructed as part of the Development to provide safe and convenient opportunities for walking, cycling equestrianism for both recreation and active travel, in compliance with Shetland Islands Council Onshore Wind Energy Supplementary Guidance 2018 Policy DC4.*

36. Peat Management Plan

No development shall commence unless and until a detailed Peat Management Plan has been submitted to and approved in writing by the Planning Authority following consultation with SEPA, and thereafter the approved Peat Management Plan shall be implemented in full on site. This plan should set the following:

- (a) volumes, depth and location of any peat disturbed;
- (b) details of any proposed reuse of the peat within the site (including a plan showing volumes, location and usage);
- (c) details of any disposal of peat proposed (including volumes and detailed disposal proposals); and
- (d) details of mitigation and restoration proposals, including measures to achieve peat management on land within the reasonable control of the applicant which will increase carbon sequestration.

Reason: *In order to minimise and offset disturbance of peat and ensure the appropriate reuse and management of peat on site, in compliance with Shetland Local Development Plan (2014) Policies GP3 and NH5.*

37. Groundwater Dependant Terrestrial Ecosystems (GWDTE)

No development shall commence unless and until revised maps are submitted to the Planning Authority following consultation with SEPA showing clearly:

- (a) all proposed infrastructure including temporary works;
- (b) overlain with details of the extent and depths of all proposed excavations;
- (c) overlain with GWDTE;
- (d) showing the relevant buffer zones (100m for excavations less than 1m in depth and 250m for excavations deeper than 1m); and
- (e) where avoidance of infrastructure within these buffer zones is impossible and GWDTE are found to be present, details of how impacts upon GWDTE are minimised and mitigated, along with monitoring measures, will require to be submitted to and approved by the Planning Authority in consultation with SEPA before construction starts on site.

Reason: *In order to minimise and offset disturbance of GWDTEs*

38. Peat Stability – Revised Peat Landslide Risk Assessment

- (1) No development shall commence unless and until a revised peat landslide risk assessment, addressing the construction phase of the Development and post-construction monitoring, has been submitted to, and approved in writing by, the Planning Authority in consultation with Scottish Ministers.
- (2) The revised peat landslide risk assessment shall:
 - (a) comply with best practice contained in “Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments” published by the Scottish Government in April 2017, or such replacement standard as may be in place at the time of submission of the peat landslide risk assessment for approval;
 - (b) address all the key actions in the 2009 checking report (pages 14 and 15 of Halcrow Group Ltd (2009)) and any further actions deemed appropriate from review of the revised report; and
 - (c) include a scaled plan of the full site showing existing landslides within and adjacent to the site, calculated peat landslide risk and mitigation measures for all infrastructure and calculated peat landslide risk and mitigation measures for all areas proposed for temporary and permanent peat storage in the Peat Management Plan.
- (3) The Peat Management Plan and CEMP shall be updated to reference the findings and proposed landslide risk mitigation measures contained within the revised peat landslide risk assessment.
- (4) The approved revised peat landslide risk assessment shall be undertaken in full prior to Commencement of Development.

Reason: *To minimise the risk of peat failure arising from the Development.*

39. Peat Stability - Geotechnical Engineer

- (1) No development shall commence unless and until the terms of appointment for an independent and suitably qualified geotechnical engineer (including specification of duties and duration of appointment) have been submitted to, and approved by, the Planning Authority, and the approved engineer has been appointed.
- (2) The scope of the work of the Geotechnical Engineer will include:

- (a) Continuous monitoring of ground conditions during the construction phase of the Development shall be carried out.
- (b) Continuous analysis and call out services shall be provided by the Geotechnical Engineer throughout the construction phase of the Development.
- (3) If a risk of peat failure is identified such geotechnical instrumentation to monitor ground conditions as is recommended by the Geotechnical Engineer shall be installed and ground conditions shall be monitored.
- (4) Any remediation work considered necessary by the Geotechnical Engineer shall be implemented to the satisfaction of the geotechnical engineer.

Reason: *To minimise the risk of peat failure arising from the Development.*

40. Noise - Exposure Contour Mapping

- (1) Within 2 months of the date of Final Commissioning, the Company shall submit to the Planning Authority a revision of the Figure No. 1 that forms part of Annex 2 of Appendix 6.1, Part 2 of Volume 4 Technical Appendices of the EIA Report and an associated noise contour technical note which outlines the assumptions and limitations of the figure report; or
- (2) if the type of wind turbine erected as part of the Development has not been the Siemens DD120 wind turbine a revision of that submitted in accordance with part 1) of this condition. The revised Figure No. 1 submitted shall be based on the specific type of wind turbine that has been erected forming part of the Development and the locations at which the wind turbines have been erected as shown on the updated site plan submitted in accordance with condition 15. Notwithstanding the fact that, under certain conditions, the turbines may be operated in noise reduced mode the contour plot shall be based on the turbines operating in full mode to present a simplified, worst case scenario unless otherwise agreed in writing with the Planning Authority. The revised Figure No. 1 shall similarly show contour plots of predicted wind turbine Noise dB(A) L90 at 1 dB and 5 dB increments.

Reason: *To enable the Planning Authority to consider the implications of any proposal to locate new noise sensitive development within the site, and to ensure that the quality of life and the amenity of occupiers of noise sensitive property that is granted planning permission is not unreasonably affected. To comply with Policy GP1 of Shetland Local Development Plan 2014.*

41. Noise

- (1) 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 speeds set out in or derived from Tables 1 and 2 attached to these conditions and:
 - A. Prior to the operation of the wind farm, the Company shall submit to the Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.
 - B. 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 approved by the Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property (or a suitable alternative location agreed in writing with the Planning Authority) in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Planning Authority made under this paragraph (B), the Company shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Planning Authority in the format set out in Guidance Note 1(e).
 - C. Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the Company shall submit to the Planning Authority for written approval proposed noise limits to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Planning Authority for the complainant's dwelling.

- D. Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the Company shall submit to the Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Where the proposed measurement location is close to the wind turbines, rather than at the complainants property (to improve the signal to noise ratio), then the Company submission shall include a method to calculate the noise level from the wind turbines at the complainants property based on the noise levels measured at the agreed location (the alternative method). Details of the alternative method together with any associated guidance notes deemed necessary, shall be submitted to and agreed in writing by the Planning Authority prior to the commencement of any measurements. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the Planning Authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the Planning Authority.
- E. Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the Company shall submit to the Planning Authority for written approval a proposed assessment protocol setting out the following:
- i. the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
 - ii. a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.
- F. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the Planning Authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the Planning Authority and the attached Guidance Notes.
- G. 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 Guidance Notes within 2 months of the date of the written request of the Planning Authority made under paragraph (B) of this condition unless the time limit is extended in writing by the Planning Authority. The

assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

- H. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) 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 assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Planning Authority.
- I. The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data shall be retained for a period of not less than 24 months. The Company shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Planning Authority on its request within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a “dwelling” is a building within Use Classes 7, 8 and 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 which lawfully exists or had planning permission at the date of this permission and “wind farm” is the wind farm Development as described at Part 1 of Annex 2 of this permission.

Table 1 - Between 07:00 and 23:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
L _{A90} Decibel Levels												
Glenlea (444322, 1163627)	40	40	40	40	40	40	40	40	40	40	40	41.4
Tararet (445001, 1162940)	40	40	40	40	40	40	40	40	40	40	35	35
Tararet; Next Closest Non-FI Property (Haa Buttons) (444806, 1163076)	40	40	40	40	40	40	40	40	40	40	39.4	38.8
Grunnafirth (445947, 1159638)	40	40	40	40	40	40	40	40	40	40	40.9	42.6
New House at Dury (445673, 1160441)	40	40	40	40	40	40	40	40	40	40	40.9	42.6
Hamelea (448170, 1157574)	40	40	40	40	40	40	40	40	40	40	42.8	45.5
Whinnia Lee (446682, 1155852)	40	40	40	40	40	40	40	40	40	40	40	40.6
Hollydell (443843, 1154352)	40	40	40	40	40	40	40	40	41.3	43.9	46.2	48.3
Sandwater (441732, 1155184)	40	40	40	40	40	40	40	40	40.6	43.1	45.5	47.7
Setter House (439705, 1154796)	40	40	40	40	40	40	40	40	40	40	40	42.5
Millhouse (439460, 1153086)	40	40	40	40	40	40	40	40	40	40	40	41.9
Koopins (439511, 1152903)	40	40	40	40	40	40	40	40	40	40	40	41.9

Dykeside (436370, 1151231)	40	40	40	40	40	40	40	40	40	40	40.3	42.4	44.6
Breckenlea (435463, 1151606)	40	40	40	40	40	40	40	40	40	40	40.3	42.4	44.6
Gruids (434765, 1153921)	40	40	40	40	40	40	40	40	39.4	38.6	36.4	34.3	43.8
Mid Town (434695, 1153637)	40	40	40	40	40	40	40	40	40	40	40	35	35.5
Valhalla (436728, 1157749)	40	40	40	40	40	40	40	40	40	40	40.7	44.1	48
12 Whitelaw Road (434911, 1155664)	40	40	40	40	40	40	40	39.5	38.9	36.9	30.7	34.1	45.4
Roadside (436191, 1157714)	40	40	40	40	40	40	40	40	40	40	40.7	44.1	48
Hoddins (437135, 1161516)	40	40	40	40	40	40	40	40	40	40	40	42	45.3
Rocklea (439858, 1162158)	40	40	40	40	40	40	40	40	40	40	40	41.6	44.1
Norbrek (440923, 1164030)	40	40	40	40	40	40	38.9	37.9	35.7	30	30	31.6	34.1
Muness (445131, 1153152)	40	40	40	40	40	40	40	40	41.3	42.4	42.5	44.4	47.6
Muness; Next Closest Non-FI Property (445355, 1153208)	40	40	40	40	40	40	40	40	41.3	43.9	46.2	48.3	49.9
Parkhead (440737, 1151832)	40	40	40	40	40	40	40	40	38.9	36.8	30	31.9	34.4
Moars Park (438150, 1150032)	40	40	40	40	40	40	30	30	30	30	30	31.9	34.4
The Mark (433431, 1158405)	40	40	40	40	40	40	39	38.3	36.8	32.3	30.7	36.4	46.2
Lonabrek (433980, 1155778)	40	40	40	40	40	40	38.9	38.2	36.9	33.5	30.7	38.8	46.5
Adnashoor (434622, 1155969)	40	40	40	40	40	40	40	39.5	39.1	38.3	37.7	41.7	47.2
South Voxter (436072, 1161942)	40	40	40	40	40	40	40	40	40	40	40	42	43.2
South Voxter; Next Closest Non-FI Property (436072, 1161520)	40	40	40	40	40	40	40	40	40	40	40	42	45.3
East Lynn (436347, 1165646)	40	40	40	40	40	40	40	40	39.2	38.6	37.3	39.2	44.2

Table 2 - Between 23:00 and 07:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods												
	1	2	3	4	5	6	7	8	9	10	11	12	
L _{A90} Decibel Levels													
Glenlea (444322, 1163627)	43	43	43	43	43	43	43	43	43	43	43	43	43
Tararet (445001, 1162940)	43	43	43	43	43	43	43	43	42.9	40.3	35	35	35
Tararet; Next Closest Non-FI Property (Haa Buttons) (444806, 1163076)	43	43	43	43	43	43	43	43	43	43	43	42.5	42.5
Grunnafirth (445947, 1159638)	43	43	43	43	43	43	43	43	43	43	43	43	43.4
New House at Dury (445673, 1160441)	43	43	43	43	43	43	43	43	43	43	43	43	43.4
Hamelea (448170, 1157574)	43	43	43	43	43	43	43	43	43	43	43	45	49.7
Whinnia Lee (446682, 1155852)	43	43	43	43	43	43	43	43	43	43	43	43	45.4
Hollydell (443843, 1154352)	43	43	43	43	43	43	43	43	43	43	43	44.9	46.1
Sandwater (441732, 1155184)	43	43	43	43	43	43	43	43	43	43	43	45.8	48.6
Setter House (439705, 1154796)	43	43	43	43	43	43	43	43	43	43	43	43	43
Millhouse (439460, 1153086)	43	43	43	43	43	43	43	43	43	43	43	43	43
Koopins (439511, 1152903)	43	43	43	43	43	43	43	43	43	43	43	43	43
Dykeside (436370, 1151231)	43	43	43	43	43	43	43	43	43	43	43	43	44.6
Breckenlea (435463, 1151606)	43	43	43	43	43	43	43	43	43	43	43	43	44.6
Gruids (434765, 1153921)	43	43	43	43	43	43	43	43	43	42.4	41.6	39.1	39.1
Mid Town (434695, 1153637)	43	43	43	43	43	43	43	43	43	43	40.5	35	35
Valhalla (436728, 1157749)	43	43	43	43	43	43	43	43	43	43	43	43	43
12 Whitelaw Road (434911, 1155664)	43	43	43	43	43	43	43	43	42.5	41.7	39	33	33
Roadside (436191, 1157714)	43	43	43	43	43	43	43	43	43	43	43	43	43

Hoddins (437135, 1161516)	43	43	43	43	43	43	43	43	43	43	43	43	43.7
Rocklea (439858, 1162158)	43	43	43	43	43	43	43	43	43	43	43	43	43
Norbrek (440923, 1164030)	43	43	43	43	43	42.5	42.1	41.3	39.7	33.4	33	33	
Muness (445131, 1153152)	43	43	43	43	43	43	43	43	42.4	38.8	35	36.1	
Muness; Next Closest Non-FI Property (445355, 1153208)	43	43	43	43	43	43	43	43	43	42.4	44.2	45.6	
Parkhead (440737, 1151832)	43	43	43	43	43	43	43	42.5	41.7	38.7	33	33	
Moars Park (438150, 1150032)	43	43	43	43	43	39.7	33.4	33	33	33	33	33	
The Mark (433431, 1158405)	43	43	43	43	43	42.5	42.2	41.7	40.7	38.3	33	33	
Lonabrek (433980, 1155778)	43	43	43	43	43	42.5	42.2	41.7	40.9	39.1	33	33	
Adnashoor (434622, 1155969)	43	43	43	43	43	43	43	43	42.2	41.5	39.5	39.5	
South Voxter (436072, 1161942)	43	43	43	43	43	43	43	43	43	43	42.7	42.7	
South Voxter; Next Closest Non-FI Property (436072, 1161520)	43	43	43	43	43	43	43	43	43	43	43	43.7	
East Lynn (436347, 1165646)	43	43	43	43	43	43	43	43	42.4	41.9	40.9	42	

Note 1 to Tables 1 2: The geographical coordinates references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those at hub height, calculated in accordance with the method given in the Guidance Notes.

Note 2 to Tables 1 2: The occupiers of some of the properties have a financial involvement or receive power from nearby turbines that were consented or operational at the time of this consent, and this is reflected in the tables. The noise limits also assume that all existing / consented turbines will remain operational for the lifetime of this consent and that their noise immissions are as per the levels detailed in Chapter 6 of the EIA Report. The noise limits detailed in this condition can be recalculated, if necessary to consider any differences in financial involvement or turbine operation, using the same methodology adopted in Chapter 6 of the EIA Report dated October 2018 and submitted with the application ECU 00000723. Any update to the noise limits shall be submitted to and approved in writing by, the Planning Authority. The development shall operate in accordance with the limits contained in this Condition unless the Planning Authority gives it written consent to an updated set of noise limits.

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

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. 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).

Note 1

- (a) Values of the LA90,10-minute noise statistic should be measured at the complainant’s property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 “Electroacoustics – sound calibrators” Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant’s dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the Company shall submit for the written approval of the Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) 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. Each 10 minute arithmetic average mean wind speed data as measured or calculated 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 is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

- (e) Data provided to the Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format with the exception of data collected to assess tonal noise (if required) which shall be provided in a format to be agreed in writing with the Planning Authority.
- (f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Note 2

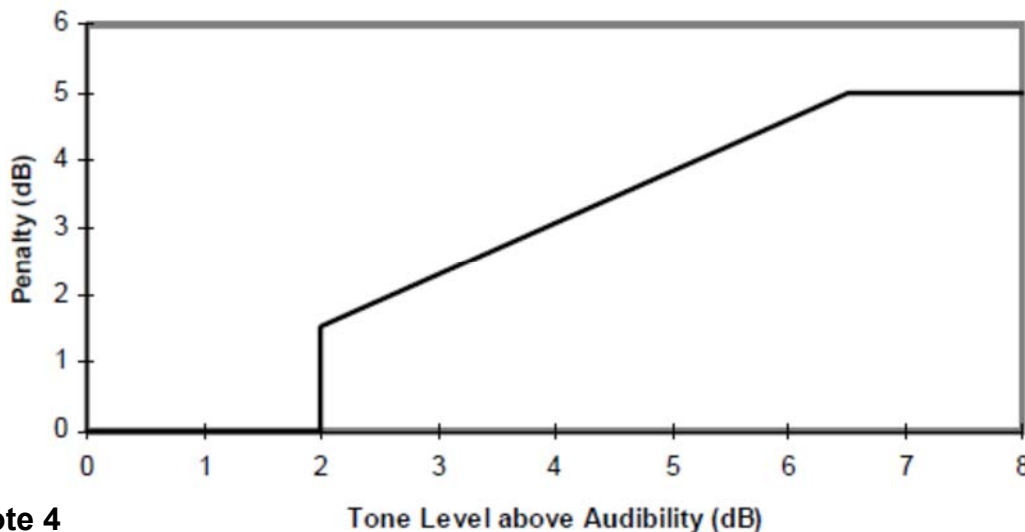
- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the LA90,10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which LA90,10-minute data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted

clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.

- (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.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares “best fit” linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line fitted to values within $\pm 0.5\text{m/s}$ of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits

approved by the Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

- (d) The Company shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
 - ii. The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Planning Authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

Definitions

In this deemed planning permission:-

“Commencement of Development” means the date on which Development will be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

“Company” means Viking Energy Wind Farm LLP (company registration number SO305400) having its Office at The Gutters’ Hut, 7 North Ness, Lerwick, Shetland, ZE1 0LZ and its permitted successors and assignees;

“Construction Period” means the period from the Commencement of Development until the approved site compounds areas have been reinstated in accordance with the conditions of this consent;

“Decommissioning of the Development ” means the date on which those elements of the Development have been permanently decommissioned and removed from the site, in accordance with the conditions of this consent;

“the Development” means the wind powered electricity generating station on the Shetland Islands, North of Lerwick, as defined in Part 1 of this Annex ;

“EIA Report” means the Environmental Impact Assessment Report submitted by the Company on 14 November 2018;

“Final Commissioning” means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with the section 36 consent and the planning permission deemed to be granted upon varying that section 36 consent or (ii) the date falling 24 months from the date of First Commissioning;

“First Commissioning” means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development;

“Planning Authority” means Shetland Islands Council;

“Public Holiday” means;

- New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January.
- 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January.
- Good Friday.
- Easter Monday.
- The first Monday in May.
- The first Monday in August.
- The third Monday in September.
- 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day.
- Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December.

- Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December

“SEPA” means the Scottish Environment Protection Agency;

“Site” means the area of land defined in the application EIA Report and outlined in red on the boundary map (Figure 1.2) attached to this planning permission;

“SNH” means Scottish Natural Heritage;

“NATS” means National Air Traffic Services;

“Variation Application” means the variation application submitted by the Company on 14 November 2018;