

## Formartine Area Committee Report - 23 July 2019

Reference No: APP/2019/0922

**Full Planning Permission for Erection of 3 No. Wind Turbines (50m Hub Height, 76.5m Blade Tip Height) and Associated Infrastructure without Compliance with Conditions 7, 9, 10, 12, 13, 14, 16, 18, 19 and 20 of Approved Planning Application APP/2015/2965 at Land at Mains of Cairnbrogie, Oldmeldrum, Inverurie, Aberdeenshire**

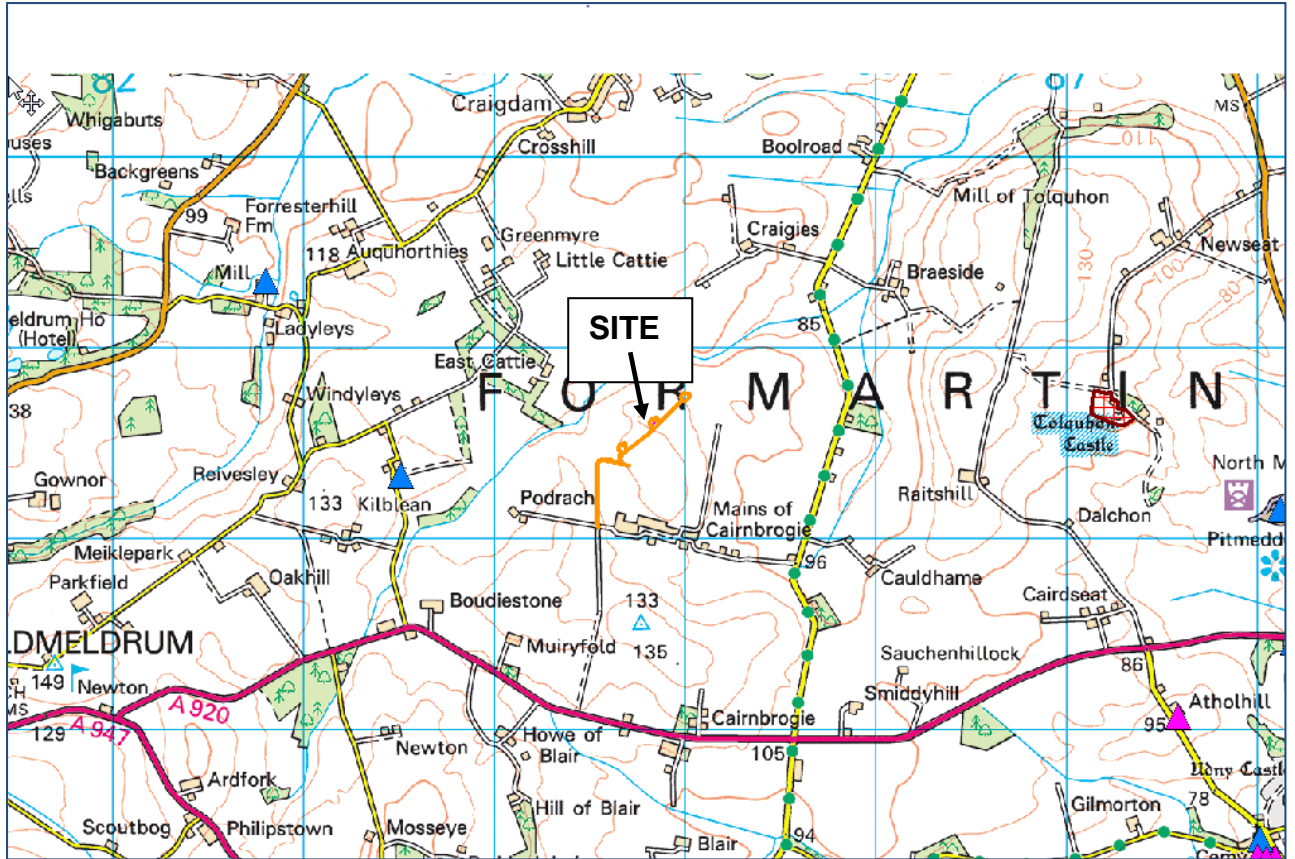
**Applicant:** Mountwest 838 Limited  
**Agent:** Ian A Downie

Grid Ref:	E:384779 N:828415
Ward No. and Name:	Mid-Formartine
Application Type:	Full Planning Permission
Representations:	22
Consultations:	5
Relevant Proposals Map:	Aberdeenshire Local Development Plan
Designations:	AHMA
Complies with Development Plans:	Yes
Main Recommendation:	Grant



**NOT TO SCALE**

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## 1. Reason for Report

- 1.1 The application is being referred to Area Committee because there have been valid objections from more than five separate households and because there is an unresolved objection from Tarves Community Council.

## 2. Background and Proposal

- 2.1 This application seeks full planning permission for the erection of 3 No. Wind Turbines (50m Hub Height, 76.5m Blade Tip Height) and Associated Infrastructure without Compliance with Conditions 7, 9, 10, 12, 13, 14, 16, 18, 19 and 20 of Approved Planning Application APP/2015/2965. The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997. For avoidance of doubt, and with the exception of Condition 13, the applicant is seeking to amend the wording of the above conditions rather than entirely remove them.
- 2.2 The purpose of the application is to allow for the proposal to be partially implemented (by way of formation of the access or similar material works) in order to retain the permission in perpetuity in the event that there is a chance to the commercial viability of the project (such as a change in subsidy for onshore wind). The applicant has commented that the present situation means that certain conditions cannot be purified as there is an absence of technical information at this stage of the process. The applicant seeks to amend the wording of each of the conditions in a similar fashion to allow for the provision of the pre requisite information for each condition prior to the '*construction of any turbine foundations*'. In effect this would allow the construction of the access, laydown and temporary construction areas prior to the provision of the information requested under each condition. The full wording of the existing condition can also be found in the decision notice appended as **Appendix 1**.
- 2.3 The wind turbines would be located within fields approximately 130 metres AOD lying to the north of the Mains of Cairnbrogie and around 1.6km south of the small settlement of Craigdam. The proposal comprises three turbines additional associated infrastructure which includes a 1.2km single access track, 1.1km of which will be an upgrade from an existing farm track, from the local road network at Mains of Cairnbrogie, drainage works and a sub-station building.
- 2.4 An area of hardstanding, measuring 30m x 20m, would be required to support the cranes used for the erection of the turbines.
- 2.5 Condition 7 requires the provision of a Construction Traffic Management Plan prior to the commencement of development. The applicant seeks to vary the condition by replacing the wording of the condition from:

*Development shall not be begun until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local*

*Planning Authority. Development shall be carried out in accordance with the approved CTMP.*

*Reason: In the interests of road safety and to avoid degradation of the road and bridge network.*

To:

*'Prior to the commencement of the construction of any turbine foundation details of the Construction Traffic Management Plan shall be submitted to and approved in writing by the Planning Authority'.*

- 2.6 Condition 9 requires the submission of an Abnormal Routing Plan which relates to the delivery of abnormal loads. Abnormal loads would be associated with the wind turbines components in the case of this particular development. The applicant seeks to amend the wording of the condition from:

*Development shall not be begun until an Abnormal Load Routing Plan (ALRP), written in accordance with Aberdeenshire Council's Abnormal Load Routing (Windfarms) Guidelines, has been submitted to and approved in writing by the local Planning Authority. No abnormal load movements shall be permitted until all agreed actions from the approved ALRP have been fully implemented and approved by Aberdeenshire Council's Abnormal Loads Team.*

*Reason: In the interests of road safety and to avoid degradation of the road and bridge network.*

To:

*Prior to the commencement of the construction of any turbine foundation an Abnormal Load Routing Plan (ALRP), written in accordance with Aberdeenshire Council's Abnormal Load Routing (Windfarms) Guidelines, has been submitted to and approved in writing by the local Planning Authority. No abnormal load movements shall be permitted until all agreed actions from the approved ALRP have been fully implemented and approved by Aberdeenshire Council's Abnormal Loads Team.*

*Reason: In the interests of road safety and to avoid degradation of the road and bridge network.*

- 2.7 Condition 10 requires the submission of a TV and Radio Reception mitigation plan. The applicant seeks to amend the wording of the condition from:

*Prior to the commencement of the development a TV and radio reception mitigation plan for a 20km radius from the boundary of the development site must be submitted to and approved in writing by the Planning Authority etc.*

*Reason: To ensure that any adverse effect on TV or radio reception is rectified.*

To:

*Prior to the commencement of the construction of any turbine foundation a TV and radio reception mitigation plan for a 10km radius from the boundary of the development site must be submitted to and approved in writing by the Planning Authority etc.*

- 2.8 Condition 12 requires agreement of an Air Defence Radar Mitigation Scheme to be agreed by the Planning Authority (in consultation with the MOD). The applicant seeks amendment to the condition from:

*No development shall commence unless and until an Air Defence Radar Mitigation Scheme has been submitted to and approved in writing by the Planning Authority.*

*Reason: to protect the operational effectiveness and safety of air surveillance and control.*

To:

*No construction of any wind turbine foundation shall commence unless and until an Air Defence Radar Mitigation Scheme has been submitted to and approved in writing by the Planning Authority.*

- 2.9 Condition 13 requires the provision of a bond to cover restoration at the end of the lifetime of the development. The applicant seeks to remove the condition entirely stating that the permission granted under APP/2015/2965 is not time limited and therefore the turbines could remain in perpetuity. The existing condition reads:

*Prior to commencement of development on the site, the Developer shall provide to the Planning Authority written details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs at the end of the period of this consent. The Developer shall also provide an independent confirmation by a Chartered Surveyor (whose appointment for this task has been approved by the Planning Authority) that the amount of the bond or financial provision so proposed is sufficient to meet the full estimated costs of decommissioning, dismantling, removal, disposal, site restoration, remediation and incidental work as well as associated professional costs. No work shall commence on site until written confirmation has been given by the Planning Authority to the company to the effect that the proposed bond or other financial arrangement is satisfactory and the company has confirmed to the Planning Authority that it has been put in place.*

*Reason: To ensure financial security for the cost of the site reinstatement to the satisfaction of the Planning Authority is in place to provide that any redundant wind turbine and ancillary equipment is removed from site, in the interests of safety amenity and environmental protection.*

- 2.10 Condition 14 requires full details of all colours and finishes of the external components of the development. The applicant wishes to amend the wording of the condition from:

*That the wind turbines shall be finished in a non-reflective pale grey semi-matt finish and should not display any advertising on any part of the turbine unless otherwise agreed in writing with the Planning Authority. Confirmation of the details of the finish and colour of all externally visible components of the associated ancillary aspects of the proposal shall be submitted in writing to and agreed by the Planning Authority prior to the commencement of development.*

*Reason: In the interests of visual amenity.*

To:

*That the wind turbines shall be finished in a non-reflective pale grey semi-matt finish and should not display any advertising on any part of the turbine unless otherwise agreed in writing with the Planning Authority. Confirmation of the details of the finish and colour of all externally visible components of the associated ancillary aspects of the proposal shall be submitted in writing to and agreed by the Planning Authority prior to the construction of any wind turbine foundation.*

*Reason: In the interests of visual amenity.*

- 2.11 Condition 16 requires the provision of a site specific construction methods statement. The applicant wishes to amend the condition from:

*Prior to the commencement of development a site specific construction method statement, including details of waste, surface water run-off, road construction, the timing of works and environmental management, shall be submitted for the approval in writing of the Planning Authority. The approved construction method statement shall be implemented in full during construction.*

*Reason: In the interest of landscape and environmental protection.*

To:

*Prior to the commencement of the construction of any turbine foundation a site specific construction method statement, including details of waste, surface water run-off, road construction, the timing of works and environmental management, shall be submitted for the approval in writing of the Planning Authority. The approved construction method statement shall be implemented in full during construction.*

- 2.12 Condition 18 requires submission of details of power cables and associated reinstatement. The applicant seeks to amend the condition from:

*Prior to the commencement of development details of the routes of all power cables and a ground reinstatement plan shall be submitted for the approval of the Planning Authority. All cables shall be located underground and the ground thereafter reinstated fully in accordance with details which have been approved, within 12 months of the commissioning of the wind turbines, unless otherwise agreed in writing by the Planning Authority.*

*Reason: In the interests of visual amenity and landscape protection.*

To:

*Prior to the commencement of the construction of any turbine foundation details of the routes of all power cables and a ground reinstatement plan shall be submitted for the approval of the Planning Authority. All cables shall be located underground and the ground thereafter reinstated fully in accordance with details which have been approved, within 12 months of the commissioning of the wind turbines, unless otherwise agreed in writing by the Planning Authority.*

- 2.13 Condition 19 requires details of routes of all construction traffic and components. The applicant seeks to amend the wording from:

*Prior to commencement of development details of route(s) of all construction and component traffic shall be submitted showing complete transportation proposals for all loads from either their place of manufacture or the port to which they are delivered, to the development site for the approval in writing of the Planning Authority in consultation with the Roads Authority and the Bridge Authority. No development shall begin until the route proposed for that traffic has been approved. The agreed route(s) shall be adhered to in its entirety unless otherwise agreed in writing.*

*Reason: In the interests of road safety and to avoid degradation of the road and bridge network.*

To:

*Prior to construction of any turbine foundation details of all construction and component traffic shall be submitted showing complete transportation proposals for all loads from either their place of manufacture or the port to which they are delivered, to the development site for the approval in writing of the Planning Authority in consultation with the Roads Authority and the Bridge Authority. No development shall begin until the route proposed for that traffic has been approved. The agreed route(s) shall be adhered to in its entirety unless otherwise agreed in writing.*

*Reason: In the interests of road safety and to avoid degradation of the road and bridge network.*

- 2.14 Condition 20 requires that a dilapidation survey of the approved routes is submitted prior to commencement. The applicant has requested the condition is reworded from:

*Prior to commencement of development a dilapidation survey (condition of roads, bridges and retaining walls) of the approved route(s) shall be carried out in consultation with the Roads Authority and the Bridge Authority. Once development is complete any remedial works required shall be completed in consultation with and to the satisfaction of the Roads Authority and Bridge Authority.*

*Reason: In the interest of road and public safety.*

To:

*Prior to construction of any turbine foundation a dilapidation survey (condition of roads, bridges and retaining walls) of the approved route(s) shall be carried out in consultation with the Roads Authority and the Bridge Authority. Once development is complete any remedial works required shall be completed in consultation with and to the satisfaction of the Roads Authority and Bridge Authority.*

## 2.15 Relevant Planning History

- APP/2008/4093 – Erection of 3 no. Wind Turbines 93.5m to blade tip (originally 4 turbines). Refused date 02/10/2009. This was appealed (ref PPA-110-2018) and dismissed by Reporter 19/2/210.
- APP/2010/0305 - Erection of 3 Wind Turbines, 93.5m blade tip. . Refused 27/05/2010. This was appealed (ref PPA-110-2055) and dismissed by Reporter November 2010.
- APP/2011/1917 Erection of 2 No. E70 2.3Mw Wind Turbines, 92.5m to blade tip. Refused 5 March 2012
- APP/2012/3825 – Erection of a 79.8m, 800kw Wind Turbine. Refused 12 March 2013.
- APP/2015/2965 – Erection of 3 No. Wind Turbines (50m Hub Height, 76.5m Blade Tip Height) and Associated Infrastructure – Approved 24 August 2016

- 2.16 The applicant has submitted the following supporting information: -

- 1) Supporting statement (outlining the requested wording of the changes and reasoning for the application and changes proposed by the application.)

It should be noted that the application was originally supported by an Environmental Statement.

## 3. Representations

- 3.1 A total of 22 valid representations (22 objection) have been received as defined in the Scheme of Governance. This does not include multiple



representations from the same household which equate to 23 letters in total. These are available to view online. All issues raised have been considered. The letters raise the following material issues:

Objection:

- *The proposed development doesn't comply with current planning regulations and should be refused.*
- *The applicant has failed to discharge the existing conditions and the lack of viability should not be used to further extend uncertainty regarding the implementation of the project.*
- *The conditions should be retained as they are required in relation to the works to be carried out and would be circumvented by the change of wording.*
- *The conditions as currently worded relate to the Policies in the 2017 Local Development Plan are necessary, and*
- *Important to ensure restoration bond remains in place.*

#### 4. Consultations

##### External

- 4.1 **Ministry of Defence (Defence Infrastructure Organisation)** objects to this application as the proposed development will be detectable by, and will cause unacceptable interference to the AD radar at RAF Buchan.
- 4.2 **Transport Scotland** has not objection to the application.

##### Internal

- 4.3 **Infrastructure Services (Environmental Health)** does not object to the proposal but requests consideration is given to amending the noise conditions in order to clarify some of the requirements related to these conditions.
- 4.4 **Infrastructure Services (Roads Development)** notes the need for the dilapidation survey to be provided prior to commencement of development but also notes that some of the terms of conditions 7, 9, and 19 are duplicated.
- 4.5 **Tarves Community Council** objects to the application and consider it inappropriate to be seeking removal of Conditions, the absence of which would have resulted in Refusal of the Approved application. They note Condition 12 requires agreement of the MOD on an Air Defence Radar Mitigation Scheme (ADRM) which should be retained

The letter from the Community Council is attached to this report as **Appendix 2**.

## 5. Relevant Planning Policies

### 5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

### 5.2 Aberdeen City and Shire Strategic Development Plan 2014

The purpose of this Plan is to set a clear direction for the future development of the North East. It promotes a spatial strategy. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

From the 29 March 2019, the Strategic Development Plan 2014 will be beyond its five-year review period. In light of this, for proposals which are regionally or strategically significant, or give rise to cross boundary issues between Aberdeen City and Aberdeenshire, the presumption in favour of development that contributes to sustainable development will be a significant material consideration in line with Scottish Planning Policy 2014.

The Aberdeenshire Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Proposed Aberdeen City & Shire SDP 2020 may also be a material consideration.

### 5.3 Aberdeenshire Local Development Plan 2017

Policy C2 Renewable energy

Policy PR1: Protecting Important Resources

Policy RD1 Providing suitable services

### 5.4 Other Material Considerations

- Aberdeenshire Council Planning Advice 12/2012: Landscape Character Advice for Small Scale Development
- Aberdeenshire Council Planning Advice 2/2012: Wind Turbines – Distance and Noise Calculations
- Aberdeenshire Council Planning Advice 2/2005: Use of Wind Energy in Aberdeenshire Guidance for Assessing Wind Energy Developments
- Scottish Government – Onshore Wind Turbines
- SEPA – Standing Advice for Small Scale Wind Farms below 10 MW not subject to formal Environmental Impact Assessment.
- SNH – Assessing the impact of Small Scale Wind Energy proposals on the Natural Heritage (2012)
- Circular 3/2013 Development Management Procedures
- Circular 4/1998 Use of Planning Conditions

## 6. Discussion

6.1 As the application has been made under S42 of the Town and Country Planning (Scotland) Act 1997 the matters which the Planning Authority can consider in relation to the application are limited.

6.2 Circular 3/2013 states that in *'determining a Section 42 application, authorities may consider only the issue of the conditions to be attached to any resulting permission. However, in some cases this does not preclude the consideration of the overall effect of granting a new planning permission, primarily where the previous permission has lapsed or is incapable of being implemented.'*

*Where it is considered that permission should be granted subject to different conditions or no conditions, a new permission should be granted and all conditions attached.*

*If it is considered that planning permission should be granted subject to the same conditions as the previous permission, the section 42 application should be refused. The making, granting, or refusal of a section 42 application does not alter or effect the previous permission or its conditions.'*

6.3 The principle of development has been established by the previous permission and is not required to be assessed. Notwithstanding this it should be noted that in principle, Aberdeenshire Council supports the installation of renewable energy facilities such as wind turbines. Policy C2 encourages wind

energy developments where they are of a scale and in a location which avoids any significant negative impacts. In this case the principal of the development was considered acceptable under the previous Aberdeenshire Local Development Plan. For avoidance of doubt there has been no substantial change in the relevant policies relevant to the application. A revised EIA is not considered necessary to determine the application.

- 6.4 The key factor is whether it is reasonable with reference to the tests for planning conditions and within the policy context of the Aberdeenshire Local Development Plan 2017 to amend or remove conditions as requested by the applicant. As set out in the Circular generally only the implications of the amending or removing these conditions require to be assessed although in some cases the implications of granting a new permission can also be considered as set out in the Circular.
- 6.5 Given the limited scope under which the application can be considered, some of the comments made in the representations (for instance the impact on residential amenity) cannot be considered material apart from where they relate to the consideration of the conditions the applicant seeks to amend.
- 6.6 Equally and as noted in the representation by a number of objectors, the lack of current viability of the development (as stated in the applicants supporting statement) may explain the application but it does not necessarily form a significantly material consideration as to whether the conditions should be amended. The variation of the conditions would not fundamentally change the viability of the development only allow an indefinite period for it to be implemented. The inability of the applicant to meet the current conditions 'at the present time' is not sufficient justification to consider them unreasonable.
- 6.7 The consideration of the wording amendments proposed has been grouped together where possible. All conditions are required to meet the tests for a planning condition as set out in the Circular 4/1998 (Use of Planning Conditions in Planning Permissions). Conditions should be:
- Necessary
  - Relevant to planning
  - Relevant to the development to be permitted
  - Enforceable
  - Precise
  - Reasonable in all other respects
- 6.8 All relevant material issues raised in representation have been considered as an inherent part of the discussion.

Roads/ Traffic Management Related Conditions (Conditions 7/9/19 and 20)

- 6.9 Condition 7 seeks to ensure that all Construction Traffic Management Proposal are agreed in advance of the commencement of the development. It is common to utilise such a condition prior to the commencement of development to provide certainty over the routing and management of

construction traffic. Although the most important elements of the development to control will be the routing of Abnormal Loads and the information on this is required to be agreed prior to commencement of development under the terms Condition 9.

- 6.10 In addition to Condition 7 and 9, Condition 19 seeks details of route(s) of all construction and component traffic. This duplicates the terms of Condition 7 and 9. Condition 20 requires a dilapidation survey. Generally the use of such conditions for constructed related methods statements for Wind Turbine Developments are routinely pre commencement to ensure such project elements are all agreed and any necessary improvement agreed in advance of the project starting. The Roads Department, after additional consideration of the conditions consider it is important to agree routing of construction vehicles for the project, including the volume of construction vehicles prior to commencement. This is in line with best practise. The request to be able to begin development to secure the permission in perpetuity is not considered sufficient reason to amend the conditions to the wording suggested by the applicant. It remains within the public interest to manage all construction traffic from the development appropriately and for this information to be agreed before the commencement of the development.
- 6.11 Circular 4/1998 states that in some cases a condition will clearly be unnecessary, such as where it would repeat provisions in another condition imposed on the same permission. Given there is a clear duplication between Condition 19 and the terms of Condition 7 and 9 there is an argument that, with respect of the tests for a planning condition, Condition 19 is not necessary. It is therefore proposed to remove condition 19 from the permission and reword Condition 7 to clarify the requirements of the Construction Traffic Management Plan and include the information requirements of Condition 19 and 9 all of which relate to Construction Traffic Management.
- 6.12 In relation to Condition 20 it is noted that, depending on the information submitted as part of Condition 7, there may be scope to agree alternative timing of the dilapidation survey and as such the wording of Condition 20 will be amended to allow for agreement through the Construction Traffic Management Plan of the timing of the dilapidation survey.

#### TV and Radio Reception

- 6.13 Condition 10 requires the provision of a mitigation package and assessment to prevent adverse impacts on residential amenity by way of impacts on TV and Radio reception. Wind Turbines can have an impact on digital signals particularly close to a wind farm where a turbine is located in line of sight between the transmitter and the receptor. Evidence suggests this is unlikely to occur outside of 20km from the wind turbine which generally forms a limit to such studies. No reasons have been given to warrant reducing the area of the study which is generally initially desk based. As such it would be reasonable to retain the current wording of the condition in relation to the distance.

- 6.14 As the nature of the survey is to ensure that a baseline survey and mitigation is provided to ensure any subsequent issues are dealt with it would be reasonable in terms of the tests for a condition to allow for the submission of this information prior to the commencement of the turbines rather than the commencement of the ancillary infrastructure. It would only be on operation of the turbine that there would be any impacts on reception. As such the timing of the requirement of the condition has been amended in line with the wording requested by the applicant.

#### Radar Mitigation

- 6.15 Condition 12 requires an agreed scheme of radar mitigation prior to commencement of development. Although the condition as currently worded requires agreement with the Planning Authority, in effect agreement will be with the Ministry of Defence, a third party to which the Planning Authority has no control. Although the Ministry of Defence have not objected to the amended wording, when considered in the context of Policy C2: Renewable Energy an agreed scheme of mitigation is required to ensure no impact from the development on radar. This is fundamental to the approval of the application and its acceptability.
- 6.16 It is generally considered that conditions requiring agreement of a third party should be Grampian style conditions (i.e. they are negative suspensive conditions). This allows the Planning Authority to retain control over the development and ensure works do not start until such time as the third party approval is in place. Given this context and the fact this issue goes to the heart of whether the proposal is acceptable or not, the wording of the condition should remain unchanged. There is no planning merit in allowing the ancillary development to be installed if there is little prospect of agreement being reached on radar mitigation until such time as the development is considered commercially viable. The consequences of relaxation of the condition would create significant uncertainty regarding when and if the development could ever be fully implemented. This would provide significant uncertainty over the future land use planning of the immediate area.

#### Financial Bond

- 6.17 Condition 13 requires agreement of a financial bond to cover the restoration of the site in the event the owner of the development at the time fails to restore the site. The applicant argues the condition is unreasonable, by virtue that the costs of restoration are not significant and there is no time period for the permission.
- 6.18 Although the restriction on a specific time period (for instance 25 years) has been removed, wind energy developments are still generally required to be removed at the end of their useful life unless they can be directly replaced with the same turbine. These developments generally have an impact on local visual amenity and the landscape which is only acceptable due to their function in producing energy. Condition 11 of the current permission provides the requirement for the wind turbine energy developments to be removed in

the event they become non-operational for any extended period as may occur at the end of their lifetime. As this could be a significant time in the future where circumstance may be different. It is prudent to ensure that adequate provision has been made to ensure removal now, rather than leave this to chance. Removal of the condition would render Condition 1 and Condition 11, and the terms of the restoration scheme difficult to enforce and would not accord with the Policy C2: Renewable Energy. Policy C2 promotes the use of bonds in order to ensure removal of visible structures at the end of their useful life.

#### Other Conditions

- 6.19 Condition 14 requires full details of all colours and finishes of the external components of the development to be submitted prior to commencement of the development but also confirms that the turbines shall be non-reflective pale grey semi matt finish. Generally the turbine components will be as described in the condition and therefore confirmation of the exact details do not need to be agreed prior to commencement of development but could easily be retained for a later stage. As the condition also relates to ancillary development (i.e. substation etc.) it is considered reasonable to allow for an amendment to the wording of the condition similar to that requested by the applicant.
- 6.20 Condition 16 requires the provision of a site specific construction methods statement. This does not solely relate to the wind turbine foundations rather the development of the whole site (including construction compound access tracks etc. As the construction methods statement specifically relates to the whole development including the road construction and it is not considered acceptable to amend the condition as requested by the applicant.
- 6.21 Condition 18 requires submission of details of power cables and associated reinstatement. Theoretically these should form part of the Construction Methods Statement however as these elements are often installed toward the end of the construction process it would be reasonable to amend the condition, although in a slightly different fashion from the applicants request by amending the wording to state '*Prior to the installation of any power cables associated with the development, the routes of all power cables and a ground reinstatement plan shall be submitted for the approval of the Planning Authority*'.
- 6.22 It should be noted that Environmental Health comment that ideally they would like to reword some of the other noise conditions to reflect best practise and aid in clarity however they do not object to the proposal. The wording does not change the fundamentals of the noise conditions which maintain reasonable control of the development from a noise perspective. The applicant is not amenable to amending these conditions and as they have not been applied and the imposition of the existing conditions still meet the six tests for a condition then there is no planning reason to amend them

## Conclusion

- 6.23 Circular 3/2013 allows for the Planning Authority to consider the implications of granting a new permission by way of a S42 application. If the wording of all the conditions were amended as requested this would allow for a material start to the development to be undertaken whilst considerable outstanding matters remained to be resolved. Given the lack of viability of the project at the present time this would create considerable uncertainty as to whether the development would ever be carried out and would not engender confidence in the planning system as is sought by Scottish Planning Policy.
- 6.24 Each Planning Condition has been considered independently as well as in connection with other relevant conditions and in relation to the tests for a planning condition. Given the nature of the development and its potential to constrain land use planning within its locale it is not considered to be in accordance with the development plan to allow for the commencement of the development without formal agreement with the MOD regarding mitigation (Condition 12), agreed Construction Traffic Management Measures (Condition 7), a restoration bonds (Condition 13) and agreed onsite construction measures (Condition 16). The conditions are considered necessary and furthermore the amendment of the above conditions would make the development more difficult to enforce.
- 6.25 Ultimately some of the conditions can be amended or removed to remove duplication and avoid conditions not meeting the test for necessity or reasonableness. Conditions 9 and 19 can be removed and condition 7 amended to reflect the requirements of the Construction Traffic Management Plan. Other conditions can be amended, more or less in line with the applicants' request, as they are not fundamental to the acceptability of the development in policy terms or clearly do not relate to works required during the initial phases of development. These include Condition 10, 14 and 18.
- 6.26 As it is reasonable to amend some of the conditions this means a new permission would be issued. In considering the issue of development viability a new permission subject to the standard timescales for implementation of the development would allow a further 3 years for the development to be started. Given the principal of the development remains and the permission has only been in place for under 3 years it would be reasonable to issue a new permission.
- 6.27 Should the subsidy or financial situation change then this would still allow for the implementation of the development subject to discharge of the conditions. In the event the permission is not implemented and the conditions not discharged it retains control of the reassessment of the proposal through a new planning application/renewal of the new permission.
- 6.28 Given the above the Planning Service recommends granting permission for the variation of the permission but only in relation to the removal of Condition 9 and 19 and the variation of Condition 7, 10, 14 and 18. All other conditions would be retained as set out in Section 11 of this report. Note due to the



removal of some of the conditions this has affected the numbering of some of the conditions. In doing so this reasonably addresses the concerns raised by the Community Council and many of the representations.

## **7. Area Implications**

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

## **8. Equalities and Financial Implications**

- 8.1 An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics.
- 8.2 There are no financial implications arising from this report.

## **9. Sustainability Implications**

- 9.1 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

## **10. Departures, Notifications and Referrals**

### **10.1 Strategic Development Plan Departures**

None

### **10.2 Local Development Plan Departures**

None

- 10.3 The application is not a Departure from the Local Plan and Strategic Plan and no departure procedures apply.
- 10.4 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.
- 10.5 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

## 11. Recommendation

### 11.1 Grant subject to the following conditions.

01. Unless otherwise agreed in writing with the Planning Authority; within two years of the commissioning of the wind turbines (when energy is produced and sold from the development), a fully detailed scheme for the ultimate reinstatement of the site shall be submitted to, and require the approval of, the Planning Authority. The site shall be reinstated fully, in accordance with the approved scheme. Such plan shall be subject to review in the light of monitoring

Reason: In the interests of visual amenity and landscape protection.

02. At wind speeds not exceeding 12m/s, (referenced to a height of 10m above ground level, at the location of the turbines), the wind turbine noise level at each noise sensitive property shall not exceed the levels in Tables 1, except where the level in the table exceeds the lower fixed limit (35dB LA90, 10min. for daytime and quiet daytime hours, and 38dB LA90, 10min. for night hours), and also exceeds the measured background noise level, LA90, 10min by 5dB or more, in which case the permitted level will be the lower fixed limit or the background noise level plus 5 dB, whichever is the greater.

Table 1

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Mains of Cairnbrogie	385006 828056	34	36	38	39	39	39	39	39	39	
The Steading	384307 828873	34	36	38	39	39	39	39	39	39	
East Cattie	384297 828901	33	36	38	39	39	39	39	39	39	
Mains of Cairnbrogie a	385106 827954	31	34	36	37	37	37	37	37	37	
Mains of Cairnbrogie b	385177 827931	31	33	35	36	36	36	36	36	36	
Mains of Cairnbrogie c	385271 827911	30	32	34	35	35	35	35	35	35	
Podrach	384158 828120	30	33	35	36	36	36	36	36	36	
Note: for all properties not specified above the predicted noise from the turbine will be calculated using the propagation model in ISO 9613-Part 2 incorporating the recommendations contained in the Institute of Acoustics Good Practice Guide dated May 2013.											

Reason: In the interest of retaining a level of control over any changes in the noise from the wind turbines or any difference in the actual noise from projected noise from the site.

03. The Wind Turbine Operator shall log wind speed and wind direction data continuously and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour and in 10 minute increments thereafter. The wind speed data shall be made available to the Planning Authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format or other format agreed with the Planning Authority. The wind speed shall also be normalised to a 10m reference height.

Reason: In the interests of the amenity of the area.

04. The Wind Turbine Operator shall employ an independent consultant approved by the Planning Authority, to measure, at the operator's own expense, the level of noise emissions from the wind turbines within the first year of the operation of the turbines, and every two years thereafter, unless and until the Planning Authority extend the period or determine that continued compliance monitoring is no longer required. The measurement procedures, which may include filtering data according to wind direction, shall be agreed with the Planning Authority prior to commencement. The results of any measurement exercise shall be forwarded to the Planning Authority as soon as practicable after the completion of the monitoring exercise. Unless otherwise agreed with the Planning Authority the turbines shall be switched off during part of the monitoring period to permit reliable background noise level data to be determined at the range of wind speeds from 4 metres per second to 12 metres per second.

Reason: In the interest of the amenity of the area.

05. At the request of the Planning Authority, following a verified complaint to Aberdeenshire Council relating to noise emissions from the wind turbines, the Wind Turbine Operator shall shut down the turbines no later than 24 hours after the receipt of the request and, at his own expense, employ an independent consultant, approved by the Planning Authority, to assess the level of noise emissions from the wind turbines (inclusive of existing background noise). This condition shall not prevent the turbines from being operated temporarily for acoustic testing and measurement in a manner agreed with the Planning Authority and outlined below.

An assessment of amplitude modulation of noise from the turbines may also be required, and shall be carried out in accordance with the terms specified by the Planning Authority and shall also be carried out at the expense of the Wind Turbine Operator.

For noise other than amplitude modulation the LA90 index shall be used over a minimum of 20 periods each of 10 minutes duration. At least 10 of the periods

of measurement shall be made at wind speeds between a wind speed specified by the Council and a wind speed of not more than 2 metres per second above the wind speed(s) specified by the Council. At least 10 measurements shall be made at wind speeds between the wind speed specified by the Council and a wind speed not less than 2 metres per second below the wind speed(s) specified by the Council. Measurements of noise emissions shall, so far as is reasonably practicable, be made in consecutive 10-minute periods provided that they fall within the wind speed range defined in this clause. Sufficient data points are required for the determination of the sound pressure levels at each of the required wind speeds and at wind directions agreed with the Planning Authority for each receptor location.

The LA<sub>90, 10min</sub> noise level from the wind turbines (inclusive of existing background noise) shall be correlated with wind speed and derived using a Best Fit Curve and, where appropriate, allowing for a correction for the influence of the background noise level as described on page 88 of the ETSU-R-97 document, which will necessitate measurement of the background noise level in the absence of the turbine operating. Measured wind turbine noise levels and background noise levels shall be referenced to derived 10 metre height wind speeds. The measurement procedures, including any data filtering parameters, shall be agreed with the Planning Authority prior to commencement.

Unless otherwise agreed with the Planning Authority the assessment shall be completed and report submitted to the Planning Authority within 3 months from the date of notification by the Planning Authority that monitoring is required.

Should the Wind Turbine Operator fail to demonstrate to the satisfaction of the Planning Authority that noise levels referred to in these conditions have not been exceeded, the turbines shall remain shut down, or operated in accordance with a mitigation scheme agreed with the Authority until such time as compliance with the noise limits has been demonstrated to the satisfaction of the Authority.

Reason: In the interests of the amenity of the area.

06. At the request of the Planning Authority the Wind Turbine Operator will be required to carry out an assessment for tonal noise in accordance with the procedure recommended in Section 6 of the document "The Assessment & Rating of Noise from Wind Farms" (ETSU-R-97) i.e. the procedure based on the Joint Nordic Method. Where the tone level above audibility is greater than 2dB a tonal penalty shall be applied to permitted noise levels, in accordance with figure 16 of the document; so that the permitted levels specified in these conditions will be reduced by the tonal penalty.

Reason: In the interest of the amenity of the area.

07. Development shall not be begun until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local Planning Authority in consultation with the Roads and Bridge Authority.

The CTMP shall include:

- a) The routing of all traffic associated with the development on the local road network;
- b) Measures to ensure that the specified routes are adhered to, including any monitoring procedures;
- c) Details of any signage and lining arrangements to be put in place;
- d) Provisions for emergency vehicle access if deemed necessary;
- e) Identification of a nominated person to whom any road safety issues can be referred; and
- f) A plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width and axle configuration of all extraordinary traffic accessing the site.

The approved traffic management plan shall thereafter be implemented in full, unless otherwise agreed in advance in writing with the Planning Authority.

Reason: In the interests of road safety and to ensure that abnormal loads access the site in a safe manner

08. The development shall be served in accordance with the approved drawings and the following details:

- a) The maximum gradient of the first 5m of the access must not exceed 1 in 20.
- b) Prior to commencement of development, the first 5m of access (measured from edge of road or back of footway) to be fully paved.
- c) Prior to commencement of development, visibility splays measuring 2.4 metres by 120 metres to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level.

Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.

09. Prior to the construction of any turbine foundation, a TV and radio reception mitigation plan for a 20km radius from the boundary of the development site must be submitted to and approved in writing by the Planning Authority:-

- (a) The plan shall provide for a baseline TV and radio reception survey to be carried out prior to commencement of the construction of wind turbines at the development site, the results of which shall be submitted to the Planning Authority.

- (b) Within 12 months of the commissioning of the development, any claim by any individual person regarding radio interference or TV picture loss or interference at their house, business premises or other building, shall be investigated by a suitably qualified engineer and the results submitted to the Planning Authority within one month of the conclusion of the investigation.
- (c) Should any impairment to the TV or radio signal be attributable to the wind turbine development, the developer shall remedy such impairment within an agreed timescale so that the standard of reception at the affected property is equivalent to baseline TV or radio reception, to the satisfaction of the Planning Authority.

Reason: To ensure that any adverse effect on TV or radio reception is rectified.

10. In the event that the wind turbines fail to produce electricity supplied to a local grid for a continuous period of 6 months, as demonstrated by the submission of operating records and accounts, it will be deemed to have ceased to be required and unless it has been demonstrated that such cessation is due to the wind turbine being under repair or otherwise agreed in writing by the Planning Authority, the wind turbine and its ancillary equipment including cables and foundations shall be dismantled and removed from the site, and the ground fully reinstated to the specification of the Planning Authority, all in accordance with the approved re-instatement plan as specified in Condition 1.

Reason: In the interests of safety, amenity and environmental protection of the plant become redundant during or at the end of its lifespan.

11. No development shall commence unless and until an Air Defence Radar Mitigation Scheme has been submitted to and approved in writing by the Planning Authority in consultation with the Ministry of Defence. For the purposes of this condition, an ADRM scheme means a detailed scheme to mitigate the adverse impacts of the development on the air defence radar at Remote Radar head Buchan and the air surveillance and control operations of the MOD. The scheme will set out the appropriate measures to be implemented to that end. No turbine shall become operational until:
- a) The mitigation measures which the approved ADRM scheme which requires to be implemented prior to the operation of the turbine have been implemented; and
  - b) Any performance criteria specified in the approved ADRM scheme and which the approved ADRM scheme requires to have been satisfied prior to the operation of the turbine has been satisfied. The company shall thereafter comply with all other obligations contained within the approved ADRM scheme for the duration of the operation of the development.

Reason: To protect the operational effectiveness and safety of air surveillance and control.

12. Prior to commencement of development on the site, the Developer shall provide to the Planning Authority written details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs at the end of the period of this consent. The Developer shall also provide an independent confirmation by a Chartered Surveyor (whose appointment for this task has been approved by the Planning Authority) that the amount of the bond or financial provision so proposed is sufficient to meet the full estimated costs of decommissioning, dismantling, removal, disposal, site restoration, remediation and incidental work as well as associated professional costs. No work shall commence on site until written confirmation has been given by the Planning Authority to the company to the effect that the proposed bond or other financial arrangement is satisfactory and the company has confirmed to the Planning Authority that it has been put in place.

Reason: To ensure financial security for the cost of the site reinstatement to the satisfaction of the Planning Authority is in place to provide that any redundant wind turbine and ancillary equipment is removed from site, in the interests of safety amenity and environmental protection.

13. That the wind turbines shall be finished in a non-reflective pale grey semi-matt finish and should not display any advertising on any part of the turbine unless otherwise agreed in writing with the Planning Authority. Confirmation of the details of the finish and colour of all externally visible components of the associated ancillary aspects of the proposal shall be submitted in writing to and agreed by the Planning Authority prior to the construction of any wind turbine foundation or the ancillary substation.

Reason: In the interests of visual amenity.

14. That prior to the commencement of the operation of the wind turbines, all soil and materials stockpiles shall be removed and the construction area reinstated to the satisfaction of the Planning Authority.

Reason: In the interests of visual amenity and landscape protection.

15. Prior to the commencement of development a site specific construction method statement, including details of waste, surface water runoff, road construction, the timing of works and environmental management, shall be submitted for the approval in writing of the Planning Authority. The approved construction method statement shall be implemented in full during construction.

Reason: In the interest of landscape and environmental protection.

16. That no part of any concrete foundations and no construction activities shall be within 20 metres of any drain or water course. Prior to the commencement of development details of any new access track drainage shall be submitted to and approved in writing by the Planning Authority. Track drainage should not discharge to a watercourse but to Sustainable Urban Drainage Systems (SUDS).

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

17. Prior to the installation of any power cables associated with the development the routes of all power cables and a ground reinstatement plan shall be submitted for the approval of the Planning Authority. All cables shall be located underground and the ground thereafter reinstated fully in accordance with details which have been approved, within 12 months of the commissioning of the wind turbines, unless otherwise agreed in writing by the Planning Authority.

Reason: In the interests of visual amenity and landscape protection.

18. Prior to the commencement of the development (unless the timing of the survey is otherwise agreed under the terms of the Construction Traffic Management Plan required under Condition 7) a dilapidation survey (condition of roads, bridges and retaining walls) of the approved route shall be carried out in consultation with the Roads Authority and the Bridge Authority. Once development is complete any remedial works required shall be completed in consultation with and to the satisfaction of the Roads Authority and Bridge.

Reason: In the interest of road and public safety.

19. No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers and otters from being trapped in open excavations, pipe and culverts are submitted to and approved in writing by the local Planning Authority. The measures may include:
  - a) creation of sloping escape ramps for badgers and otters, which may be achieved by edge profiling of trenches and excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 150mm outside diameter being blanked off at the end of each working day.

Reason: In the interest of safeguarding the habitat of a protected species.

## **11.2 Reasons for Decision**

01. That the removal of Condition 9 and 19 and the variation of Condition 7, 10, 14 and 18 are considered to meet both the tests for a Planning Condition and the requirements of the Aberdeenshire Local Development Plan 2017.
02. The variation and/or removal of Conditions 12, 13 and 16 are not supported as they would contravene the requirements of Condition C2: Renewable Energy of and Policy PR1: Protecting Important Resource of the Aberdeenshire Local Development Plan 2017 and the existing wording of the conditions is considered to meet the tests for a planning condition. The alternative wording would prove difficult to enforce and cause significant uncertainty.



Stephen Archer  
Director of Infrastructure Services  
Author of Report: James Wheeler  
Report Date: 11 July 2019

Previous Planning Decision Notice for APP/2015/2965



**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**Application Reference: APP/2015/2965**

TO: Green Cat Renewables  
Stobo House  
Midlothian Innovation Centre  
Thainstone  
Edinburgh  
EH25 9RE

FOR: Mountwest 838 Limited  
34 Albyn Place  
Aberdeen  
AB10 1FW

In pursuance of the powers exercised by them as Planning Authority, this Council having considered your application for the following:

**Full Planning Permission for Erection of 3 No. Wind Turbines (50m Hub Height, 76.5m Blade Tip Height) and Associated Infrastructure at Land at Mains of Cairnbrogie, Oldmeldrum, Inverurie, Aberdeenshire**

and in accordance with the plan(s) docquetted as relative hereto and the particulars given in the application, do hereby give notice of their decision to **GRANT Full Planning Permission** for the said development subject to compliance with the following conditions:

- (1) Unless otherwise agreed in writing with the Planning Authority; within two years of the commissioning of the wind turbine (when energy is produced and sold from the development), a fully detailed scheme for the ultimate reinstatement of the site shall be submitted to, and require the approval of, the Planning Authority. The site shall be reinstated fully, in accordance with the approved scheme. Such plan shall be subject to review in the light of monitoring

Reason: In the interests of visual amenity and landscape protection.

- (2) At wind speeds not exceeding 12m/s, (referenced to a height of 10m above ground level, at the location of the turbines), the wind turbine noise level at each noise sensitive property shall not exceed the levels in Tables 1, except where the level in the table exceeds the lower fixed limit (35dB LA90,10min. for daytime and quiet daytime hours, and 38dB LA90,10min. for night hours), and also exceeds the measured background noise level, LA90,10min by 5dB or more, in which case the permitted level will be the lower fixed limit or the background noise level plus 5 dB, whichever is the greater

Location		Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min									
Property Name	Map Ref	4	5	6	7	8	9	10	11	12	
Mains of Cairnbrogie	385006 828056	34	36	38	39	39	39	39	39	39	
Damside Cottages	384834 828004	33	36	38	39	39	39	39	39	39	
The Steading	384307 828873	34	36	38	39	39	39	39	39	39	
East Cattie	384297 828901	33	36	38	39	39	39	39	39	39	
Mains of Cairnbrogie a	385106 827954	31	34	36	37	37	37	37	37	37	
Mains of Cairnbrogie b	385177 827931	31	33	35	36	36	36	36	36	36	
Mains of Cairnbrogie c	385271 827911	30	32	34	35	35	35	35	35	35	
Podrach	384158 828120	30	33	35	36	36	36	36	36	36	

Note: for all properties not specified above the predicted noise from the turbine will be calculated using the propagation model in ISO 9613-Part 2 incorporating the recommendations contained in the Institute of Acoustics Good Practice Guide dated May 2013.

Reason: In the interest of retaining a level of control over any changes in the noise from the wind turbine, or any difference in the actual noise from projected noise from the site.

- (3) The Wind Turbine Operator shall log wind speed and wind direction data continuously and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour and in 10 minute increments thereafter. The wind speed data shall be made available to the Planning Authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format or other format agreed with the Planning Authority. The wind speed shall also be normalised to a 10m reference height.

Reason: In the interests of the amenity of the area.

- (4) The Wind Turbine Operator shall employ an independent consultant, approved by the Planning Authority, to measure, at the operator's own expense, the level of noise emissions from the wind turbines within the first year of the operation

of the turbines, and every two years thereafter, unless and until the Planning Authority extend the period or determine that continued compliance monitoring is no longer required. The measurement procedures, which may include filtering data according to wind direction, shall be agreed with the Planning Authority prior to commencement, (see 'Informative' section below for further detail). The results of any measurement exercise shall be forwarded to the Planning Authority as soon as practicable after the completion of the monitoring exercise. Unless otherwise agreed with the Planning Authority the turbines shall be switched off during part of the monitoring period to permit reliable background noise level data to be determined at the range of wind speeds from 4 minutes per second to 12 minutes per second.

Reason: In the interest of the amenity of the area.

- (5) At the request of the Planning Authority, following a verified complaint to Aberdeenshire Council relating to noise emissions from the wind turbines, the Wind Turbine Operator shall shut down the turbines no later than 24 hours after the receipt of the request and, at his own expense, employ an independent consultant, approved by the Planning Authority, to assess the level of noise emissions from the wind turbines (inclusive of existing background noise). This condition shall not prevent the turbines from being operated temporarily for acoustic testing and measurement in a manner agreed with the Planning Authority and outlined below. An assessment of amplitude modulation of noise from the turbines may also be required, and shall be carried out in accordance with the terms specified by the Planning Authority and shall also be carried out at the expense of the Wind Turbine Operator.

For noise other than amplitude modulation the LA<sub>90</sub> index shall be used over a minimum of 20 periods each of 10 minutes duration. At least 10 of the periods of measurement shall be made at wind speeds between a wind speed specified by the Council and a wind speed of not more than 2 metres per second above the wind speed(s) specified by the Council. At least 10 measurements shall be made at wind speeds between the wind speed specified by the Council and a wind speed not less than 2 metres per second below the wind speed(s) specified by the Council.

Measurements of noise emissions shall, so far as is reasonably practicable, be made in consecutive 10-minute periods provided that they fall within the wind speed range defined in this clause. Sufficient data points are required for the determination of the sound pressure levels at each of the required wind speeds and at wind directions agreed with the Planning Authority for each receptor location.

The LA<sub>90, 10min</sub> noise level from the wind turbines (inclusive of existing background noise) shall be correlated with wind speed and derived using a Best Fit Curve and, where appropriate, allowing for a correction for the influence of the background noise level as described on page 88 of the ETSU-R-97 document, which will necessitate measurement of the background noise

level in the absence of the turbine operating. Measured wind turbine noise levels and background noise levels shall be referenced to derived 10 metre height wind speeds. The measurement procedures, including any data filtering parameters, shall be agreed with the Planning Authority prior to commencement, (see 'Informative' section below for methodology).

Unless otherwise agreed with the Planning Authority the assessment shall be completed and report submitted to the Planning Authority within 3 months from the date of notification by the Planning Authority that monitoring is required. Should the Wind Turbine Operator fail to demonstrate to the satisfaction of the Planning Authority that noise levels referred to in these conditions have not been exceeded, the turbines shall remain shut down, or operated in accordance with a mitigation scheme agreed with the Authority until such time as compliance with the noise limits has been demonstrated to the satisfaction of the Authority.

Reason: In the interests of the amenity of the area.

- (6) At the request of the Planning Authority the Wind Turbine Operator will be required to carry out an assessment for tonal noise in accordance with the procedure recommended in Section 6 of the document "The Assessment & Rating of Noise from Wind Farms" (ETSU-R-97) i.e. the procedure based on the Joint Nordic Method. Where the tone level above audibility is greater than 2dB a tonal penalty shall be applied to permitted noise levels, in accordance with figure 16 of the document; so that the permitted levels specified in these conditions will be reduced by the tonal penalty.

Reason: In the interest of the amenity of the area.

- (7) Development shall not be begun until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local Planning Authority. Development shall be carried out in accordance with the approved CTMP.

Reason: In the interests of road safety and to avoid degradation of the road and bridge network.

- (8) The development shall be served in accordance with the approved drawings and the following details:
- a) The maximum gradient of the first 5m of the access must not exceed 1 in 20.
  - b) Prior to commencement of development, first 5m of access (measured from edge of road or back of footway) to be fully paved.
  - c) Prior to commencement of development, visibility splays measuring 2.4 metres by 120 metres to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall

thereafter be kept free of all permanent obstructions above adjacent carriageway level.

Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.

- (9) Development shall not be begun until an Abnormal Load Routing Plan (ALRP), written in accordance with Aberdeenshire Council's Abnormal Load Routing (Windfarms) Guidelines, has been submitted to and approved in writing by the local Planning Authority. No abnormal load movements shall be permitted until all agreed actions from the approved ALRP have been fully implemented and approved by Aberdeenshire Council's Abnormal Loads Team.

Reason: In the interests of road safety and to avoid degradation of the road and bridge network.

- (10) Prior to the commencement of the development, a TV and radio reception mitigation plan for a 20km radius from the boundary of the development site must be submitted to and approved in writing by the Planning Authority.
- (a) The plan shall provide for a baseline TV and radio reception survey to be carried out prior to commencement of the construction of wind turbines at the development site, the results of which shall be submitted to the Planning Authority.
  - (b) Within 12 months of the commissioning of the development, any claim by any individual person regarding radio interference or TV picture loss or interference at their house, business premises or other building, shall be investigated by a suitably qualified engineer and the results submitted to the Planning Authority within one month of the conclusion of the investigation.
  - (c) Should any impairment to the TV or radio signal be attributable to the wind turbine development, the developer shall remedy such impairment within an agreed timescale so that the standard of reception at the affected property is equivalent to baseline TV or radio reception, to the satisfaction of the Planning Authority.

Reason: To ensure that any adverse effect on TV or radio reception is rectified.

- (11) In the event that the wind turbine fails to produce electricity supplied to a local grid for a continuous period of 6 months, as demonstrated by the submission of operating records and accounts, it will be deemed to have ceased to be required and unless it has been demonstrated that such cessation is due to the wind turbine being under repair or otherwise agreed in writing by the Planning Authority, the wind turbine and its ancillary equipment including cables and foundations shall be dismantled and removed from the site, and the ground fully reinstated to the specification of the Planning Authority, all in accordance with the approved re-instatement plan as specified in condition 1.

Reason: In the interests of safety, amenity and environmental protection of the plant become redundant during or at the end of its lifespan.

- (12) No development shall commence unless and until an Air Defence Radar Mitigation Scheme has been submitted to and approved in writing by the Planning Authority.

For the purposes of this condition, an ADRM scheme means a detailed scheme to mitigate the adverse impacts of the development on the air defence radar at Remote Radar head Buchan and the air surveillance and control operations of the MOD. The scheme will set out the appropriate measures to be implemented to that end.

No turbine shall become operational until:

- a) The mitigation measures which the approved ADRM scheme which requires to be implemented prior to the operation of the turbine have been implemented; and
- b) Any performance criteria specified in the approved ADRM scheme and which the approved ADRM scheme requires to have been satisfied prior to the operation of the turbine have been satisfied.

The company shall thereafter comply with all other obligations contained within the approved ADRM scheme for the duration of the operation of the development.

Reason: to protect the operational effectiveness and safety of air surveillance and control.

- (13) Prior to commencement of development on the site, the Developer shall provide to the Planning Authority written details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs at the end of the period of this consent. The Developer shall also provide an independent confirmation by a Chartered Surveyor (whose appointment for this task has been approved by the Planning Authority) that the amount of the bond or financial provision so proposed is sufficient to meet the full estimated costs of decommissioning, dismantling, removal, disposal, site restoration, remediation and incidental work as well as associated professional costs. No work shall commence on site until written confirmation has been given by the Planning Authority to the Company to the effect that the proposed bond or other financial arrangement is satisfactory and the Company has confirmed to the Planning Authority that it has been put in place.

Reason: To ensure financial security for the cost of the site reinstatement to the satisfaction of the Planning Authority is in place to provide that any redundant wind turbine and ancillary equipment is removed from site, in the interests of safety amenity and environmental protection.

- (14) That the wind turbine shall be finished in a non-reflective pale grey semi-matt finish and should not display any advertising on any part of the turbine unless otherwise agreed in writing with the Planning Authority. Confirmation of the details of the finish and colour of all externally visible components of the associated ancillary aspects of the proposal shall be submitted in writing to and agreed by the Planning Authority prior to the commencement of development.

Reason: In the interests of visual amenity.

- (15) That prior to the commencement of the operation of the wind turbine, all soil and materials stockpiles shall be removed and the construction area reinstated to the satisfaction of the Planning Authority.

Reason: In the interests of visual amenity and landscape protection.

- (16) Prior to the commencement of development a site specific construction method statement, including details of waste, surface water run off, road construction, the timing of works and environmental management, shall be submitted for the approval in writing of the Planning Authority. The approved construction method statement shall be implemented in full during construction.

Reason: In the interest of landscape and environmental protection.

- (17) That no part of any concrete foundations and no construction activities shall be within 20 metres of any drain or water course. Prior to the commencement of development details of any new access track drainage shall be submitted to and approved in writing by the Planning Authority. Track drainage should not discharge to a watercourse but to Sustainable Urban Drainage Systems (SUDS).

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

- (18) Prior to the commencement of development details of the routes of all power cables and a ground reinstatement plan shall be submitted for the approval of the Planning Authority. All cables shall be located underground and the ground thereafter reinstated fully in accordance with details which have been approved, within 12 months of the commissioning of the wind turbine, unless otherwise agreed in writing by the Planning Authority.

Reason: In the interests of visual amenity and landscape protection.

- (19) Prior to commencement of development details of route(s) of all construction and component traffic shall be submitted showing complete transportation proposals for all loads from either their place of manufacture or the port to which they are delivered, to the development site for the approval in writing of the Planning Authority in consultation with the Roads Authority and the Bridge Authority. No development shall begin until the route proposed for that traffic





has been approved. The agreed route(s) shall be adhered to in its entirety unless otherwise agreed in writing.

Reason: In the interests of road safety and to avoid degradation of the road and bridge network.

- (20) Prior to commencement of development a dilapidation survey (condition of roads, bridges and retaining walls) of the approved route) shall be carried out in consultation with the Roads Authority and the Bridge Authority. Once development is complete any remedial works required shall be completed in consultation with and to the satisfaction of the Roads Authority and Bridge.

Reason: In the interest of road and public safety.

- (21) No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers and otters from being trapped in open excavations, pipe and culverts are submitted to and approved in writing by the local planning authority. The measures may include:
- a) creation of sloping escape ramps for badgers and otters, which may be achieved by edge profiling of trenches and excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

Reason: In the interest of safeguarding the habitat of a protected species.

### **Informatives**

- (1) This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development is begun within that period. [See Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)].
- (2) The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start the development. Failure to do so is a breach of planning control and could result in the planning authority taking enforcement action. [See Sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)]. Such notification shall contain the information set out in the 'Notification of Initiation of Development' Notice as appended.
- (3) As soon as possible after the development is finished, the person who completed the development must write to the planning authority to confirm that the development has been completed. [See Section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)]. Such notification shall contain the information set out in the 'Notification of Completion of Development' Notice as appended.

- (4) Determination of LA<sub>90</sub> index shall be used with integrating periods of at least 1 minute duration. At least 10 periods of measurement are required for each integer wind speed bin from the cut-in wind speed to a wind speed of 11m/s. The LA<sub>eq</sub> Wind Turbine Noise Level shall be correlated with wind speed and derived using a Best Fit Line, using linear regression analysis.

The LA<sub>90</sub> Background Noise Level shall also be correlated with wind speed and derived using a Best Fit Line, using linear regression analysis.

The assessment of compliance with the above conditions will be determined on the basis of the levels determined from the best fit lines.

The locations of monitoring shall be determined by, or agreed with, the Planning Authority.

- (5) Rotor height wind speeds can be determined by direct measurement at hub height or calculated from the measured wind speed at 10m height, using a roughness value, Z<sub>0</sub> = 0.05m, from the following equation:

$$V1 = V2 \times \text{LN} (H1/Z0) / \text{LN} (H2/Z0)$$

Where V1 = Hub Height wind speed

V2 = Measured 10m height speed

H1 = Hub Height, metres

H2 = 10 metres

LN is the natural logarithm to the base

- (6) "Wind Turbine Sound Pressure Level" means the downwind sound pressure level due to the combined effect of all contributing Wind Turbines, excluding the contribution from background noise. The applicant shall be aware that due to the numerical similarity of the background noise level and the wind turbine noise level at some preferred monitoring locations it may be necessary to agree alternative monitoring locations, with the Planning Authority. The agreed location will be closer to the turbine. The turbine noise level can then be calculated for the preferred monitoring location using the formula.

$$\text{SPL1,} = \text{SPL2} + 20\log (R2/R1) - 0.01(R1 - R2)$$

Where:

SPL1 is the calculated sound pressure level, dB LA<sub>eq</sub> at the preferred location.

SPL2 is the measured sound pressure level, dB LA<sub>eq</sub> at the agreed alternative measurement location.

R1 is the horizontal distance, in metres, from the preferred location at a height of 1.2m, to the turbine hub.

R2 is the slant distance, in metres, from the turbine hub to the agreed alternative microphone position, (at a height of 1.2m).

"Background Noise Level" means the noise level in the absence of noise generated by the wind turbines as measured and correlated with Wind

Speeds using linear regression analysis determined as a result of the monitoring exercise required by these conditions.

"The integer wind speed bin wind speeds" are the wind speeds between 0.5 m/s below and 0.5 m/s above each integer wind speed.

"Night Hours" means 23:00 - 07:00 hours on all days.

"Quiet Daytime Hours" means 18:00 - 23:00 hours Monday to Friday, 13:00 - 23:00 hours on Saturday and 07:00 - 23:00 hours on Sunday.

"Daytime Hours" means 07:00 - 18:00 hours Monday to Friday and 07:00 - 13:00 on Saturday.

Measurements shall be made 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), with the microphone mounted at 1.2 - 1.5 metres above ground level in "free field" conditions, and fitted with a two-layer windshield, or suitable equivalent approved in writing by the local Planning Authority. To achieve "free field" conditions, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location.

- (7) The proposed vehicular access onto the public road shall be formed at the Developer's expense and must be constructed in accordance with the Council's Specification.
- (8) Adequate provision to be made for internal surface water drainage to ensure that surface water does not run from the site onto the public road or vice versa.
- (9) Adequate precautions to be taken to protect any Statutory Undertaker's plant which may be affected by the works/development.
- (10) An application for a Road Excavation Permit must be submitted to Infrastructure Services, Area Roads Office at least 15 days prior to the commencement of any excavation works within the boundaries of the public road. Applicants should note that failure to obtain a Permit is an offence in terms of Section 56 of the Roads (Scotland) Act 1984. Note: The Public Road may incorporate carriageway, verge, cycleway/ footway and visibility envelopes.
- (11) If road deliveries to site exceed either the maxima stated in the "Road Vehicles (Construction and Use) (Amendment No.7) Regulations 1998" or "The Road Vehicles (Authorised Weight) Regulations 1998", at least one months notice must be given to the Councils Abnormal Loads Officer together with submission of an Abnormal Load Routing Plan for approval. (Contact Abnormal Loads Officer either by email to [abnormal.loads@aberdeenshire.gov.uk](mailto:abnormal.loads@aberdeenshire.gov.uk) or fax to 01224 662005).
- (12) To avoid delay in the start of development it is advisable to submit Abnormal Load Routing Plan at least 3 months prior to commencement of development. This will enable assessment of the route and any problems to be identified.

- (13) The Developer should contact the local Roads Maintenance Team and Bridges Team at least two months prior to start of works to arrange any necessary permits and surveys to be completed.

For the avoidance of doubt where different transportation routes are required for components or construction vehicles these should be identified separately. Turbine delivery may require a separate route from crane or construction traffic.

- (14) Please note that birds may be breeding on the site of the proposed works. Breeding birds are protected by law, it is illegal to damage, destroy or interfere with the nest of any wild bird whilst in use or being built or to prevent any wild bird from using its nest. There are certain species (Schedule 1 birds) for which birds, eggs and young are protected at all times and habitually used nest sites are also protected whether birds are present or not. Breeding birds can nest from February to October. Ground works should be avoided while birds are nesting. If nesting birds are found during works then works should stop and advice should be sought from Scottish Natural Heritage.

### **Reason for Decision**

That the location and scale of the proposed wind turbines would not detract from the quality and character of the landscape and therefore complies with Policy 3: Development in the countryside, SG Rural Development 2: Wind farms and large wind turbines, Policy 8 Layout, siting and design of new development, SG LSD2: Layout, siting and design of new development, Policy 12 Landscape conservation and SG Landscape 1: Landscape character contained in the Aberdeenshire Local Development Plan 2012.

Dated: 24 August 2016

### **Head of Planning and Building Standards**

#### **List of Plans and Drawings**

Reference Number: APP-101 Block Plan 1  
Reference Number: APP-102 Block Plan 2  
Reference Number: APP-103 Block Plan 3  
Reference Number: APP-500 Indicative Foundation Evacuation  
Reference Number: APP-100 Site Location Plan  
Reference Number: APP-600 Indicative Substation Details  
Reference Number: APP-300 Indicative Access Track Sections  
Reference Number: APP-400 Indicative Crane Hardstanding Details  
Reference Number: APP-200 Turbine Elevation

APP/2019/0922

Appendix 2  
Community Council Response

## Tarves Community Council

Community Council Postbox  
Tarves Post Office  
The Square  
Tarves  
AB41 7GX  
22<sup>nd</sup> May 2019

Aberdeenshire Council  
P. & B. S. Formartine Area  
By email

Dear Sir/Madam

**APP/2019/0922; - FPP for Erection of 3 No. Wind Turbines and Associated Infrastructure at the Mains Of Cairnbrogie, Without Compliance with Conditions 7, 9, 10, 12, 13, 14, 16, 18, 19 and 20 of Approved Planning Application APP/2015/2965.**

Members discussed this application and resolved to object to the proposal for the following reasons.

It is entirely inappropriate to be seeking removal of Conditions, the absence of which would have resulted in Refusal of the Approved application. Many of the Conditions were in respect of Visual Amenity, Landscape and Environmental Protection, as well as Road and Public Safety. These important Planning considerations cannot be swept aside on the whim of a Developer seeking an open-ended Planning permission.

Condition 12 requires agreement of the MOD on an Air Defence Radar Mitigation Scheme (ADRM) which, as the Planning Service stated, if not achieved would merit the application returning to the Formartine Area Committee with a recommendation of **Refusal**.

The current application seeks to remove this Condition which, in the interests of consistency in Planning, should merit the same recommendation of **Refusal** in order to protect the operational effectiveness and safety of air surveillance and control.

Yours on behalf of the Community Council

Robert P. Davidson

Chairman.