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Energy Consents

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3 July 2020

Dear Mr Beck

## **ELECTRICITY ACT 1989**

### **THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED)**

#### **SCREENING OPINION OF THE SCOTTISH MINISTERS**

#### **IN RESPECT OF A PROPOSED APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE EXISTING SECTION 36 CONSENT TO CONSTRUCT AND OPERATE THE FARR WIND FARM IN THE PLANNING AUTHORITY AREA OF THE HIGHLAND COUNCIL**

Thank you for your letter dated 13 May 2020 requesting, on behalf of Ventient Energy Limited (Ventient), a screening opinion in respect of a proposed application under Section 36c of the Electricity Act 1989 to vary the existing consent granted under section 36 of said Act for Farr Wind Farm.

The proposed varied development is Farr Wind Farm located within the Kyllachy Estate 8 km south of Inverness within the planning authority area of The Highland Council ("planning authority").

The proposed variation to the existing section 36 consent in respect of Farr Wind Farm, which was granted by Scottish Ministers on 5 October 2004, constitutes an extension to the period of operation of the generating station from 25 years to 35 years.

The proposed variation requires to be screened by the Scottish Ministers in accordance with regulation 7 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ('the regulations'). Following a request for a screening opinion made under regulation 8(1), Scottish

Ministers are required to adopt an opinion on whether the proposed variation is or is not EIA development.

The screening application letter was accompanied by supporting documentation which included a Farr Wind Farm Site Layout map, a landscape note with a review of baseline environmental and assessment of effects on landscape and visual amenity, a note on noise conditions and an ecology note which includes a baseline review of ornithology and ecology.

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

The regulations set out (at 8(2)) the information that must accompany a request to the Scottish Ministers to adopt a screening opinion. Regulation 10 requires that the Scottish Ministers must seek that information if it is not included within the application documentation. Scottish Ministers consider the information included in the application letter and supporting documents is sufficient to meet the requirements set out in regulation 8(2), and that the submitted information has been compiled taking into account the selection criteria in schedule 3 of the regulations.

### **Statutory Consultation**

Under regulation 8(5) of the regulations, Scottish Ministers are required to consult the planning authority within whose land the proposed application is situated. The planning authority were consulted and responded on 11 June 2020 advising that, in their view, the proposed varied development constitutes EIA development. A copy of the planning authority's response is annexed to this screening opinion (**Annex A**).

### **Scottish Ministers' Considerations**

EIA development is defined in the regulations, in respect of a variation application, as a proposed variation which is either Schedule 1 development, or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

The proposed variation constitutes Schedule 2 development in terms of the regulations.

In adopting a screening opinion as to whether Schedule 2 development is EIA development, the Scottish Ministers must in all cases take into account such of the selection criteria in Schedule 3 of the regulations as are relevant to the proposed variation, and the available results of any relevant assessment.

Scottish Ministers have taken the selection criteria in Schedule 3 and all of the information submitted in respect of the screening request into account, and have taken account of the views of the planning authority. Scottish Ministers disagree with the planning authority's view, and adopt the opinion that **the proposal does not constitute EIA development and that any application submitted for this development does not require to be accompanied by an EIA report.**

In accordance with regulation 7(2), this opinion is accompanied by the following written statement with reference to the relevant selection criteria within Schedule 3 of the regulations. In accordance with the regulations, a copy of the screening opinion has been sent to the planning authority.

## **Written Statement**

### *Characteristics of Development*

The proposed variation constitutes an extension to the period of operation of the generating station from 25 years to 35 years. The proposed variation does not require the carrying out of any building, engineering or other operations in, on, over or under land. The extension of time does not alter the appearance or the dimensions of the existing wind farm. No land, soil, water or areas of biodiversity will be disturbed. There will be no production of waste. No pollution or nuisances will result from the proposal. There is no risk of major accidents or disasters pertaining to the proposed variation and no risk to human health.

### *Location of Development*

There are no building, engineering or other operations taking place to extend the operating life of the wind farm. There are no works or physical changes associated with the proposed variation which could affect the natural environment.

### *Characteristics of the Potential Impact*

Taking account of the above, the proposed variation will not have a likely significant effect on the factors specified in regulation 4(3) of the regulations.

This screening opinion does not constitute pre – application advice, and is provided without prejudice to the assessment of any future application under section 36c of the Electricity Act 1989.

Yours sincerely,

**Debbie Flaherty**  
**A member of the staff of the Scottish Government**

cc The Highland Council



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Our Ref / Ur n-àireamh-iùil: 20/02008/SCRE  
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Date / Ceann-là: 11 June 2020

Dear Ms Flaherty

## THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED) - PART 2

### SCREENING CONSULTATION RESPONSE

#### PROPOSED APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE EXISTING SECTION 36 CONSENT FOR FARR WIND FARM

**LOCATION: FARR WIND FARM, MOY, TOMATIN, INVERNESS, IV13 7ZA**

I refer to the above 22 May 2020 screening consultation to assist Scottish Ministers to adopt a screening opinion in respect of a proposed variation to the consent issued by Scottish Ministers under section 36 of the Electricity Act 1989 for Farr Wind Farm generating station dated 5 October 2004. The Planning Authority understand that the prospective applicant wishes to vary Condition 3.1 of the consent to extend the operational life of the wind farm from 25 to 35 years.

The proposed variation constitutes schedule 2 development in terms of the aforementioned regulations and the Planning Authority are aware that in reaching a determination as to whether the variation is or is not EIA development, the selection criteria set out in schedule 3 of the regulations must be taken into account. To assist with this determination, the Planning Authority have reviewed the accompanying additional information submitted under regulation 8 of the above regulations.

#### Planning Authority's View - Screening Opinion

It is considered that **Environmental Impact Assessment is required** for the development described in your application and information accompanying your screening request.

The proposal constitutes schedule 2 development as the development would result in a change to or extension (including a change in the manner or period of operation) to a generating station which may have significant adverse effects on the environment.

Having screened the proposal against the selection criteria outlined in Schedule 3 The rationale behind the Planning Authority's view on the Screening Opinion is as follows:

## 1. Characteristics of Development

- a) The scale of Farr Wind Farm is considerable, comprising 40 turbines, with a blade tip height of 101m and a generating capacity of 2.3MW. Whilst many modern onshore wind farms have considerably higher turbines, the number of turbines, footprint of the development and overall generating output of 92MW is substantial to warrant careful consideration. The duration of the proposed extension by a further 10 years is also 40% longer than originally assessed.
- b) Since the original ES was undertaken in 2002 the landscape and visual baseline has changed with the development / consent of several other wind farms in the vicinity. Section 3 of the prospective applicant's Landscape and Visual File Note acknowledges this with seven other wind farms haven been consented / developed since the original LVIA was undertaken. The applicant is of the opinion that the impact of the continued operation of Farr Wind Farm has recently been considered in the determination of the cumulative effects associated with the neighbouring Glen Kyllachy Wind Farm which was consented in 2019. The consent referred to is 18/05083/S42, dated 15 April 2019 which was an application under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, to develop land without compliance with condition(s) 1 previously attached to Planning Permission ref. 13/02441/FUL for the operation of the turbines for 30 years at Glen Kyllachy wind farm. Notably, the Section 42 application was not however subject to EIA, with reliance being placed upon the assessment submitted back in July 2013 which was subject to EIA scoping in 2010; now circa 10 years ago. This EIA is also focused on the development of Glen Kyllachy Wind Farm, and not Farr Wind Farm. It therefore remains possible that the operation of Farr Wind Farm for a further 10 years could result in additional cumulative effects or at the very least, prolonged significant landscape and visual effects.
- c) The use of natural resources, land, soil, water and biodiversity has already been consented, however, environmental best practice has moved on in the intervening 18 years post the application's original ES. As such, without reviewing the mitigation and restoration provisions for the site it remains unclear if any significant environmental effects would arise through prolonging the life of the wind farm and decommissioning. Similarly, it remains unclear if the operational life for the turbines will last up to 35 years or if this will result in more site maintenance requirements, additional frequency of replacement infrastructure equipment, upgrades or additional strengthened foundations which could result in a greater movements of service vehicles and potentially abnormal loads or ground works not previously assessed. Theses matters should be clarified within the prospective application's submission, regardless of the requirement for EIA.
- d) No additional waste is anticipated to be generated, however again this must be clarified by the prospective applicant.
- e) In terms of pollution, the prospective applicant's Noise File Note acknowledges that the baseline noise monitoring was undertaken in 2005. Since then, there have been low levels of housing development in the immediate surrounding area, however, the Council's House Completions Data shows new residential receptors in proximity to the site to the north west, north east, east and south which could not have been assessed to date. Refer to the mapping below which was last updated in January 2020:

<https://www.arcqis.com/apps/opsdashboard/index.html#/f827c80f82364d7b82ba5eca454f9f5e>

The Council's Environmental Health department have also pointed out that they have received complaints about wind turbine noise from Farr in the past and that there was significant opposition to Glen Kyllachy Wind Farm. Environmental Health consider that it is inevitable that when it comes online the Council will receive further complaints. There may also be a further round of objections to extending Farr for another 10 years and think it likely that compliance monitoring will be necessary. Since Glen Kyllachy was consented, the Council's standard condition has changed to include a requirement for developers to submit a noise monitoring and mitigation scheme for the approval of the Planning Authority. Although the limits here relate to cumulative noise, there may be a need to establish the levels from each wind farm and advise that before Glen Kyllachy becomes operational it would be beneficial to undertake monitoring of Farr on its own. Otherwise, any scheme will need to include a methodology for shutting down one or other of the wind farms

should compliance monitoring be required.

Environmental Health have advised that this is perhaps more pertinent to repowering as opposed to life extension but as a general observation, there seems to be an assumption that wind farms have a right to continue operating at the same noise levels or with the same limits as they have for the last 25 years or so. Environmental Health also point out that the main guidance, ETSU-R-97, is over 20 years old and the recommended limits have not been reviewed in that time. Since ETSU came out the noise standards suggested by other guidance has been tightened e.g. BS 4142 has gone from saying a difference of 5dB above background was of marginal significance to now being an indication of an adverse impact. Obviously, ETSU still advises that turbine noise levels of up to 5db above background are acceptable. Technology has moved on in the last 20 years so turbines are becoming significantly bigger with a greater visual impact but this is not being reflected in any compensatory reduction in noise levels which might help offset the overall impact of a wind farm development in an area. In Highland Environmental Health have tried to work with developers to implement a tighter limit for night time noise and believe this has been fundamental in reducing the number of complaints compared to other authorities. The point Environmental Health would make is that they would hope that developers and operators take this into consideration and that efforts are made to reduce the impact of turbine noise in these circumstances rather than just assume the status quo.

Based on the above, it is considered that the continuation of the development for a further 10 years may give rise to noise pollution, the effects of which could potentially be significantly adverse at existing and newly developed residential receptors with the cumulative noise impacts associated with Kyllachy Wind Farm to be carefully considered.

- f) The Planning Authority are not aware of any increased risk of major accidents or disasters of relevance, however, advise SEPA to consider this matter further, particularly in light of increased rainfall events / pluvial flood risk associated with climate change the design requirements for which have moved since the 2002 ES.
- g) No additional risk to human health is evident at this stage, however, it would be worthwhile reviewing public access rights across the site and ongoing land management practices to maintain public safety.

## 2. Location of Development

- a) The existing wind farm is a temporary land use which is time limited. This provides the decision maker with the opportunity to re-assess proposals to extend the operational life of a development or consider it's potential for further development / re-powering or to consider design changes to the Wind Farm to mitigate any new or previous significant effects. An up to date EIA is critical to this process.
- b) From the Ecology File Note this stated that ornithology survey work at the site in dates back to 2016 with the next breeding wader monitoring surveys being due 15 years after the construction phase is completed, meaning that the next survey is due in 2021. Raptor and Bird Flight monitoring on site also dated back to 2011 with bird surveys at Glen Kyllachy Wind Farm dating to 2012-2013. Similarly, ecology survey work at Farr Wind Farm date back to around 2005 with Glen Kyllachy Wind Farm ecology survey work pre-dated its 2013 ES. The prospective applicant has not considered it necessary to undertake any further ecological survey work in support of the Section 36, given that development would not result in any greater habitat loss or impact. The prospective applicant also considers that it highly unlikely that any species present on or near the site have habituated to the presence of infrastructure and turbines over the past 14 years of the wind farm's operation. The Planning Authority would point out that this is a substantial development site, with a large footprint and consider that the necessity for further ecological or ornithological survey work should be considered by Scottish Natural Heritage, who should also advise if any additional or prolonged significant effects are likely. In the absence of more up to date survey information this may be difficult to definitively determine.

- c) In terms of the absorption capacity of the site, the Planning Authority would draw the Scottish Government's attention to the emergence of Special Landscape Areas and areas of Wild Land which were not assessed in the original 2002 ES. The assessment of cumulative effects of this development have also moved on since the neighbouring Glen Kyllachy Wind Farm's ES which also pre-dates Scottish Planning Policy, as well as the Highland Council's Onshore Wind Energy Supplementary Planning Guidance.

### 3. Characteristics of the Potential Impact

Whilst it is for the Scottish Government to weight up the potential effects of the character of the development in relation to its location, the Planning Authority wishes to highlight the following in relation to section 3 (g) of the selection criteria for screening Schedule 2 development:

- Given the scale of the existing development, its retention in situ for a further 10 years beyond its 25 year consented operational life could potentially give rise to a moderate to high magnitude of change.
- The existing consent runs until December 2030 and in the intervening period more wind farm development is could emerge. The advanced timing of this screening request and any subsequent submission (10 years ahead of the expiry of the existing consent) would therefore not capture any further consents in the years to come leading up to the end of the current consented period.
- The resultant cumulative assessment (if) undertaken at this stage would to some extent still underplay the potential future cumulative position. That said, one cannot second guess if or when further wind farm development may or may not take place and this cumulative position should be captured within the any forthcoming application's LVIA, but these are again likely to predominantly focus each new wind farm proposal's identified key sensitive receptors and viewpoints, which may overlook or adequately consider those originally assessed for Farr Wind Farm.
- In seeking to extend Farr Wind Farm consent relatively early, around midway through its operational life, this results in a heightened risk of a greater cumulative impacts than doing so towards the end of the wind farm's lifecycle (i.e. it may be easier for the prospective applicant to do this now rather than in say 5-10 years time when other wind farms may emerge, the original ES baseline will be more outdated and national policy support or requirements for onshore wind farms may change).
- Given this context, the Planning Authority consider it important that an updated EIAR, or at the very least a robust EIAR Addendum is undertaken to update the baseline position and better capture the cumulative position to help fully assess the potential for significant cumulative impacts to arise, as well as to identify any new mitigation measures to be put in place, if necessary. This applies to the landscape and visual impacts associated with the continued operation of the wind farm, but also in relation to its ongoing noise impacts and potentially for a wider range of environmental topics which should be identified through a more thorough EIA Scoping exercise. The prospective applicant is encouraged to utilise the Council's [Major Pre-Application Advice Service](#) at the draft EIA Scoping stage to help inform the forthcoming planning application submission.
- The Planning Authority also consider this updated EIAR with more up to date baseline information may also be beneficial when considering the longer term generating capacity of the site with this data helping to inform any future application for re-powering following the end of the operational life of the current turbines on site.

We hope the foregoing is of assistance and look forward to receiving a copy of the Scottish Government's Screening Opinion in due course.

Yours sincerely

**Peter Wheelan**

MRTPI Planner – Strategic Projects Team

**Please Note:** This correspondence does not constitute pre-application planning advice. The merits of the proposed development have not been assessed, nor has its acceptability in terms of material planning considerations and development plan policy.