



SCOTTISH EXECUTIVE

STANLEY

DATE: 29 OCT 2004

File ref:

**Enterprise, Transport & Lifelong Learning Department
Energy and Telecommunications Division**

Meridian Court
5 Cadogan Street
Glasgow G2 6AT

Mr Robert Warren
Npower Renewables Limited
North Range East Lodge
Mill Road
Stanley
Perthshire
PH1QE

I hereby certify
this is a true and
complete copy of
the original

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Your ref:
Our ref: IEC 3/43

Date: 05 October 2004

Dated 5 Oct 04

Signed Bond Pearce LLP

Dear Mr Warren

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

1. I am directed by the Scottish Ministers to refer to the application dated 11 September 2002 under section 36 of the Electricity Act 1989 ("the Act") by Npower Renewables Limited ("the company") for both the consent of the Scottish Ministers to construct and operate a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire and their direction under section 57 (2) of the Town and Country Planning (Scotland) Act 1997 that planning permission for the development be deemed to be granted.

2. The Scottish Ministers have considered the environmental statement and subsequent submissions prepared by the company in support of the application, submissions prepared by those bodies approached as part of the formal consultation and all matters raised by other bodies. For the reasons set out below, the Scottish Ministers have decided to consent to the application and have issued a direction that planning permission is deemed to be granted.

Description and background

3. The proposed development is located on open moorland with some isolated hills to the south and west and more continuous high ground of the Monadhliath Mountains occurring to the west of the site. It is sited on an upland basin between the Findhorn and Nairn valleys at a height of 500 to 600 metres. It is situated off the A9 approximately 16 km south west of Inverness and 20 km north west of Aviemore.

4. You originally submitted a proposal for up to 45 wind turbines with a total capacity not exceeding 112.5 MW and of a blade tip height not exceeding 102 metres. In order to reduce

the visual impact of the development as viewed from the Strathnairn valley, you reduced the windfarm to 40 turbines. In terms of landscape designations, the site does not lie within any National Scenic Areas (NSAs), Regional Scenic Areas (RSAs) or Areas of Great Landscape Value (AGLVs). The site is not protected by European designations such as Special Areas of Conservation, Special Protected Areas or Ramsar sites and the nearest scenic area is the Cairngorms National Scenic Area which is located approximately 21.5 km to the south east of the site.

5. A number of organisations and departments were consulted by the Scottish Ministers. The advice from **Scottish Natural Heritage (SNH)** in this instance was that following your agreement to remove 5 turbines, and therefore limit the visual impact on the Strathnairn valley, the application for consent should be granted subject to conditions. Specifically, the concerns raised centred on the need for a peatland restoration plan, conditions governing construction methods and provision of further information on potential disturbance to otters.

6. The **Scottish Environment Protection Agency (SEPA)** also recommended that consent be granted and that the conditions drafted. Specifically, the concerns raised centred on the need for site specific construction method statements to limit risk of contamination arising from construction activities. A condition is required to ensure provision of detailed monitoring proposals and contingency plans.

7. **Historic Scotland** is content that your proposal does not compromise its statutory interests.

Planning policy and advice

8. The Director of Planning and Development at Highland Council, referred the section 36 application to the Council's Planning, Development, Europe and Tourism Committee. The Committee was of the view that whilst there are issues relating to visual and landscape impacts, local amenity and other matters, there are no substantive consultee objections to the section 36 application.

9. The Development Plan consists of the **Highland Structure Plan (March 2001)** and the **Strathnairn, Strathdean and Loch Ness Local Plan**.

10. The following references in the **Highland Structure Plan (HSP)** are of relevance:

Policy G2 identifies a number of assessment criteria on Design for Sustainability. Some key considerations for proposed development are:-

- maximise energy efficiency in terms of location, layout and design, including utilisation of renewable resources
- impact on individual and community residential amenity
- impact *inter alia* on habitats, landscape, species, scenery
- demonstrate sensitive siting and high quality design
- contribute to the economic and social development of the community

Developments which are judged to be significantly detrimental in terms of the above criteria shall not accord with the Structure Plan.

Policy G4 considers Community benefit and commitment

- Notes that Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands whilst recognising wider national interests
- Seeks agreements with developers
- Seeks a fund for local community initiatives where a development will have a long term impact on the environment (the developers reference their intention to establish a fund in their statement attaching)
- Seeks a financial bond for long term environmental restoration.

We note that you have reached an agreement with the Strathnairn and Strathdean Community Councils for both an index-linked capital lump sum and an annual contribution based on installed capacity.

11. Additionally, the Highland Council has a number of policies which specifically relate to renewable energy developments. Approval for such developments will normally be limited to the lifetime of the development and will be conditional on adequate provision for removal and restoration of the affected land.

Policy E2 – Wind Energy Developments states that; “Wind Energy proposals will be supported provided that impacts are not shown to be significantly detrimental. In addition to the General Strategic Policies, wind energy proposals will be assessed in respect of the following:-

- visual impact
- noise
- electro magnetic interference
- roads, bridges and traffic
- aircraft flightpaths/MOD operations
- cumulative effects”

12. The Strathnairn, Strathdean and Loch Ness East Local Plan (1997) is the currently adopted Local Plan for the area but will in due course be superseded by the Inverness Local Plan currently at Deposit Draft (see below). Relevant general policies in the Local Plan are as follows:-

The Council will encourage the sustainable use of the area’s resources and a wide distribution of employment opportunities by promoting:-

- expansion of established resource based activities;
- tourist related and service businesses;
- opportunities in the natural environment.

Additionally, the Council will encourage integrated use and management of resources in the landward area, and will continue to seek a balance between development and the conservation of features which represent the area’s outstanding natural and cultural heritage.”

13. The Inverness Local Plan Deposit Draft (September 2002), currently under revision seeks to be compatible and consistent in interpretation of the strategic policy framework of the Structure Plan which was approved by Scottish Ministers in March 2001. The Deposit Draft Local Plan sets out some general background and strategy for the area in terms of fostering prosperous and sustainable communities. The importance of tourism is recognised as well as the need to broaden the balance of economy and to develop, in sustainable terms, the natural advantages and resources of the area. In this context a map "Creating Prosperity" on page 10 of the Deposit Draft notes the upland area between Tomatin and Farr as being a potential area for wind farms.

14. The Scottish Executive sets out its planning policies through a series of national Planning Policy Guidelines and Planning Advice Notes. The following are of particular relevance to the consideration of your proposal:

Renewable Energy Developments (NPPG6) sets out the promotion of renewable sources of electricity generation as an integral part of the UK Government's energy policy. This document aims to provide guidance to support local authorities in delivering an increase in renewable energy development in Scotland; and

Planning Advice Note: Renewable Energy Technologies (PAN 45) supports the policies outlined in NPPG6 by providing information on the technologies for harnessing renewable energy for electricity generation. Additionally, this document presents advice on the issues which arise in connection with each technology.

The applicant's case

15. You have outlined the process which led to the selection of this site. This involved balancing a range of technical, environmental and planning issues. The site has a good wind resource, does not support any Sites of Special Scientific Interest (SSSI) or areas designated as of conservation importance within its boundaries. The site does not lie within a designated landscape and is at a reasonable distance from habitation. Access to the site is good and there is an available grid connection adjacent to the site.

16. You have been aware throughout the process that the landscape and visual impacts of the windfarm are a key issue in the assessment of this proposal. Your landscape and visual assessment concludes that the site will result in a prominent appearance within an area of some 6 kilometres radius. Since the deletion of 5 turbines on the western side of the site, the impact on the affected properties in Strathnairn is diminished but you accept that this may not be eliminated. Given the scale of the project, you are of the view that there will inevitably be some detrimental visual impact but find that the degree of this impact is acceptable.

17. A group opposed to your development Farr Wind Action Group (FARRWAG) has submitted two alternative layouts which move the turbines further to the east of the site and as a consequence render them invisible from Strathnairn and Strathdearn. The Scottish Ministers presented these alternatives to you for your consideration but you rejected them as they present a depleted wind yield and would lead to greater infrastructure costs.

18. In regard to deficiencies in ornithological information identified by the Scottish Ministers, you were asked to undertake further collision risk assessments, the results of which were presented to the Scottish Ministers for their consideration. Additionally, FARRWAG presented a dataset showing a significantly higher number of red kites using the site. You were asked to run the same risk analysis model on this dataset. You are of the view that the impact on the red kite population is not significant.

19. Following advice from Scottish Natural Heritage, the Scottish Ministers requested further information on ecological impacts, specifically on the potential for construction works to disturb otter and water vole populations which have been identified on the site. Water voles are an increasingly rare species and their habitat is protected under Section 9(4) of the Wildlife and Countryside Act 1981. We strongly recommend that you stay in close contact with Scottish Natural Heritage over the details of the work to be done in relation to voles to avoid any offence being committed. You are aware that otters are protected in terms of the EU Habitats Directive. Under the terms of the Conservation (Natural Habitats &c.) Regulations 1994, it is an offence to disturb or capture otters (a European Protected Species), damage or destroy their habitats, breeding sites or shelters unless a derogation is agreed by Ministers and a licence issued which would permit such actions to take place.

20. Scottish Natural Heritage had concerns that the development would have a significant impact on the blanket bog across the site. Blanket bog is a priority habitat in terms of the EU Habitats Directive and therefore carries the highest level of protection. In discharging these responsibilities, Scottish Natural Heritage have indicated that a peatland restoration plan outlining restoration methodology should be agreed between you, the landowner and Highland Council.

21. The hydrological impacts of the development have been assessed by the Scottish Environment Protection Agency (SEPA). SEPA's concerns centre on the pollution risks arising from construction activities and the creation of access roads and tracks. SEPA has requested conditions to secure detailed construction method statements, monitoring proposals and contingency plans.

22. In light of the peat slide associated with a windfarm construction at Derrybrien in Co. Galway, the Scottish Ministers asked you to undertake an analysis of peat depth across the site, from this to complete an assessment of peat slide risk, and to set out your proposals for disposal of excavated peat. You have complied with these requests and put in place measures to minimise the risk of peat slide.

23. Historic Scotland has confirmed that there are no impacts arising from the development which will affect its statutory archaeological interests.

The Scottish Ministers' Consideration

24. Following your agreement to delete 5 turbines to the east of the site, Scottish Natural Heritage was content to withdraw its objection on landscape and visual grounds. Scottish Natural Heritage accepts that the windfarm will inevitably be prominent from many local viewpoints but overall, the landscape can accommodate this development. FARRWAG asked you to consider two alternative layouts which would eliminate the visual impact at Strathnairn and Strathdearn. Given your rejection of these alternatives Scottish Natural Heritage was not asked to advise Ministers on the resultant landscape implications. The

Scottish Ministers have limited their consideration of the landscape and visual implications to the application as submitted and are accordingly content to accept the advice of Scottish Natural Heritage on this issue.

25. A cumulative visual impact has been undertaken in the context of Novar Wind Farm and the expected submission of a proposal at Dunmaglass, 10km to the south west. Scottish Ministers are content that the separation from Novar does not make cumulative impact significant. Comparisons with Dunmaglass are not appropriate as a planning application for this development has not been submitted.

26. In considering the ornithological impact of this proposal, the Scottish Ministers have had regard to their obligations in terms of the EU Directive on the Conservation of Wild Birds ("the Birds Directive"). You will be aware that the requirements of this Directive are implemented by the relevant sections of the Wildlife and Countryside Act 1981. The presence of a protected species, in this instance red kites which are listed in Annex 1 to the Birds Directive and therefore carry the highest level of protection, has been a material consideration in the assessment of this proposal. The Scottish Ministers have adopted a precautionary approach to avoid harm to the red kite population. They are convinced that there is a need for a monitoring regime specifically in relation to the red kites. This is pertinent as your dataset considered along with that presented by FARRWAG demonstrates that the red kites are not concentrated on a particular area of the site and the potential effects cannot therefore be ameliorated by the removal of a particular group of turbines. The Scottish Ministers recognise that the distance of these non-breeding birds from the breeding population on the Black Isle means that any deaths sustained as a result of the operation of the windfarm may not be replaced. To address this issue, the Scottish Ministers propose an intensive monitoring programme funded by you and overseen by a steering group chaired by the Scottish Executive comprising members representing Scottish Natural Heritage and the Royal Society for the Protection of Birds. Broadly, the parameters of this programme include:

- intensive vantage point surveys throughout 2005 and for 5 years into the operational period of the windfarm;
- wing-tag observations to quantify turnover of birds;
- search for collision casualties; and
- search and removal of carrion

The steering group will analyse the results of surveys as they emerge and consider further measures as appropriate such as; radio-tagging, establishing feeding stations and shutting down those turbines demonstrably responsible for frequent bird deaths.

27. In considering the ecological issues the Scottish Ministers have had regard to the letter of 1 October 2003 from Scottish Natural Heritage indicating that it is content that the ecological issues relating to water voles and otters have been fully addressed. You are now in receipt of a licence to disturb otters in terms of The Conservation (Natural Habitats &c.) Regulations 1994, the terms and conditions of which are outlined in the letter which accompanies the licence.

28. In considering the potential impact of your development on the blanket bog, the Scottish Ministers note that you have entered a planning agreement with the landowner and Highland Council in terms of section 75 of the Town and Country Planning (Scotland) Act.

Ministers accept the advice of Scottish Natural Heritage that this agreement secures sufficient mitigation and compensation to allow the development to proceed.

29. In assessing the hydrological impacts of the development, the Scottish Ministers accept the advice of SEPA on measures necessary to protect water quality and control pollution. In this respect they are content to apply those conditions derived from SEPA's response to the consultation.

30. In considering peat depth issues, the Scottish Ministers acknowledge that the design of this application was well advanced when the implications of the Derrybrien peat slide became apparent. It is welcome that you have conducted extensive peat depth analysis across the site and submitted the results for Ministers' consideration. Having commissioned an independent analysis of your report, Scottish Ministers are content that the risk of peat slide is generally low across the site but a precautionary approach is warranted at 4 of the turbine positions. To address this the Scottish Ministers have imposed a condition allowing a wider degree of micro-siting and requiring further analysis to inform the final positioning at the affected turbine positions.

31. You have undertaken that where disposal of excavated peat either on the shoulders of tracks, around turbine bases is not possible, it will be temporarily stored in on site borrow pits pending disposal off-site. This commitment has been secured as a condition of the consent.

32. The Scottish Ministers are content that Historic Scotland have fully and properly advised them that there are no features of this development which could compromise its statutory archaeological interests.

The Scottish Ministers' Determination

33. In terms of schedule 8 to the Electricity Act 1989 (as amended), if the local authority makes a valid objection and does not withdraw it, the Scottish Ministers must convene a PLI before determining the application. As Highland Council did not object to the Farr Windfarm proposal, in this instance, a PLI is not a statutory requirement.

34. Additionally, schedule 8 provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of the Electricity (Application for Consent) Regulations 1990 ("the 1990 Regulations"), the Scottish Ministers "shall consider those objections together with all other material considerations" with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

35. As stated in paragraph 33 above, the planning authority has not maintained an objection to the application and as a consequence, the Scottish Ministers are not obliged under paragraph 2(2) of Schedule 8 to the Act to cause a public inquiry to be held. Paragraph 3(2) of Schedule 8 to the Act, however, requires the Scottish Ministers to consider all the objections they have received, together with all other material considerations, with a view to determining whether a public inquiry should be held and, if they think it appropriate to do so, they shall cause a PLI to be held. The Scottish Ministers received 32 individual representations, and an objection and supporting reports and information from FARRWAG pursuant to the 1990 Regulations.

36. In reaching this decision without invoking the discretionary power to cause a PLI to be held the Scottish Ministers are content that adequate opportunity was afforded for public representation and that those with a right to make representation could have their representation properly taken into account. The Scottish Ministers are further content that they can weigh all the conflicting issues without recourse to a public inquiry.

37. The Scottish Ministers are content that the Environmental Statement is sufficient to allow them to make a determination on the application.

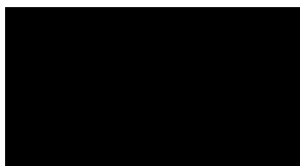
38. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") prohibit the Scottish Ministers from granting consent unless they have fully considered the environmental information, as defined in those regulations.

39. The Scottish Ministers have considered the environmental information carefully; in addition to the Environmental Statement, they have considered the comments made by the planning authority and those designated as statutory consultees in terms of Regulation 6 of the 1990 Regulations and those of the consultative bodies in terms of the 2000 Regulations.

40. Schedule 9 of the 1989 Act places a duty on the company to have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. It requires the company to do what it reasonably can to mitigate the effects that the development would have on these features. Schedule 9 also requires the Scottish Ministers have regard to these features and the extent to which the company has complied with this duty. The Scottish Ministers are satisfied that the company has had due regard to these features and, consequently consent for this proposal in terms of section 36 of the Electricity Act 1989 (as amended) and issue a direction that planning permission be deemed to be granted. The section 36 consent is subject to 14 conditions and the deemed planning permission is subject to 18 conditions. A copy of the consent is enclosed with this letter.

41. Copies of this letter have been sent to Highland Council as planning authority and all those consultees and individuals who made a representation about this proposal.

Yours sincerely



LESLEY THOMSON

A member of the staff of the Scottish Ministers

**ELECTRICITY ACT 1989
and
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR NEAR
TOMATIN, INVERNESS-SHIRE**

I hereby certify
this is a true and
complete copy of
the original

Bond Pearce LLP
26-28 Commercial E
Southampton
SO15 1GA

Dated 6 April 08
Signed Bond Pearce
UP

Consent and deemed planning permission

1. The Scottish Ministers, in exercise of the powers conferred on them by section 36 of the Electricity Act 1989 (as amended by section 93 of the Energy Act 2004) and section 57(2) of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them in that behalf hereby consent to:-
 - 1.1 the construction and operation by Npower Renewables Limited ("the company"), or their permitted assignees who are in possession of a letter of authorisation from the Scottish Ministers issued in accordance with paragraph 3.2 below, of a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire, as described in the application, the Environmental Statement, and maps, duly endorsed on behalf of the Scottish Ministers, accompanying the application outlined in Figure 1 ("the development");
 - 1.2 subject to the definitions set out in paragraph 6 and conditions set out in paragraph 7, the Scottish Ministers direct that planning permission for the development shall be deemed to be granted.

Description of Development

2. Subject to the conditions set out in paragraphs 3 and 7, the development shall comprise:
 - 1) up to 40 wind turbines, of overall height from base to tip not exceeding 102 metres, unless prior agreement is secured from the planning authority to a greater overall height and of a total capacity not exceeding 112.5 Megawatts;
 - 2) 3 anemometer masts;
 - 3) all necessary wind turbine transformers and housings,
 - 4) site tracks and foundations; and
 - 5) all on-site switch-gear and metering building and associated works including electrical cabling and temporary borrow areas.

Timing and assignation

- 3.1 The consent is for a period from the date of this consent until 25 years from the date of commissioning. The company is required to obtain by no later than the end of said 25 year period, written confirmation from the planning authority that all decommissioning works have been completed in accordance with the approved decommissioning scheme referred to in condition 3.4 of this consent. Written confirmation of the date of the commissioning shall

be provided to the planning authority within 1 month of the commissioning of the development, and the date of commissioning shall be no later than 5 years from the date of this consent, or such longer period as the Scottish Ministers may hereafter direct in writing. This consent shall cease to have effect after the end of 5 years from the date hereof if any material operation relevant to the development has not been substantially commenced by that date.

3.2 The company shall not be permitted to assign the consent set out in paragraph 1.1 above without the prior written authorisation of the Scottish Ministers, who may grant consent (with or without conditions) or refuse same as they may, in their own discretion, see fit. The said consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

3.3 The company shall decommission and restore the site, within such period as the Scottish Ministers in consultation with the planning authority may direct, and said works shall be carried out in accordance with the scheme outlined in condition 3.4. Thereafter, the company shall, on receipt of written confirmation from the planning authority that they are content that all decommissioning and restoration works are complete, undertake to maintain the site for a period of 5 years in accordance with the terms of condition 3.4 which requires an indicative scheme of reinstatement.

3.4 Before the wind farm commences operation, an indicative scheme for the ultimate reinstatement of the site, including the removal of all turbines and ground reinstatement shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. At least 12 months prior to actual decommissioning and reinstatement works, such scheme will be reviewed and amended as necessary taking into account scheme operation and monitoring.

Reason: to ensure that the scale of restoration proposed by the applicant is sufficient to meet the requirements of the planning authority

3.5 Following the completion of reinstatement as set out in condition 3.4 above a report shall be prepared by the project ecologist whose appointment is approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. This report shall set out the degree of compliance with the ecological safeguarding conditions and thereafter shall specify steps to be taken to secure any remedial action as required by the project ecologist. The remedial action set out in the report shall be implemented.

Reason: to measure compliance with the ecological safeguards built within the consent.

3.6 In the event that any wind turbine fails to produce electricity supplied to the local grid for a continuous period of 6 months, then, unless otherwise agreed in writing with the Scottish Ministers in consultation with the planning authority, it shall be deemed to have ceased to be required and the wind turbine and its ancillary equipment shall be dismantled and removed from the site by the company within the following six months, and the ground fully reinstated to the specification and satisfaction of the Scottish Ministers in consultation with the planning authority.

3.7 Turbines 10,12,13 and 40 and associated tracks shall not be erected until the company has submitted a detailed report on peat depth and stability within the 50 metres micro-siting

provision as permitted in terms of condition 7.8. The Scottish Ministers shall consider this report in consultation with the planning authority and Scottish Natural Heritage. Following this consultation, the Scottish Ministers shall approve the appropriate position for these turbines and associated tracks. The company shall erect these turbines and associated tracks in accordance with that approval. If the Scottish Ministers consider that they cannot approve a position for each or any of these, the turbines they shall not be erected. In this event, the tracks shall be re-aligned to take account of any deletion and plans submitted for the consideration of the Scottish Ministers in consultation with the planning authority. Thereafter tracks shall be constructed in accordance with any approval granted.

3.8 Prior to any work commencing on site, details of the measures to be taken to protect breeding birds, and specifically to discourage birds from breeding on those areas of the site to be worked in during that breeding season, shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. Thereafter the measures, as approved, shall be implemented.

3.9 The company shall undertake six years of monitoring of breeding birds from the date of this consent: first, annually for a period of 3 years following the final commissioning of the development, and second at five yearly intervals, at 5, 10 and 15 years after the construction phase is completed. This monitoring should be conducted to an identical standard on both the windfarm site and an appropriate reference site. The detail of this monitoring and of the reference site shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. The findings of these surveys shall be collated into two reports, after three and fifteen years, and all of the original data (in formats agreed by the Scottish Ministers in consultation with Scottish Natural Heritage), and the reports will be made available to the Scottish Ministers, the planning authority and Scottish Natural Heritage. After the first report, any mitigation measures developed and approved by Scottish Ministers in consultation with Scottish Natural Heritage shall be implemented.

3.10 A group, chaired by an officer of the Scottish Executive as appointed by the Scottish Ministers to be known as the Farr Windfarm Monitoring Group ("FWMG") shall be established. Membership of the group (apart from the Chair) shall comprise representatives of Scottish Natural Heritage and the Royal Society for the Protection of Birds and the independent ecological contractor.

3.11 Prior to any work commencing on site, the company shall identify an independent contractor whose appointment has been approved by the Scottish Ministers in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds. If at any point in this process, the Scottish Ministers determine that the independent contractor has failed to implement these provisions, the company shall identify a replacement whose appointment shall be approved in accordance with the foregoing terms. This contractor shall to undertake a programme of monitoring for a schedule of species to be agreed by FWMG. All costs relating to this programme shall be met by the company. This programme of monitoring shall include:

(1) three three-hour watches from a minimum of three vantage points each month from the date of this consent until 5 years after the commissioning of the development. These observations shall record flight-lines, any collisions or avoidance activity, narrative report as specified by FWMG; and

- (2) observations to identify individual red kites in the area from their wing-tags; and
- (3) studies of searches for collision casualties; and
- (4) searches for available carrion and its removal from the area.

The contractor shall present written reports and a full dataset to FWMG on a twice yearly-basis. These reports and datasets shall be made available to all parties expressing an interest. Following the first year of these studies, if in the opinion of FWMG a significant number of red kites use the site, FWMG shall advise the company whether a radio-tracking study of red kites in this part of Scotland and any further mitigation measures, are required. Said mitigation measures may include temporary shutdown of turbines which have been identified as responsible for red kite mortalities. FWMG shall advise on the conditions which would lead to the consideration of shutdown and the duration of proposed shutdown. The company shall, implement the required supplementary monitoring and mitigation measures, as identified by FWMG in their entirety.

3.12 The site shall not be illuminated by lighting without the prior written approval of the Scottish Ministers in consultation with the planning authority.

3.13 Where peat is excavated from the site, it shall only be used for immediate restoration at the shoulders of roads and tracks, and around turbine bases. All peat not used for these purposes must be removed from site forthwith. Excavated peat which cannot be used within the foregoing terms, may be batched and stored for up to 3 months in the on-site borrow pits, storage beyond this period shall only be permitted with the written approval of the Scottish Ministers in consultation with the planning authority. The spreading of peat across the site and storage of peat on peatlands is not permitted.

3.14 The company shall provide a detailed plan showing all turbines, tracks and infrastructure in a format compatible with an ARC GIS Shape file to the Scottish Ministers within six months of commissioning of the development.

Determination

4. In reaching their decision, the Scottish Ministers have taken into account the environmental information submitted with the application, the views of the company, the views of the planning authority, the views of statutory consultees, objections received, and Government energy and climate change policy.

5. The Scottish Ministers have considered the objections and all other material considerations and have concluded that there is no need to conduct a public inquiry before reaching their decision. The Scottish Ministers also note that the development is consistent with Government policy on the promotion of renewable energy.

Definitions

6. In this consent and conditions, unless the context otherwise requires:-

"the application" means the application submitted by National Wind Power Limited on 11 September 2002, as amended by the letter from the company dated 30 January 2003;

"the commencement of the development" means the date on which the development shall be taken as initiated in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

"the commissioning of the development" means the date on which the first wind turbine generator forming part of the development first supplies electricity to the public electricity network on a commercial basis;

"the company" means Npower Renewables Limited, having their Registered Office at Reading Bridge House, Reading Bridge, Reading, Berkshire, RG1 8LS (registered company number 02550622);

"the date of final commissioning" means the date on which all wind turbine generators forming the development have supplied electricity on a commercial basis or such date as the Scottish Ministers deem the development to be complete;

"the development" means a wind-powered electricity generating station at Farr near Tomatin comprising no more than 40 wind turbines and associated works, all as more particularly described in the application;

"material operation" has the same meaning as in section 27 of the Town and Country Planning (Scotland) Act 1997;

"planning authority" means The Highland Council;

"site" means the area of land outlined in red on Figure 1 annexed hereto;

"switchgear metering building" means the area of land coloured yellow on Figure 1 annexed hereto.

Conditions

7. For the development described in paragraph 2, consent as outlined in paragraph 1 is subject to the timescales outlined in paragraph 3. Additionally, this development is subject to the following conditions:-

7.1 At least one month prior to commencement of the development, the company 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 on the expiry of this consent. No work shall commence on the site until written confirmation has been given by the planning authority that the proposed bond or other financial provision is satisfactory. The company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent. Thereafter the company shall at 5-yearly intervals provide the planning authority with a review of the proposed bond or other financial provision against the decommissioning and restoration proposals. The planning authority, if

it considers it appropriate, may require the company to put in place additional financial provision to meet the decommissioning and restoration proposals.

Reason: to ensure that adequate provision is made for restoration costs once the windfarm has reached the end of its operational life.

7.2 No work shall commence on site until the company has appointed a suitably qualified project ecologist, named and approved by the planning authority in consultation and Scottish Natural Heritage. The duration of this appointment shall be determined by the planning authority in consultation with Scottish natural Heritage.

7.3 No work shall commence on site until approval has been obtained from the planning authority, of details, including means of access, fencing, design and colours/external finishes, of the turbines and all ancillary elements. No symbols, signs, logos or other lettering shall be displayed on any part of the wind turbines nor any other buildings or structures, without the prior written approval of the planning authority.

7.4 No work shall commence on site until the company has obtained written approval from the planning authority in consultation with Scottish Environment Protection Agency and Scottish Natural Heritage for detailed site specific method statements for all activities involving a scheme of works. Said method statements shall include monitoring and contingency proposals. Said method statements, as approved, shall be carried out in their entirety within timescales agreed with the planning authority. Method statements shall be lodged no later than one month prior to construction and shall cover, in particular, contractor arrangements for:

- the excavation and make-up of final and alignment internal access tracks and hardstanding;
- the source of all fill and bulk materials;
- construction arrangements for turbine foundations including concrete batching;
- cable laying within the site and in or below the public road;
- associated vehicle movements and routing for different phases of construction and the final alignment and landscape impact of access tracks;
- construction works compound and servicing arrangements;
- all details of the proposed opening and reinstatement of borrow areas;
- re-instatement of ground post construction;
- all related construction mitigation measures to avoid pollution or disturbance including ground silt traps, soak-aways and containment;
- construction management operations including proposals for working hours, site lighting, temporary servicing for workers, vehicle storage and other storage arrangements;
- arrangements for the appointment and supervision services of project archaeologist during relevant construction operations;
- arrangements for the supervision services of project ecologist during relevant construction operations; and
- proposals for phasing of operations.

Reason: to ensure compliance with all commitments made in the environmental statement and subsequent schemes developed following the consultation process.

7.5 No work shall commence on site until the company has obtained written approval from the planning authority for detailed plans, for all activities involving a scheme of works designed for mitigation and where possible enhancement. The mitigation and enhancement works shall be carried out in accordance with the approved plans and within timescales agreed with the planning authority. Thereafter, each plan, as amended by the planning authority, shall be implemented. Plans shall be lodged to cover:

7.5.1 site management including habitat enhancement. Prior to giving written approval for this plan, the planning authority shall consult with Scottish Environment Protection Agency and Scottish Natural Heritage;

7.5.2 a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation. All arrangements thereby approved shall be implemented in accordance with the approved timetable for investigation;

7.5.3 no work shall commence on site until the developer has carried out a survey of existing water supplies arising from and within 50 metres of the site, identifying the exact sources, premises served and distribution network. Thereafter, a mitigation plan to prevent pollution of the private water supply at Wester Lairgs, to the water catchment area above Farr, and to the area of intake for water supplies to Tomatin Distillery shall be submitted for the prior written approval of the planning authority in consultation with Scottish Water. Where said plan establishes that a supply is required to be temporarily or permanently replaced, the replacement supply shall provide sufficient quantity of water and meet relevant quality standards.

Reason: to ensure compliance with all commitments made in the environmental statement and subsequent schemes developed following the consultation process.

7.5.4 Temporary water supplies must be provided to those affected until permanent mitigation and replacement measures can be implemented. Such permanent measures shall be completed within one month of the erection of any mast or other works affecting the supply, as identified in the assessment, to the satisfaction of the planning authority in consultation with the TEC Services (Environmental Health).

Reason: to secure temporary supply should mitigation/replacement measures prove necessary.

Construction

7.6 Each turbine shall be erected in the positions indicated on figure 1. Variation shall only be permitted, within the following parameters:

(1) a variation of less than 30 metres in turbine location may only be permitted following the approval of the location of both the turbine and the access road by the project ecologist and The Highland Council Archaeologist; and

(2) a variation between 30 metres and 50 in turbine location requires the written approval of the planning authority. In considering a variation within these parameters, the planning authority shall consult with Scottish Natural Heritage and both shall have regard to a revised layout presented by the company, showing the location of both the turbines and the access road.

If a proposed variation, in accordance with the preceding parameters, brings turbines numbered 3,4 or 12 within 50 metres of a watercourse, the planning authority shall consult the Scottish Environment Protection Agency before permitting the variation

Notwithstanding the provision of this condition, the position of turbines numbered 29, 30, 38, 39 and 40 shall not be varied in a northerly or westerly direction. Additionally, prior to undertaking any turbine erection works where a variation is proposed, the company shall provide to the planning authority a plan of the layout showing the proposed variation.

Reason: to ensure that any micro-siting avoids areas of high nature conservation value or archaeological value while safeguarding visual amenity and water quality. Additionally, this condition ensures that construction takes place in areas where the stability of peat is more certain.

7.7 The blades of all the turbines shall rotate in the same direction.

Reason: to reduce visual impact.

7.8 All cables between the turbines and the substation shall be laid underground and the ground thereafter reinstated in accordance with the plan as approved by the planning authority in consultation with Scottish Natural Heritage.

Reason: to ensure works are undertaken in a manner which minimises the impact on ecology and habitats.

7.9 Any spoil produced in the course of work, with the exception of peat stored in accordance with the provision of condition 3.13, shall be either wholly removed from the site or tipped and graded in locations and in a manner previously agreed with the planning authority.

Reason: to minimise visual impact and ensure compliance with pollution control legislation.

7.10 The developer shall undertake all works within the terms of the "Guidelines for Preventing Pollution from Civil Engineering Contracts" as published by SEPA.

Reason: to adhere to best practice with regard to pollution control.

Noise

7.11 Prior to the delivery to the site, full details of the wind turbines including the make, model, design, power rating and sound power levels of wind turbine to be used on site shall be submitted to the planning authority.

Reason: to provide information necessary for accurate assessment of noise impact.

7.12 The company shall log wind speed and wind direction data continually 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 or 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. Where the wind speed is measured at a height other than 10 m, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10m height. Details of the wind shear calculation shall be provided.

Reason: to provide information necessary for accurate assessment of noise impact.

7.13 At wind speeds not exceeding 12m/s, as measured or calculated at a height of 10m above ground level at the nearest wind monitoring mast, the wind turbine noise level at any dwelling or other noise sensitive premises shall not exceed:-

- (a) during night hours, 38dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.
- (b) during Quiet Waking Hours, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.

Reason: to protect the amenity at noise sensitive premises.

In this condition,

“wind turbine noise level” means the rated noise level due to the combined effect of all the wind turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU-R -97, pages 99 – 109.

“Background Noise Level” means the ambient noise level already present within the environment (in the absence of noise generated by the development) as measured and correlated with Wind Speeds.

“wind speeds” means wind speeds measured or calculated at a height of 10 metres above ground level on the wind farm site at the wind monitoring mast nearest to the premises of interest by reference to Figure 3 of the Farr Wind Farm, Environmental Statement, Volume 3, Volume of Figures, September 2002.

“Night hours” means 23:00 – 07:00 hours on all days.

“Quiet Waking Hours” means 18:00 – 23:00 hours on all days, plus 07:00 – 18:00 on Sundays and 13:00 – 18:00 hours on Saturdays.

“Noise Sensitive Premises” means premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.

7.14 At the request of the planning authority, following a valid complaint to the planning authority relating to noise emissions from the wind turbines, the company shall measure, at its own expense, the level of noise emissions from the wind turbines. The measurement and calculation of noise levels shall be undertaken in accordance with "The Assessment & Rating of Noise from Wind Farms", September 1996, ESTU report number ETSU-R-97 having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109.

Reason: to quantify the loss of amenity at noise sensitive premises resulting from the operation of the windfarm.

7.15 Should the noise levels in the foregoing condition be exceeded, the company shall take steps forthwith, to ensure that noise emissions from the wind farm are reduced to the aforementioned noise levels or less.

Reason: to ensure adequate mitigation is in place to protect amenity at noise sensitive premises.

7.16 Access to the site by heavy goods vehicles shall be restricted to 7.00 am to 7.00 pm on Mondays to Fridays and from 7.00 am to 12 noon on Saturdays with no such access on Sundays. Any construction activity involving audible noise from cutting, hammering or welding shall be subject to the foregoing hours, unless specific exceptions have received the prior approval of the planning authority in writing.

Reason: to minimise disturbance to local residents.

Miscellaneous Reporting Requirements

7.17 No work shall commence on site until the applicant has provided the Ministry of Defence with the detailed information requested in their letter of 17 September 2002, a copy of which is appended to this consent.

Reason: to enable military aircrew to avoid overflight of the site.

7.18 The company shall provide an 'as built' drawing to the planning authority within six months of commissioning of the development.

Reason: to have a complete record of the final development.



Head of Energy Division
A member of the staff of the Scottish Ministers

5 October 2004

COPY



SCOTTISH EXECUTIVE

STANLEY**DATE: 29 OCT 2004****File ref:**

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Your ref:
Our ref: IEC 3/43

Date: 05 October 2004

Mr Robert Warren
Npower Renewables Limited
North Range East Lodge
Mill Road
Stanley
Perthshire
PH1QE

Dear Mr Warren

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

1. I am directed by the Scottish Ministers to refer to the application dated 11 September 2002 under section 36 of the Electricity Act 1989 ("the Act") by Npower Renewables Limited ("the company") for both the consent of the Scottish Ministers to construct and operate a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire and their direction under section 57 (2) of the Town and Country Planning (Scotland) Act 1997 that planning permission for the development be deemed to be granted.

2. The Scottish Ministers have considered the environmental statement and subsequent submissions prepared by the company in support of the application, submissions prepared by those bodies approached as part of the formal consultation and all matters raised by other bodies. For the reasons set out below, the Scottish Ministers have decided to consent to the application and have issued a direction that planning permission is deemed to be granted.

Description and background

3. The proposed development is located on open moorland with some isolated hills to the south and west and more continuous high ground of the Monadhliath Mountains occurring to the west of the site. It is sited on an upland basin between the Findhorn and Nairn valleys at a height of 500 to 600 metres. It is situated off the A9 approximately 16 km south west of Inverness and 20 km north west of Aviemore.

4. You originally submitted a proposal for up to 45 wind turbines with a total capacity not exceeding 112.5 MW and of a blade tip height not exceeding 102 metres. In order to reduce

the visual impact of the development as viewed from the Strathnairn valley, you reduced the windfarm to 40 turbines. In terms of landscape designations, the site does not lie within any National Scenic Areas (NSAs), Regional Scenic Areas (RSAs) or Areas of Great Landscape Value (AGLVs). The site is not protected by European designations such as Special Areas of Conservation, Special Protected Areas or Ramsar sites and the nearest scenic area is the Cairngorms National Scenic Area which is located approximately 21.5 km to the south east of the site.

5. A number of organisations and departments were consulted by the Scottish Ministers. The advice from Scottish Natural Heritage (SNH) in this instance was that following your agreement to remove 5 turbines, and therefore limit the visual impact on the Strathnairn valley, the application for consent should be granted subject to conditions. Specifically, the concerns raised centred on the need for a peatland restoration plan, conditions governing construction methods and provision of further information on potential disturbance to otters.

6. The Scottish Environment Protection Agency (SEPA) also recommended that consent be granted and that the conditions drafted. Specifically, the concerns raised centred on the need for site specific construction method statements to limit risk of contamination arising from construction activities. A condition is required to ensure provision of detailed monitoring proposals and contingency plans.

7. Historic Scotland is content that your proposal does not compromise its statutory interests.

Planning policy and advice

8. The Director of Planning and Development at Highland Council, referred the section 36 application to the Council's Planning, Development, Europe and Tourism Committee. The Committee was of the view that whilst there are issues relating to visual and landscape impacts, local amenity and other matters, there are no substantive consultee objections to the section 36 application.

9. The Development Plan consists of the Highland Structure Plan (March 2001) and the Strathnairn, Strathdean and Loch Ness Local Plan.

10. The following references in the Highland Structure Plan (HSP) are of relevance:

Policy G2 identifies a number of assessment criteria on Design for Sustainability. Some key considerations for proposed development are:-

- maximise energy efficiency in terms of location, layout and design, including utilisation of renewable resources
- impact on individual and community residential amenity
- impact *inter alia* on habitats, landscape, species, scenery
- demonstrate sensitive siting and high quality design
- contribute to the economic and social development of the community

Developments which are judged to be significantly detrimental in terms of the above criteria shall not accord with the Structure Plan.

Policy G4 considers Community benefit and commitment

- Notes that Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands whilst recognising wider national interests
- Seeks agreements with developers
- Seeks a fund for local community initiatives where a development will have a long term impact on the environment (the developers reference their intention to establish a fund in their statement attaching)
- Seeks a financial bond for long term environmental restoration.

We note that you have reached an agreement with the Strathnairn and Strathdean Community Councils for both an index-linked capital lump sum and an annual contribution based on installed capacity.

11. Additionally, the Highland Council has a number of policies which specifically relate to renewable energy developments. Approval for such developments will normally be limited to the lifetime of the development and will be conditional on adequate provision for removal and restoration of the affected land.

Policy E2 – Wind Energy Developments states that; “Wind Energy proposals will be supported provided that impacts are not shown to be significantly detrimental. In addition to the General Strategic Policies, wind energy proposals will be assessed in respect of the following:-

- visual impact
- noise
- electro magnetic interference
- roads, bridges and traffic
- aircraft flightpaths/MOD operations
- cumulative effects”

12. The Strathnairn, Strathdean and Loch Ness East Local Plan (1997) is the currently adopted Local Plan for the area but will in due course be superseded by the Inverness Local Plan currently at Deposit Draft (see below). Relevant general policies in the Local Plan are as follows:-

The Council will encourage the sustainable use of the area’s resources and a wide distribution of employment opportunities by promoting:-

- expansion of established resource based activities;
- tourist related and service businesses;
- opportunities in the natural environment.

Additionally, the Council will encourage integrated use and management of resources in the landward area, and will continue to seek a balance between development and the conservation of features which represent the area’s outstanding natural and cultural heritage.”

13. The Inverness Local Plan Deposit Draft (September 2002), currently under revision seeks to be compatible and consistent in interpretation of the strategic policy framework of the Structure Plan which was approved by Scottish Ministers in March 2001. The Deposit Draft Local Plan sets out some general background and strategy for the area in terms of fostering prosperous and sustainable communities. The importance of tourism is recognised as well as the need to broaden the balance of economy and to develop, in sustainable terms, the natural advantages and resources of the area. In this context a map "Creating Prosperity" on page 10 of the Deposit Draft notes the upland area between Tomatin and Farr as being a potential area for wind farms.

14. The Scottish Executive sets out its planning policies through a series of national Planning Policy Guidelines and Planning Advice Notes. The following are of particular relevance to the consideration of your proposal:

Renewable Energy Developments (NPPG6) sets out the promotion of renewable sources of electricity generation as an integral part of the UK Government's energy policy. This document aims to provide guidance to support local authorities in delivering an increase in renewable energy development in Scotland; and

Planning Advice Note: Renewable Energy Technologies (PAN 45) supports the policies outlined in NPPG6 by providing information on the technologies for harnessing renewable energy for electricity generation. Additionally, this document presents advice on the issues which arise in connection with each technology.

The applicant's case

15. You have outlined the process which led to the selection of this site. This involved balancing a range of technical, environmental and planning issues. The site has a good wind resource, does not support any Sites of Special Scientific Interest (SSSI) or areas designated as of conservation importance within its boundaries. The site does not lie within a designated landscape and is at a reasonable distance from habitation. Access to the site is good and there is an available grid connection adjacent to the site.

16. You have been aware throughout the process that the landscape and visual impacts of the windfarm are a key issue in the assessment of this proposal. Your landscape and visual assessment concludes that the site will result in a prominent appearance within an area of some 6 kilometres radius. Since the deletion of 5 turbines on the western side of the site, the impact on the affected properties in Strathnairn is diminished but you accept that this may not be eliminated. Given the scale of the project, you are of the view that there will inevitably be some detrimental visual impact but find that the degree of this impact is acceptable.

17. A group opposed to your development Farr Wind Action Group (FARRWAG) has submitted two alternative layouts which move the turbines further to the east of the site and as a consequence render them invisible from Strathnairn and Strathdearn. The Scottish Ministers presented these alternatives to you for your consideration but you rejected them as they present a depleted wind yield and would lead to greater infrastructure costs.

18. In regard to deficiencies in ornithological information identified by the Scottish Ministers, you were asked to undertake further collision risk assessments, the results of which were presented to the Scottish Ministers for their consideration. Additionally, FARRWAG presented a dataset showing a significantly higher number of red kites using the site. You were asked to run the same risk analysis model on this dataset. You are of the view that the impact on the red kite population is not significant.

19. Following advice from Scottish Natural Heritage, the Scottish Ministers requested further information on ecological impacts, specifically on the potential for construction works to disturb otter and water vole populations which have been identified on the site. Water voles are an increasingly rare species and their habitat is protected under Section 9(4) of the Wildlife and Countryside Act 1981. We strongly recommend that you stay in close contact with Scottish Natural Heritage over the details of the work to be done in relation to voles to avoid any offence being committed. You are aware that otters are protected in terms of the EU Habitats Directive. Under the terms of the Conservation (Natural Habitats &c.) Regulations 1994, it is an offence to disturb or capture otters (a European Protected Species), damage or destroy their habitats, breeding sites or shelters unless a derogation is agreed by Ministers and a licence issued which would permit such actions to take place.

20. Scottish Natural Heritage had concerns that the development would have a significant impact on the blanket bog across the site. Blanket bog is a priority habitat in terms of the EU Habitats Directive and therefore carries the highest level of protection. In discharging these responsibilities, Scottish Natural Heritage have indicated that a peatland restoration plan outlining restoration methodology should be agreed between you, the landowner and Highland Council.

21. The hydrological impacts of the development have been assessed by the Scottish Environment Protection Agency (SEPA). SEPA's concerns centre on the pollution risks arising from construction activities and the creation of access roads and tracks. SEPA has requested conditions to secure detailed construction method statements, monitoring proposals and contingency plans.

22. In light of the peat slide associated with a windfarm construction at Derrybrien in Co. Galway, the Scottish Ministers asked you to undertake an analysis of peat depth across the site, from this to complete an assessment of peat slide risk, and to set out your proposals for disposal of excavated peat. You have complied with these requests and put in place measures to minimise the risk of peat slide.

23. Historic Scotland has confirmed that there are no impacts arising from the development which will affect its statutory archaeological interests.

The Scottish Ministers' Consideration

24. Following your agreement to delete 5 turbines to the east of the site, Scottish Natural Heritage was content to withdraw its objection on landscape and visual grounds. Scottish Natural Heritage accepts that the windfarm will inevitably be prominent from many local viewpoints but overall, the landscape can accommodate this development. FARRWAG asked you to consider two alternative layouts which would eliminate the visual impact at Strathnairn and Strathdearn. Given your rejection of these alternatives Scottish Natural Heritage was not asked to advise Ministers on the resultant landscape implications. The

Scottish Ministers have limited their consideration of the landscape and visual implications to the application as submitted and are accordingly content to accept the advice of Scottish Natural Heritage on this issue.

25. A cumulative visual impact has been undertaken in the context of Novar Wind Farm and the expected submission of a proposal at Dunmaglass, 10km to the south west. Scottish Ministers are content that the separation from Novar does not make cumulative impact significant. Comparisons with Dunmaglass are not appropriate as a planning application for this development has not been submitted.

26. In considering the ornithological impact of this proposal, the Scottish Ministers have had regard to their obligations in terms of the EU Directive on the Conservation of Wild Birds ("the Birds Directive"). You will be aware that the requirements of this Directive are implemented by the relevant sections of the Wildlife and Countryside Act 1981. The presence of a protected species, in this instance red kites which are listed in Annex 1 to the Birds Directive and therefore carry the highest level of protection, has been a material consideration in the assessment of this proposal. The Scottish Ministers have adopted a precautionary approach to avoid harm to the red kite population. They are convinced that there is a need for a monitoring regime specifically in relation to the red kites. This is pertinent as your dataset considered along with that presented by FARRWAG demonstrates that the red kites are not concentrated on a particular area of the site and the potential effects cannot therefore be ameliorated by the removal of a particular group of turbines. The Scottish Ministers recognise that the distance of these non-breeding birds from the breeding population on the Black Isle means that any deaths sustained as a result of the operation of the windfarm may not be replaced. To address this issue, the Scottish Ministers propose an intensive monitoring programme funded by you and overseen by a steering group chaired by the Scottish Executive comprising members representing Scottish Natural Heritage and the Royal Society for the Protection of Birds. Broadly, the parameters of this programme include:

- intensive vantage point surveys throughout 2005 and for 5 years into the operational period of the windfarm;
- wing-tag observations to quantify turnover of birds;
- search for collision casualties; and
- search and removal of carrion

The steering group will analyse the results of surveys as they emerge and consider further measures as appropriate such as; radio-tagging, establishing feeding stations and shutting down those turbines demonstrably responsible for frequent bird deaths.

27. In considering the ecological issues the Scottish Ministers have had regard to the letter of 1 October 2003 from Scottish Natural Heritage indicating that it is content that the ecological issues relating to water voles and otters have been fully addressed. You are now in receipt of a licence to disturb otters in terms of The Conservation (Natural Habitats &c.) Regulations 1994, the terms and conditions of which are outlined in the letter which accompanies the licence.

28. In considering the potential impact of your development on the blanket bog, the Scottish Ministers note that you have entered a planning agreement with the landowner and Highland Council in terms of section 75 of the Town and Country Planning (Scotland) Act.

Ministers accept the advice of Scottish Natural Heritage that this agreement secures sufficient mitigation and compensation to allow the development to proceed.

29. In assessing the hydrological impacts of the development, the Scottish Ministers accept the advice of SEPA on measures necessary to protect water quality and control pollution. In this respect they are content to apply those conditions derived from SEPA's response to the consultation.

30. In considering peat depth issues, the Scottish Ministers acknowledge that the design of this application was well advanced when the implications of the Derrybrien peat slide became apparent. It is welcome that you have conducted extensive peat depth analysis across the site and submitted the results for Ministers' consideration. Having commissioned an independent analysis of your report, Scottish Ministers are content that the risk of peat slide is generally low across the site but a precautionary approach is warranted at 4 of the turbine positions. To address this the Scottish Ministers have imposed a condition allowing a wider degree of micro-siting and requiring further analysis to inform the final positioning at the affected turbine positions.

31. You have undertaken that where disposal of excavated peat either on the shoulders of tracks, around turbine bases is not possible, it will be temporarily stored in on site borrow pits pending disposal off-site. This commitment has been secured as a condition of the consent.

32. The Scottish Ministers are content that Historic Scotland have fully and properly advised them that there are no features of this development which could compromise its statutory archaeological interests.

The Scottish Ministers' Determination

33. In terms of schedule 8 to the Electricity Act 1989 (as amended), if the local authority makes a valid objection and does not withdraw it, the Scottish Ministers must convene a PLI before determining the application. As Highland Council did not object to the Farr Windfarm proposal, in this instance, a PLI is not a statutory requirement.

34. Additionally, schedule 8 provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of the Electricity (Application for Consent) Regulations 1990 ("the 1990 Regulations"), the Scottish Ministers "shall consider those objections together with all other material considerations" with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

35. As stated in paragraph 33 above, the planning authority has not maintained an objection to the application and as a consequence, the Scottish Ministers are not obliged under paragraph 2(2) of Schedule 8 to the Act to cause a public inquiry to be held. Paragraph 3(2) of Schedule 8 to the Act, however, requires the Scottish Ministers to consider all the objections they have received, together with all other material considerations, with a view to determining whether a public inquiry should be held and, if they think it appropriate to do so, they shall cause a PLI to be held. The Scottish Ministers received 32 individual representations, and an objection and supporting reports and information from FARRWAG pursuant to the 1990 Regulations.

36. In reaching this decision without invoking the discretionary power to cause a PLI to be held the Scottish Ministers are content that adequate opportunity was afforded for public representation and that those with a right to make representation could have their representation properly taken into account. The Scottish Ministers are further content that they can weigh all the conflicting issues without recourse to a public inquiry.

37. The Scottish Ministers are content that the Environmental Statement is sufficient to allow them to make a determination on the application.

38. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") prohibit the Scottish Ministers from granting consent unless they have fully considered the environmental information, as defined in those regulations.

39. The Scottish Ministers have considered the environmental information carefully; in addition to the Environmental Statement, they have considered the comments made by the planning authority and those designated as statutory consultees in terms of Regulation 6 of the 1990 Regulations and those of the consultative bodies in terms of the 2000 Regulations.

40. Schedule 9 of the 1989 Act places a duty on the company to have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. It requires the company to do what it reasonably can to mitigate the effects that the development would have on these features. Schedule 9 also requires the Scottish Ministers have regard to these features and the extent to which the company has complied with this duty. The Scottish Ministers are satisfied that the company has had due regard to these features and, consequently consent for this proposal in terms of section 36 of the Electricity Act 1989 (as amended) and issue a direction that planning permission be deemed to be granted. The section 36 consent is subject to 14 conditions and the deemed planning permission is subject to 18 conditions. A copy of the consent is enclosed with this letter.

41. Copies of this letter have been sent to Highland Council as planning authority and all those consultees and individuals who made a representation about this proposal.

Yours sincerely



LESLEY THOMSON

A member of the staff of the Scottish Ministers

ELECTRICITY ACT 1989
and
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

Consent and deemed planning permission

1. The Scottish Ministers, in exercise of the powers conferred on them by section 36 of the Electricity Act 1989 (as amended by section 93 of the Energy Act 2004) and section 57(2) of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them in that behalf hereby consent to:-
 - 1.1 the construction and operation by Npower Renewables Limited ("the company"), or their permitted assignees who are in possession of a letter of authorisation from the Scottish Ministers issued in accordance with paragraph 3.2 below, of a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire, as described in the application, the Environmental Statement, and maps, duly endorsed on behalf of the Scottish Ministers, accompanying the application outlined in Figure 1 ("the development");
 - 1.2 subject to the definitions set out in paragraph 6 and conditions set out in paragraph 7, the Scottish Ministers direct that planning permission for the development shall be deemed to be granted.

Description of Development

2. Subject to the conditions set out in paragraphs 3 and 7, the development shall comprise:
 - 1) up to 40 wind turbines, of overall height from base to tip not exceeding 102 metres, unless prior agreement is secured from the planning authority to a greater overall height and of a total capacity not exceeding 112.5 Megawatts;
 - 2) 3 anemometer masts;
 - 3) all necessary wind turbine transformers and housings,
 - 4) site tracks and foundations; and
 - 5) all on-site switch-gear and metering building and associated works including electrical cabling and temporary borrow areas.

Timing and assignation

- 3.1 The consent is for a period from the date of this consent until 25 years from the date of commissioning. The company is required to obtain by no later than the end of said 25 year period, written confirmation from the planning authority that all decommissioning works have been completed in accordance with the approved decommissioning scheme referred to in condition 3.4 of this consent. Written confirmation of the date of the commissioning shall

provision as permitted in terms of condition 7.8. The Scottish Ministers shall consider this report in consultation with the planning authority and Scottish Natural Heritage. Following this consultation, the Scottish Ministers shall approve the appropriate position for these turbines and associated tracks. The company shall erect these turbines and associated tracks in accordance with that approval. If the Scottish Ministers consider that they cannot approve a position for each or any of these, the turbines they shall not be erected. In this event, the tracks shall be re-aligned to take account of any deletion and plans submitted for the consideration of the Scottish Ministers in consultation with the planning authority. Thereafter tracks shall be constructed in accordance with any approval granted.

3.8 Prior to any work commencing on site, details of the measures to be taken to protect breeding birds, and specifically to discourage birds from breeding on those areas of the site to be worked in during that breeding season, shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. Thereafter the measures, as approved, shall be implemented.

3.9 The company shall undertake six years of monitoring of breeding birds from the date of this consent: first, annually for a period of 3 years following the final commissioning of the development, and second at five yearly intervals, at 5, 10 and 15 years after the construction phase is completed. This monitoring should be conducted to an identical standard on both the windfarm site and an appropriate reference site. The detail of this monitoring and of the reference site shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. The findings of these surveys shall be collated into two reports, after three and fifteen years, and all of the original data (in formats agreed by the Scottish Ministers in consultation with Scottish Natural Heritage), and the reports will be made available to the Scottish Ministers, the planning authority and Scottish Natural Heritage. After the first report, any mitigation measures developed and approved by Scottish Ministers in consultation with Scottish Natural Heritage shall be implemented.

3.10 A group, chaired by an officer of the Scottish Executive as appointed by the Scottish Ministers to be known as the Farr Windfarm Monitoring Group ("FWMG") shall be established. Membership of the group (apart from the Chair) shall comprise representatives of Scottish Natural Heritage and the Royal Society for the Protection of Birds and the independent ecological contractor.

3.11 Prior to any work commencing on site, the company shall identify an independent contractor whose appointment has been approved by the Scottish Ministers in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds. If at any point in this process, the Scottish Ministers determine that the independent contractor has failed to implement these provisions, the company shall identify a replacement whose appointment shall be approved in accordance with the foregoing terms. This contractor shall undertake a programme of monitoring for a schedule of species to be agreed by FWMG. All costs relating to this programme shall be met by the company. This programme of monitoring shall include:

- (1) three three-hour watches from a minimum of three vantage points each month from the date of this consent until 5 years after the commissioning of the development. These observations shall record flight-lines, any collisions or avoidance activity, narrative report as specified by FWMG; and

"the application" means the application submitted by National Wind Power Limited on 11 September 2002, as amended by the letter from the company dated 30 January 2003;

"the commencement of the development" means the date on which the development shall be taken as initiated in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

"the commissioning of the development" means the date on which the first wind turbine generator forming part of the development first supplies electricity to the public electricity network on a commercial basis;

"the company" means Npower Renewables Limited, having their Registered Office at Reading Bridge House, Reading Bridge, Reading, Berkshire, RG1 8LS (registered company number 02550622);

"the date of final commissioning" means the date on which all wind turbine generators forming the development have supplied electricity on a commercial basis or such date as the Scottish Ministers deem the development to be complete;

"the development" means a wind-powered electricity generating station at Farr near Tomatin comprising no more than 40 wind turbines and associated works, all as more particularly described in the application;

"material operation" has the same meaning as in section 27 of the Town and Country Planning (Scotland) Act 1997;

"planning authority" means The Highland Council;

"site" means the area of land outlined in red on Figure 1 annexed hereto;

"switchgear metering building" means the area of land coloured yellow on Figure 1 annexed hereto.

Conditions

7. For the development described in paragraph 2, consent as outlined in paragraph 1 is subject to the timescales outlined in paragraph 3. Additionally, this development is subject to the following conditions:-

7.1 At least one month prior to commencement of the development, the company 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 on the expiry of this consent. No work shall commence on the site until written confirmation has been given by the planning authority that the proposed bond or other financial provision is satisfactory. The company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent. Thereafter the company shall at 5-yearly intervals provide the planning authority with a review of the proposed bond or other financial provision against the decommissioning and restoration proposals. The planning authority, if

7.5 No work shall commence on site until the company has obtained written approval from the planning authority for detailed plans, for all activities involving a scheme of works designed for mitigation and where possible enhancement. The mitigation and enhancement works shall be carried out in accordance with the approved plans and within timescales agreed with the planning authority. Thereafter, each plan, as amended by the planning authority, shall be implemented. Plans shall be lodged to cover:

- 7.5.1 site management including habitat enhancement. Prior to giving written approval for this plan, the planning authority shall consult with Scottish Environment Protection Agency and Scottish Natural Heritage;
- 7.5.2 a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation. All arrangements thereby approved shall be implemented in accordance with the approved timetable for investigation;
- 7.5.3 no work shall commence on site until the developer has carried out a survey of existing water supplies arising from and within 50 metres of the site, identifying the exact sources, premises served and distribution network. Thereafter, a mitigation plan to prevent pollution of the private water supply at Wester Lairs, to the water catchment area above Farr, and to the area of intake for water supplies to Tomatin Distillery shall be submitted for the prior written approval of the planning authority in consultation with Scottish Water. Where said plan establishes that a supply is required to be temporarily or permanently replaced, the replacement supply shall provide sufficient quantity of water and meet relevant quality standards.

Reason: to ensure compliance with all commitments made in the environmental statement and subsequent schemes developed following the consultation process.

- 7.5.4 Temporary water supplies must be provided to those affected until permanent mitigation and replacement measures can be implemented. Such permanent measures shall be completed within one month of the erection of any mast or other works affecting the supply, as identified in the assessment, to the satisfaction of the planning authority in consultation with the TEC Services (Environmental Health).

Reason: to secure temporary supply should mitigation/replacement measures prove necessary.

Construction

7.6 Each turbine shall be erected in the positions indicated on figure 1. Variation shall only be permitted, within the following parameters:

- (1) a variation of less than 30 metres in turbine location may only be permitted following the approval of the location of both the turbine and the access road by the project ecologist and The Highland Council Archaeologist; and

7.12 The company shall log wind speed and wind direction data continually 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 or 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. Where the wind speed is measured at a height other than 10 m, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10m height. Details of the wind shear calculation shall be provided.

Reason: to provide information necessary for accurate assessment of noise impact.

7.13 At wind speeds not exceeding 12m/s, as measured or calculated at a height of 10m above ground level at the nearest wind monitoring mast, the wind turbine noise level at any dwelling or other noise sensitive premises shall not exceed:-

- (a) during night hours, 38dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.
- (b) during Quiet Waking Hours, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.

Reason: to protect the amenity at noise sensitive premises.

In this condition,

“wind turbine noise level” means the rated noise level due to the combined effect of all the wind turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU-R -97, pages 99 – 109.

“Background Noise Level” means the ambient noise level already present within the environment (in the absence of noise generated by the development) as measured and correlated with Wind Speeds.

“wind speeds” means wind speeds measured or calculated at a height of 10 metres above ground level on the wind farm site at the wind monitoring mast nearest to the premises of interest by reference to Figure 3 of the Farr Wind Farm, Environmental Statement, Volume 3, Volume of Figures, September 2002.

“Night hours” means 23:00 – 07:00 hours on all days.

“Quiet Waking Hours” means 18:00 – 23:00 hours on all days, plus 07:00 – 18:00 on Sundays and 13:00 – 18:00 hours on Saturdays.

“Noise Sensitive Premises” means premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.

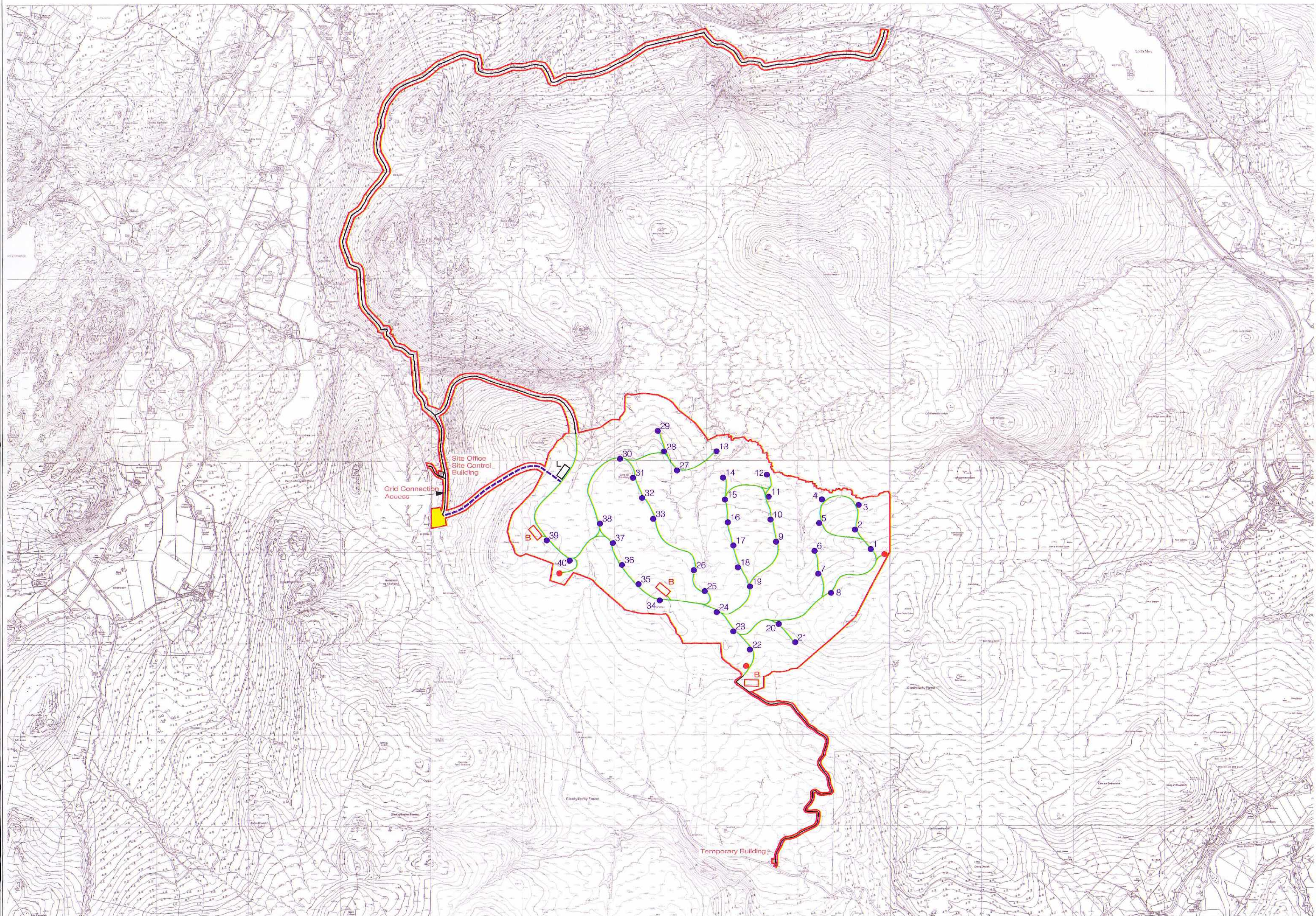
FARR
WIND FARM

FARR
WINDFARM LTD

FIGURE 1

KEY:

- Turbine Locations
- Anemometer Masts
- Site Boundary
- Underground Grid Connection
- Site Access
- Internal Access
- B Borrow Pit Location
- L Laydown Area



NOTES:

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Scale: 1:20,000
0m 250m 500m 1km



ELECTRICITY ACT 1989
SECTION 36 SITE MAP
REVISED