

## Item: 5

**Planning Committee: 20 March 2024.**

**Erect Wind Turbine and Associated Development (repowering of existing site) at Ludenhill (Land Near), Lochside Road, Birsay.**

**Report by Corporate Director for Neighbourhood Services and Infrastructure.**

### 1. Summary

#### 1.1.

It is proposed to repower an existing wind turbine site, by the removal of an existing turbine, and the construction and operation of a replacement turbine at Ludenhill, Birsay. The proposed turbine is at the same overall site, with location altered slightly to allow for a new turbine foundation. The proposed turbine has a hub height of 50 metres and a blade tip height of 76 metres, higher than the blade tip height of 46.5 metres of the existing turbine. No consultation bodies have objected, and no valid representations have been received. The application is accompanied by an Environmental Impact Assessment Report (EIAR), and therefore, in accordance with the Scheme of Delegation, the application must be reported to the Planning Committee for determination. The proposed development is considered compliant with all relevant national and local policies, noting support for repowering of wind energy development in National Planning Framework 4 (NPF4). In terms of material planning considerations, no unacceptable impacts are anticipated and, where subject to embedded mitigation, matters could be controlled by planning conditions. As such, the application is recommended for approval.

Application Number.	23/295/TPP.
Application Type.	Planning Permission (with environmental impact assessment).
Proposal.	Erect a wind turbine (maximum height 76 metres, maximum capacity 500kW) extend a crane pad and create a temporary access (repowering of existing site).
Location.	Ludenhill (Land Near), Lochside Road, Birsay, Orkney.
Applicant.	Constantine Wind Energy Limited.
Agent.	Axis, c/o Steve Harding, Camelia House, 76 Water Lane, Wilmslow, Cheshire, SK9 5BB.

## **1.2.**

All application documents (including plans, consultation responses and representations) are available for members to view [here](#) (click on “Accept and Search” to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

## **2. Consultation Bodies**

### **2.1. Statutory Consultation Bodies**

#### **2.1.1.**

The following agencies are the statutory consultation bodies as prescribed by the 2017 EIA Regulations:

- Historic Environment Scotland (HES).
- NatureScot.
- Scottish Water (SW).
- Scottish Environmental Protection Agency (SEPA).

#### **2.1.2.**

In addition to those listed above, the following is a statutory consultation body as prescribed by the 2013 Development Management Regulations:

- Roads Services (as roads authority).

### **2.2. Non-Statutory Consultation Bodies**

- Arqiva (telecommunications company, providing infrastructure and broadcast transmission facilities).
- Highlands and Islands Airports Limited.
- Joint Radio Company (industry-owned spectrum management consultancy and spectrum management organisation).
- Kirkwall Airport – Senior Pilot.
- Ministry of Defence.
- NATS (the main air navigation service provider in the UK).
- Orkney Islands Council Airfield Superintendent.
- Islands Archaeologist.
- Environmental Health.
- Development and Marine Planning –Environment.
- Royal Society for the Protection of Birds Scotland (RSPB Scotland).

## **3. Consultation Responses**

### **3.1.**

Section 3 lists issues raised by statutory consultation bodies that are of relevance to the robustness of the EIAR. Other consultation responses received are comment only, and have specified necessary planning conditions where relevant, including Environmental Health in relation to noise. No consultation body has objected.

### **3.2. Historic Environment Scotland (HES)**

#### **3.2.1.**

No objection. HES does not agree with some of the conclusions of the EIAR and considers that the scale of impacts resulting from this development are underestimated and concludes, “The proposed turbine would have a significant effect on the setting of Hundland Hill enclosure, an impact much greater than the existing turbine. However, whilst the impacts would be significant and increased, the impacts would not be sufficient to warrant an objection”.

#### **3.2.2.**

With respect to the turbine’s presence in the setting of the Park Holm and Stoney Holm crannogs and visual impacts, HES notes that “This would be a significant impact” and “the presence of the existing turbine already compromises these specific views and the increased impacts are insufficient to warrant an objection”.

#### **3.2.3.**

HES comments that, with reference to Heart of Neolithic Orkney World Heritage Site (WHS), the proposal represents a cumulative impact of development which breaks the skyline of the sensitive ridgelines. Without prejudice to any other planning applications, HES notes that any development with a greater presence above the sensitive ridgelines than the current proposal would generate serious concerns and adds “We acknowledge that the principle of development at this site has already been established. However, given the significant impact of the proposed turbine upon Hundland Hill’s setting and the level of impacts upon the settings of the crannogs and the OUV [Outstanding Universal Value] of the WHS, we strongly encourage the applicant to explore options to reduce the height of the proposed turbine, for example to one that is of a similar height to the existing, in order to reduce these impacts”.

#### **3.2.4.**

This position of potential impacts and suggested amendment, with the conclusion of no objection, forms part of the balance of considerations.

## 3.2. NatureScot

### 3.2.1.

No objection. NatureScot notes, "There are natural heritage interests of international importance on the site, but our advice is that these will not be adversely affected by the proposal".

### 3.2.2.

The proposal is likely to have a significant effect on the breeding and non-breeding hen harrier, breeding red-throated diver and breeding short-eared owl of Orkney Mainland Moors Special Protection Area (SPA). Consequently, the Council as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest(s).

### 3.2.3.

In that context, NatureScot notes, "Based on the information provided, our conclusion is that the proposal will not adversely affect the integrity of the site [the SPA] ... The proposal to repower the existing single turbine at this site poses a low level of risk to SPA species and is unlikely to adversely affect the populations of hen harrier, short-eared owl or red-throated diver. The proposal is also unlikely to significantly contribute to cumulative impacts on SPA birds, when considered in combination with other developments close to this SPA".

### 3.2.4.

The proposal does not raise landscape issues of national interest.

## 4. Representations

No valid representations received.

## 5. Relevant Planning History

### 5.1.

Reference	Proposal	Location	Decision	Date
11/703/PP	Erect a wind turbine (max height 46.6m).	Ludenhill Farm (Land Near), Stonymildars, Swannay, Orkney.	Grant subject to conditions.	12.05.12.

### 5.2.

It should be noted that the current application site is surrounded by the application site for the Nisthill Windfarm. This is subject to a current planning application, reference 22/320/TPMAJ, also accompanied by an EIAR. Whilst some connectivity will result in relation to some material considerations, each application must be determined separately on its merits.

## 6. Relevant Planning Policy and Guidance

### 6.1.

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

### 6.2.

The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development.
  - Policy 7C – Energy – All Renewables and Low Carbon Energy Developments.
  - Policy 7D – Energy – Onshore Wind Energy Development.
  - Policy 8A – Historic Environment and Cultural Heritage – All Development.
  - Policy 8B - Historic Environment and Cultural Heritage – Specific Policy Considerations.
  - Policy 9A – Natural Heritage and Landscape - Natural Heritage Designations.
  - Policy 9B – Natural Heritage and Landscape – Protected Species.
  - Policy 9C – Natural Heritage and Landscape – Wider Biodiversity and Geodiversity.
  - Policy 9G – Natural Heritage and Landscape – Landscape.
  - Policy 14 – Transport, Travel and Road Network Structure.
- Guidance:
  - Supplementary Guidance – Energy (9 March 2017).
  - Development Management Guidance: Energy (2021).
  - Supplementary Guidance – Historic Environment and Cultural Heritage (9 March 2017).
  - Supplementary Guidance – Natural Environment (2017).
  - Planning Policy Advice - Heart of Neolithic Orkney World Heritage Site (2010).
  - Planning Policy Advice – Landscape Capacity Assessment for Wind Energy in Orkney (2015).
  - Supplementary Guidance: Natural Environment (2017).
  - Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).

- Policy 3 – Biodiversity.
- Policy 4 – Natural places.
- Policy 7 – Historic assets and places.
- Policy 11 – Energy.

## **7. Legal Aspects**

### **7.1.**

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”

### **7.2.**

Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”

### **7.3.**

Annex A continues as follows:

- The House of Lords’ judgement also set out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision.
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
  - Consider whether or not the proposal accords with the development plan.
  - Identify and consider relevant material considerations for and against the proposal.
  - Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - It should relate to the particular application.

- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy and UK Government policy on reserved matters.
  - The National Planning Framework.
  - Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed local development plan or proposed supplementary guidance.
  - Community plans.
  - The environmental impact of the proposal.
  - The design of the proposed development and its relationship to its surroundings.
  - Access, provision of infrastructure and planning history of the site.
  - Views of statutory and other consultees.
  - Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

#### **7.4.**

Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.

- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

## **7.5.**

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

## **7.6. Status of the Local Development Plan**

Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

## **7.7. Status of National Planning Framework 4**

### **7.7.1.**

National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of the National Planning Framework and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of National Planning Framework 4 and a provision of the Orkney Local Development Plan 2017, National Planning Framework 4 is to prevail as it was adopted later. It is important to note that National Planning Framework 4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in National Planning Framework 4 and can be used to guide decision-making.

### **7.7.2.**

In the current case, there is not considered to be any incompatibility between the provisions of National Planning Framework 4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual National Planning Framework 4 policies, however, there are some new provisions, including biodiversity, and the proposed development has also been assessed against these as appropriate.

## **8. Environmental Impact Assessment**

### **8.1. Screening Opinion**

A request to adopt a screening opinion was submitted to the Planning Authority in March 2023, for the erection of an 850kW wind turbine (maximum height 76 metres) (repowering of existing site), in accordance with Regulation 9 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ('the 2017 EIA Regulations'). The proposal is a development of a type described in Column 1 and Column 2 of Schedule 2 of the 2017 EIA Regulations and classed as being within a 'Sensitive Area'. As such it met the thresholds for consideration of Environmental Impact Assessment reporting. The potential for the development to



result in likely significant effects was determined from the environmental information presented, based on the proposal, its location and potential for effects to sensitive receptors. It was concluded that an EIA was required for the proposed development.

## **8.2. Environmental Impact Assessment Report**

The planning application was submitted in August 2023, accompanied by an EIAR prepared in accordance with the 2017 EIA Regulations. The submitted EIAR has been subject to third party peer review on behalf of the Planning Authority. The submitted application and its accompanying EIAR have been subject to consultation and advertisement within the period of consideration of the application. The EIAR is considered robust and to be compliant with the requirements of the 2017 EIA Regulations.

## **9. Assessment**

### **9.1. Site Description**

The site is located between the Loch of Swannay and the Loch of Hundland, as indicated in the Location Plan attached as Appendix 1 to this report. Surrounded by agricultural land, the site currently includes a single Windflow 500 turbine, which is 30 metres to hub and 33 metre diameter blades, with 46.5 metre blade tip height. Access to the site is via an existing purpose-built access track, approved with the existing turbine under planning permission 11/703/TPP, which is formed directly from the access road to Ludenhill Farm. The closest residential property is Ludenhill Farm, which is approximately 560 metres to the north-east of the existing wind turbine, with the next closest residential properties at Dale, approximately 720 metres north-northwest and at Nisthouse, approximately 800 metres south-west.

### **9.2. Proposed Development**

It is proposed to repower the site and install a replacement turbine, with a hub height of 50 metres, blade diameter of 52 metres, and a blade tip height of 76 metres. The proposed location is adjacent to the existing turbine (as the proposed turbine would not be compatible with the existing foundation). The new foundation pad is proposed within the area of the existing access, and if approved and constructed the existing turbine foundation would be used as an extension of the existing crane pad. The proposed turbine would have a rated output capacity of 500kW. The developer notes that whilst that is consistent with the existing turbine, energy production onsite would be increased due to improved wind to energy conversion efficiency, heightened reliability, increased wind speeds at taller heights, and a larger swept area of wind capture. The existing switchgear building and cabling would be used.

### **9.3. Alternatives**

Schedule 4 of the 2017 EIA Regulations requires an EIAR to include a description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option. The main alternatives that have been considered include location, scale and site access. It is identified in the EIAR that the

location was primarily selected, as repowering an existing wind turbine site was likely to have a more limited environmental impact than a new development elsewhere. With regards scale, a larger turbine (86 metres to tip height) was considered to have an increased impact on heritage features and a smaller turbine (69 metres) was considered less efficient but with similar heritage impacts to the proposed turbine. HES asked the applicant to consider the smaller turbine.

## **9.4. Principle**

### **9.4.1.**

Policy 11 of NPF4 states “a) Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported. These include: i. wind farms including repowering, extending, expanding and extending the life of existing wind farms”.

### **9.4.2.**

The Local Development Plan “seeks to ensure that Orkney’s full potential for electricity and heat from renewable sources is achieved, whilst ensuring that there are no unacceptable impacts on relevant environmental and community considerations”, and Policy 7 ‘Energy’ provides general support for the “development of renewable and low carbon energy schemes...where it has been demonstrated that the proposal will not result in significant adverse effects on known constraints”.

### **9.4.3.**

Supplementary Guidance ‘Energy’ provides nine criteria against which wind energy developments of all scales, including repowering, are assessed, as follows:

- Development Criterion 1 – Communities and Amenity.
- Development Criterion 2 – Landscape and Visual Impact.
- Development Criterion 3 – Natural Heritage.
- Development Criterion 4 – Historic Environment.
- Development Criterion 5 – Tourism and Recreation.
- Development Criterion 6 – Peat and Carbon Rich Soils.
- Development Criterion 7 – Water Environment.
- Development Criterion 8 – Aviation, Defence and Communications.
- Development Criterion 9 – Construction and Decommissioning.

### **9.4.4.**

In general policy terms, the principle of the proposed development is acceptable, subject to detailed assessment of potential impacts.

## **9.5. Amenity**

The EIAR addresses emissions from the proposed development with reference to noise, air quality and shadow flicker, in effect scoping these out of the EIAR. Environmental Health raised no objections in relation to noise, subject to conditions,

noting that a Noise Impact Assessment was submitted with the application. A shadow flicker protocol would be secured by planning condition. Based on these controls and noting the distance to neighbouring properties and that this is a repowering, no unacceptable amenity impacts are anticipated.

## **9.6. Landscape and Visual Impact**

### **9.6.1.**

The proposal does not raise landscape issues of national interest, noting that the principle of a single turbine at the site is already established. The EIAR sets out the assessment of the proposed development with respect to landscape and visual impacts, and identifies no significant residual effects during either the construction, operation or decommissioning stages.

### **9.6.2.**

Where the proposed development is considered in combination with consented or proposed windfarm development, the EIAR highlights the proposed Nisthill scheme (22/320/TPPMAJ) and states “should the proposed development be added into that context, there would be a clear difference in size and scale with the surrounding Nisthill turbines, and this would be obvious in views from the surrounding area...This contrast is likely to exacerbate the existing effects of the Nisthill turbines and would result in localised significant cumulative landscape and visual effects. However, the key source of cumulative landscape and visual change would be the Nisthill turbines, due to their appreciably greater size than other schemes in the vicinity, and the effects of this would occur independently of the presence/ absence of the Proposed Development”.

### **9.6.3.**

No unacceptable amenity impacts are anticipated from the repowering of the site.

## **9.7. Natural Heritage**

### **9.7.1.**

The EIAR sets out the assessment of the development with respect to biodiversity. In order that the impact assessment be proportionate, only those ecological features for which there is potential for a significant effect because of the proposed development, following embedded mitigation measures, were taken forward for assessment. The EIAR identifies no significant effects during either the construction, operation, or decommissioning stages.

### **9.7.2.**

NatureScot notes that the proposal is close to Orkney Mainland Moors Special Protection Area (SPA), protected for its breeding and non-breeding hen harrier, breeding red-throated diver and breeding short-eared owl populations, and that the proposal is likely to have a significant effect on these listed qualifying interests. Consequently, the Council as competent authority is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interest(s). This is carried out by Development Management. Critically, NatureScot

concludes that natural heritage interests of international importance on the site will not be adversely affected by the proposal.

### **9.7.3.**

The site also lies adjacent to the West Mainland Moorlands Site of Special Scientific Interest (SSSI), protected for its upland habitats (including blanket bog), red-throated diver, hen harrier, short-eared owl and breeding bird assemblage. Given the separation distance between the SSSI and the proposal, and as a repowering of an existing site, NatureScot advises that the habitat and breeding bird assemblage features would not be affected by the proposal. In relation to hen harrier, red-throated diver and short-eared owl, the advice provided regarding the SPA applies.

### **9.7.4.**

Policy 3(c) of NPF4 requires development to include appropriate measures to conserve, restore and enhance biodiversity. Given the very constrained nature and scale of the site, in this case on-site opportunities for biodiversity enhancement are limited. Opportunities were explored by the agent on land in the applicant's ownership, neighbouring properties in proximity to the site, and other areas in Orkney where the applicant retains an interest. The Council has not finalised nature networks (e.g. restoration areas and/or other environmental projects where a contribution can be made). In this context, and given the very limited nature of the site (the red line application site boundary), there being no other land identified in the control of the applicant, the nature of the application as a renewable energy development, and specifically as a repowering with the principle of development established, NPF4 can be read as a whole on this particular matter and the enhancement requirements of Policy 3(c) outweighed by other considerations.

## **9.8. Historic Environment Scotland (HES)**

### **9.8.1.**

HES noted in its consultation response to the Screening Opinion that the existing turbine on the site has an adverse effect on the setting of three nearby scheduled monuments and that an increase in the height of this turbine by its replacement would amplify setting impacts. HES also identified potential impacts to the Heart of Neolithic Orkney World Heritage Site and requested that these likely effects were assessed. It was identified that the proposed development has potential to affect the following assets:

- Hundland Hill, enclosure 500m NE of Nisthouse (SM13451).
- Park Holm, artificial island and causeway, Loch of Swannay (SM1362).
- Stoney Holm, crannog, Loch of Swannay (SM1394).
- The Heart of Neolithic Orkney (World Heritage Site).

### **9.8.2.**

HES states, "We do not agree with some of the conclusions of the EIAR as we consider that it has underestimated the scale of impacts resulting from this development".

### **9.8.3.**

In terms of the Hundland Hill enclosure, HES agrees with the conclusion of the EIAR that the monument would experience significant adverse effects. The proposed turbine would have an impact much greater than the existing turbine. However, whilst the impacts would be significant and increased, HES confirms the impacts would not be sufficient to warrant an objection.

### **9.8.4.**

In terms of the Park Holm and Stoney Holm crannogs, from both crannogs, the proposal would appear as a large, lone structure in an otherwise featureless skyline to their west. The turbine's presence in the crannogs' setting would be made more obvious through it being the only tall feature in this direction. The proposed larger turbine would amplify the adverse impact the existing turbine has in views out from both monuments in this direction, noting that the land to the west was of importance to the crannogs' builders and inhabitants and the main access from the crannogs along causeways is in this direction, emphasising the sensitivity of these views. Impact of the proposed development would be significant; however, HES confirms the presence of the existing turbine already compromises these specific views and the increased impacts are insufficient to warrant an objection.

### **9.8.5.**

With regards the World Heritage Site (WHS), HES notes the turbine would be visible from the WHS, that much of its mast would be visible from Stenness but that the turbine would only just be visible above the skyline to the north in views from the Ring of Brodgar. While this would have an impact on important views out from Stenness, given the intervening distance and the presence of the existing turbine, it is unlikely that the effect on the OUV of the WHS or the setting of Stenness would be significant enough to warrant an objection. Nevertheless, HES states that the proposal represents a cumulative impact of development which breaks the skyline of the sensitive ridgelines.

### **9.8.6.**

Without prejudice to any other forthcoming planning applications, HES notes that any development with a greater presence above the sensitive ridgelines than the current proposal would create serious concerns. HES 'strongly encourages' the applicant to explore options to reduce the height of the proposed turbine, to reduce the impacts outlined above, with the final position being no objection to the proposed development. The residual concerns and request for reduced height are balanced against the benefits of the development, critically noting that this is a repowering application and the principle of a single turbine at the site is established.

### **9.8.7.**

The Islands Archaeologist reaches broadly the same conclusions as HES, whilst disagreeing with some approaches of EIA assessment, stating that "I do not consider in light of the existing turbine that the proposed heightened turbine will significantly adversely affect the integrity and heritage value of the identified historic environment assets". It is stated, like HES, that impacts could be minimised by reducing the scale

of the turbines. In terms of the World Heritage Site, the Islands Archaeologist states, “it is my opinion that it has been demonstrated that the development will not have a significant negative impact on either the Outstanding Universal Value (OUV) or the setting of the World Heritage Site”.

#### **9.8.8.**

Like HES, the Islands Archaeologist confirms this is without prejudice to consideration of other proposed development, noting, “This opinion is specific to the proposed Ludenhill turbine repowering and should not be considered as setting a precedent for other turbines in the future to break the HONO WHS sensitive ridgelines”.

### **9.9. Other Material Considerations**

Other matters, including those raised by consultation bodies, can be addressed by planning condition, noting the confirmation provided above that no consultation body has raised any objection.

### **9.10. Mitigation**

The EIAR summarises the proposed mitigation commitments required to implement the development. All measures proposed are embedded mitigation and form part of the proposed development from the outset. No additional or secondary measures are proposed. The following measures would be carried forward into planning conditions:

- Development of a Construction Environmental Management Plan (CEMP) to be agreed in conjunction with SEPA prior to commencement of construction and implemented by the lead contractor.
- Provision and written agreement of detailed construction drawings with final dimensions and colour prior to commencement.
- Limitation on hours of operation for the removal of the existing turbine and construction.
- Noise limitation whereby the proposed development would result in no greater noise output than 35 dB LA90 at all non-financially involved properties.
- Pre-construction surveys to be undertaken for ground nesting bird species within the breeding season [April-July].
- Where the prospect of shadow flicker impact to residential properties arises, remedial measures to be agreed.
- Provide prior written notification of the commencement of the works, with details to address aviation charting and safety management.
- Submission and approval of an aviation lighting scheme defining how the development will be lit throughout its life to maintain civil and military aviation safety requirements.
- Provision of a construction phase traffic management plan, in accordance with the feedback from Roads Services.
- Requirement for reporting of all archaeological discoveries.

## **10. Conclusion**

### **10.1.**

The principle of repowering the site with a larger wind turbine is acceptable in principle, in accordance with Policy 7 'Energy' of the Local Development Plan, and Policy 11 'Energy' of National Planning Framework 4. Project design and mitigation demonstrate that impacts as listed in Policy 11 e) are addressed, and similarly there are no unacceptable impacts in relation to the nine criteria listed in Supplementary Guidance 'Energy', against which wind energy developments of all scales, including repowering, are assessed against.

### **10.2.**

In terms of cultural heritage, the EIAR identifies a residual effect on the setting of historic environment assets of moderate significance (and significant in EIA terms) due to the increased size of the proposed development relative to that of the existing turbine. The EIAR identifies that there is no applicable mitigation that would appreciably reduce the significance of the predicted impact. HES and the Islands Archaeologist suggested a reduced scale but did not object to the development. Noting that this is a repowering application, and so the principle of a single turbine is already accepted, the benefits of the renewable energy development is considered to outweigh any residual concerns, and on balance the development is not considered contrary to Policy 7 'Historic assets and places' of NPF4.

### **10.3.**

The EIAR identifies no significant effects during either the construction, operation or decommissioning stages and concludes that there are negligible impacts and no significant effects for all ecological features. NatureScot does not object, noting that the proposal to repower the site poses a low level of risk to SPA species and is unlikely to adversely affect the populations of hen harrier, short-eared owl or red-throated diver. Noting the limited ability to provide on-site biodiversity enhancement works as required by Policy 3 c) of NPF4, and taking the plan as a whole, the development is considered to meet the requirements of Policy 4 'Natural places' of NPF4 to 'protect, restore and enhance natural assets'.

### **10.4.**

As Competent Authority, the Council must consider whether any plan or project would have a 'likely significant effect' on a Natura site – in this case the Orkney Mainland Moors SPA – before it can be consented, and if so carry out an Appropriate Assessment. That process is known as Habitats Regulations Appraisal (HRA). In considering likely significant effects, the Council as Competent Authority, is not obliged to follow the advice given by NatureScot but must have regard to that advice. Based on the role of NatureScot as a statutory consultation body and appropriate national body on natural heritage issues, the Council is bound to afford considerable weight to this advice and there would have to be cogent and compelling reasons for departing from that advice. HRA concludes that Appropriate Assessment is required. This has been undertaken, concluding a likely significant effect on the Orkney Mainland Moors SPA, in terms of the breeding and non-breeding hen harrier,

breeding red-throated diver and breeding short-eared owl populations, but that the proposal will not adversely impact the integrity of the site; in terms of the Habitats Regulations the 'project' (the proposed development) can be consented.

## **10.5.**

Overall, renewable energy policy support and development design, including embedded mitigation, outweigh any residual concerns, including in relation to impacts on cultural heritage settings, noting that the development is for the repowering of the site, and is for a single turbine only, the principle of which is already accepted. No consultation bodies have objected, and no valid representations have been received. The development complies with Policies 1, 7, 8, 9 and 14 of the Orkney Local Development Plan 2017, relevant Supplementary Guidance, and Policies 3, 4, 7 and 11 of National Planning Framework 4. There are no material planning considerations that would merit refusal of the proposed development. Accordingly, the application is recommended for approval, subject to conditions attached as Appendix 2 to the report.

## **11. Contact Officer**

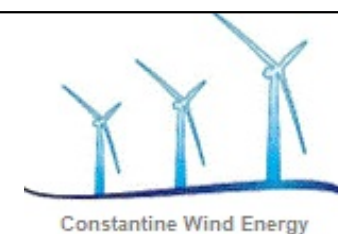
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## **12. Appendices**

Appendix 1: Location Plan.

Appendix 2: Planning Conditions.





**Location Plan**  
**Ludenhill Wind Farm**  
**3369-04-LP-01**

Ludenhill Farm  
 Stonymildars  
 Swanney  
 Orkney  
 KW17 2NR

**Legend**

Application Boundary

**Technicals:**

1:25,000 Scale in A3

Version B  
 Dated 2023-08-22  
 By DH

## **Appendix 2.**

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended, which limits the duration of planning permission.

02. This planning permission will expire and cease to have effect after a period of 25 years, counted from 12 months after the date of commencement of works, or from the 'First Export Date' (the date when electricity is first exported from the approved wind turbine to the electricity grid network), whichever is earlier. At the end of this period, unless planning permission is granted for the retention and continued operation of the wind turbine, the development will be decommissioned and removed from the site together with all ancillary infrastructure. Confirmation of the First Export Date, within the period 12 months from the date of commencement, shall be submitted in writing to the Planning Authority, within one month of the First Export Date.

Reason: In recognition of the stated lifespan of the development and to allow the Planning Authority to calculate the date of expiry of the consent.

03. Any temporary trackway required to facilitate development or decommissioning will comprise overlain matting, the specification of which shall be agreed, in writing, by the Planning Authority prior to commencement of works and shall not be formed in a way that would allow permanency. All temporary trackway shall be removed on completion of construction / decommissioning phases.

Reason: In the interests of safety, amenity and environmental protection.

04. No development shall commence until a timetable for the construction period has been agreed, in writing, by the Planning Authority.

Reason: To ensure proper planning and other environmental control of the development.

05. Prior to the commencement of development, detailed construction drawings with full details of the dimensions and colour(s) of the wind turbine, including the tower, blades and nacelle, shall be submitted to, and agreed in writing by, the Planning Authority. Thereafter, the wind turbine shall be erected and retained in accordance with the approved details throughout the lifetime of the development.

Reason: To minimise the visual impact of the development and protect the visual amenity of the area.

06. The overall height of the wind turbine shall not exceed 76 metres (to the tip of the blades) when the turbine is in the vertical position as measured from the natural ground conditions immediately adjacent to the turbine base.

Reason: To ensure proper planning and other environmental control of the development.

07. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended), and unless there is a demonstrable health and safety or operational reason, the wind turbine shall not display any name, logo, sign or other advertisement without express advertisement consent having been granted on application to the Planning Authority.

Reason: To ensure that the turbine is not used for advertising, in the interests of visual amenity.

08. Hours of operation for the removal of the existing turbine and the construction work on site, involving the use of machinery and powered tools, or any other operation that would be audible from any noise-sensitive receptor, and all HGV movements to and from the site, shall only take place between the hours of 07:00 and 19:00 Mondays to Fridays, 07:00 and 13:00 on Saturdays and not at all on Sundays or the Christmas or New Year Public Holidays, unless otherwise agreed, in writing, by the Planning Authority. Outwith these specified hours, development on the site shall be limited to maintenance, emergency works, dust suppression and the testing of plant and equipment, unless otherwise approved in advance, in writing, by the Planning Authority.

Reason: In the interests of local amenity.

09. No development shall commence until a Construction and Operational Environmental Management Plan (COEMP) outlining site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, and operational environmental monitoring, together with details of their timetabling, has been submitted to, and approved in writing by, the Planning Authority. The COEMP shall thereafter be implemented as approved.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on amenity and the environment, and that mitigation measures proposed are fully implemented.

10. No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved in writing by, the Planning Authority, in consultation with Roads Services. The CTMP shall thereafter be implemented as approved.

Reason: To maintain safety for road traffic and the traffic moving to and from the development, and to ensure that the transportation of abnormal loads will not have any detrimental effect on the road network.

11. No ground preparation, decommissioning of the existing turbine, construction or any other works associated with the proposed development shall commence during March to August (inclusive), or (if during these months) until a pre-start walkover of the site and inspection of the existing buildings, structures and vegetation has been completed by a suitably experienced (and licensed) ecologist, to identify signs of breeding birds and until an appropriate Breeding Bird Protection Plan has been submitted to, and approved in writing by, the Planning Authority. Thereafter, the development shall be carried out wholly in accordance with the approved Breeding Bird Protection Plan.

Reason: To avoid adverse effects on breeding birds (including those from the Loch of Swannay Local Nature Conservation Site) and to comply with protected species legislation.

12. No development shall commence until a Shadow Flicker Protocol has been submitted to, and approved in writing by, the Planning Authority. This Protocol shall include details of light level sensors and set out mitigation and management for addressing any complaint received from a nearby residential receptor. Operation of the turbine shall take place in accordance with the approved Shadow Flicker Protocol and any mitigation measures that have been agreed through the Protocol shall be implemented.

Reason: In the interest of local residential amenity.

13. Prior to commencing construction of the wind turbine, or deploying any construction equipment or temporal structure(s) 15.2 metres or more in height (above ground level), an aviation lighting scheme shall be submitted to, and approved in writing by, the Planning Authority, in conjunction with the Civil Aviation Authority and the Ministry of Defence. The aviation lighting scheme shall define how the development will be lit throughout its life to maintain civil and military aviation safety requirements as required under the Air Navigation Order 2016 determined necessary for aviation safety by the Civil Aviation Authority. This shall set out:

- a) Details of any construction equipment and temporal structures with a total height of 15.2 metres or greater (above ground level) that will be deployed during the construction of the wind turbine generator and details of any aviation warning lighting that it will be fitted with.
- b) The location and height of the wind turbine generator, identifying the position of the light on the wind turbine generator; the type of light that will be fitted and the performance specification of the lighting type to be used.

Thereafter, the developer must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the lifetime of the development.

Reason: To maintain aviation safety.

14. The developer shall notify the Ministry of Defence, at least 14 days prior to the commencement of the works, in writing of the following information:

- a) The date of the commencement of the erection of the wind turbine generator.
- b) The maximum height of any construction equipment to be used in the erection of the wind turbine.
- c) The date the wind turbine generator is brought into use.
- d) The latitude and longitude and maximum height of the wind turbine generator and any anemometer mast(s).

The Ministry of Defence must be notified of any changes to the information supplied in accordance with these requirements and of the completion of the construction of the development.

Reason: To maintain aviation safety.

15. Throughout the life of the development, noise generated by the wind turbine hereby permitted, shall not exceed 35dB(A) L90, 10 min at wind speeds not exceeding 10 m/s as measured not less than 10m from the façade of the nearest noise sensitive property. Measurements shall be made in accordance with the guidance in the supplementary guidance notes to the planning application, chapter 8 of the publication "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-97, Department of Trade and Industry, September 1996).

Reason: To protect the residents of nearby residential properties from disturbance as a result of noise generated during operation of the development.

Note: The property of Ludenhill Farm, Swanney, Birsay is not considered as a noise sensitive property in relationship to the turbine hereby approved due to the owner's financial interest in the turbine. Any separation of the ownership of the house and the turbine, including occupation of the house by an individual or party without a financial interest in the turbine, is likely to cause noise issues which may result in the turbine no longer being able to comply with this condition.

16. Should any complaints be received in respect of noise levels, the developer shall fully investigate these complaints and, to establish noise levels at any affected property, shall undertake noise monitoring which shall be carried out by a suitably qualified noise expert or consultancy previously agreed, in writing, by the Planning Authority and which shall be carried out by the method statement stated in section 2.0 "Procedure to be followed in the event of a complaint" page 102 of the publication "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-97, Department of Trade and Industry, September 1996).

Reason: To protect the residents of nearby residential properties from disturbance as a result of noise generated during operation of the development.

17. Should any noise monitoring undertaken in accordance with condition 16 above demonstrate that the noise thresholds in condition 15 are being exceeded, the developer shall submit a scheme of mitigating measures to the Planning Authority for written agreement within three months of the breach being identified. The agreed mitigating measures shall be implemented within three months of the written agreement or within any alternative timescale agreed in writing by the Planning Authority and thereafter retained throughout the life of the development unless otherwise agreed in writing by the Planning Authority.

Reason: To protect the residents of nearby residential properties from disturbance as a result of noise generated during operation of the development.

18. Where noise measurements are carried out in accordance with condition 17 above, the assessment of measured noise emission levels should be referenced to derived (not measured) 10m height above ground level wind speeds. The article "Prediction and assessment of wind turbine noise" from the Institute of Acoustics bulletin April 2009 Vol. 34 should be referred to in regard to this matter.

Reason: For the avoidance of doubt regarding a technical matter and to follow recognised current good practice.

19. Should any complaints be received in respect of disruption to radio/television reception, the developer shall fully investigate these complaints and provide a satisfactory solution within a timescale specified, in writing, by the Planning Authority, details of which shall be submitted to the Planning Authority for approval. The approved details shall thereafter be implemented in accordance with the terms specified by the Planning Authority and retained throughout the life of the development unless otherwise agreed, in writing, by the Planning Authority.

Reason: To protect the residents of nearby residential properties from unacceptable levels of disruption to radio/TV reception.

20. During construction and operation, should any archaeological features be revealed, works shall cease until re-commencement is confirmed, in writing, by the Planning Authority, and the features shall be reported, in writing, to the Planning Authority.

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

21. No development shall commence until a draft Decommissioning and Restoration Plan (DRP) for the application site has been submitted to, and approved in writing by, the Planning Authority.

Thereafter, and no later than 12 months prior to the decommissioning of the development, a detailed DRP, based upon the principles of the approved draft plan, shall be submitted to, and approved in writing by, the Planning Authority.

For the avoidance of doubt, the DRP shall include the removal of all above-ground redundant elements of the wind turbine development, the treatment of ground surfaces, management and timing of the works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. This shall include the decommissioning of the existing wind turbine currently on site and timescale for completion of such works in advance of the first operational use of the wind turbine hereby approved. The developer shall also demonstrate that an appropriate mechanism, including funding, is put in place to undertake the Decommissioning Plan. It should be made clear whether costs are estimated on the decommissioning statement. All costs shall be met by the developer and the following points addressed:

(i) Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration measures, outlined in the approved decommissioning, restoration and aftercare strategy, has been submitted to, and approved in writing by, the Planning Authority.

(ii) Confirmation, in writing, by a suitably qualified independent professional that the amount of financial provision proposed under part (i) above is sufficient to meet the full estimated costs of all decommissioning, dismantling, removal, disposal, site restoration, remediation and incidental work, as well as associated professional costs, has been submitted to, and approved in writing by, the Planning Authority.

(iii) Documentary evidence that the bond or other financial provision approved under parts (i) and (ii) above is in place, has been submitted to, and confirmation, in writing, that the bond or other financial provision is satisfactory, has been issued by the Planning Authority.

Thereafter, the developer shall:

(iv) Ensure that the bond or other financial provision is maintained throughout the duration of this permission.

(v) Pay for the bond or other financial provision to be subject to review five years after the commencement of development and every five years thereafter until the wind turbine is decommissioned and the site restored.

Each review shall be:

(a) Conducted by a suitable qualified independent professional.

(b) Published within three months of each five year period ending, with a copy submitted upon its publication to both the landowner(s) and the Planning Authority.

(c) Approved, in writing, by the Planning Authority without amendment or approved, in writing, by the Planning Authority following amendment to their reasonable satisfaction.

Where a review approved under part (c) above recommends that the amount of the bond or other financial provision should be altered (be that an increase or decrease) or the framework governing the bond or other financial provision requires to be amended, the Wind Turbine Operator shall do so within one month of receiving that written approval, or another timescale as may be agreed, in writing, by the Planning Authority, and in accordance with the recommendations contained therein.

Thereafter the detailed Decommissioning and Restoration Plan shall be implemented as approved.

Reason: To ensure that the wind turbine and associated development is appropriately removed from the site; in the interests of safety, amenity and environmental protection and that an appropriate financial security for the cost of restoration of the site to the satisfaction of the Planning Authority is secured.

22. Prior to the commencement of operation, an operational safety plan shall be submitted to, and approved in writing by, the Planning Authority. This plan shall be implemented for the lifetime of the development.

Reason: To ensure safe and effective operation during the lifetime of the development.