

Energy and Climate Change Directorate
Energy Division

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Steven Pottinger
Spittal Hill Wind Farm Ltd
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13 June 2012

Dear Mr Pottinger,

APPLICATION FOR CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH MINISTERS TO CONSTRUCT AND OPERATE THE SPITTAL HILL WIND FARM ELECTRICITY GENERATING STATION ON SPITTAL HILL, NEAR SPITTAL, CAITHNESS

Application

1. I refer to the Application made by Spittal Hill Windfarm Ltd, ("The Company") dated 24 April 2007 for:

(i) consent under section 36 of the Electricity Act 1989 ("The Electricity Act") for construction and operation of Spittal Hill Wind Farm electricity generating station near Spittal, Caithness, with a generation capacity of up to 77.5MW.

(ii) a direction under section 57 (2) of the Town and Country Planning (Scotland) Act 1997 ("the planning act") that planning permission be deemed to be granted in respect of that generating station and any ancillary developments (as described in Annex 1).

Consultation

2. In accordance with statutory requirements, advertisements of the Application had to be placed in the local and national press. Ministers note that these requirements have been met. Under Schedule 8 of the Electricity Act, the relevant Planning Authority is required to be notified in respect of a section 36 consent application.

3. Notifications were sent to the Highland Council as the Planning Authority, as well as to Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).

4. The Highland Council, (“the Planning Authority”), objected to the application and in accordance with the terms of Schedule 8 to the Electricity Act 1989 a public local inquiry (“PLI”) was held.

5. The Scottish Ministers have considered fully and carefully the Application and accompanying documents and all relevant responses from consultees and third party representations received. A total of 2814 public representations were received, 1268 of which were letters of support and 1546 were objections to the Application. The objections raised concerns on a number of subjects including noise, location, cumulative and visual impacts and residential amenity. In the letters of support received the main comments were the development would have a positive impact in terms of community benefits, jobs will be created, CO₂ emission would be reduced and it would help combat climate change. Scottish Ministers are not satisfied that all issues can be appropriately addressed by way of mitigation.

Public Inquiry

6. The PLI was held in Halkirk between 3 May 2011 and 13 May 2011. The Reporter conducted an accompanied inspection of the site and surrounding viewpoints, then carried out unaccompanied inspections from other, more distant, viewing points.

7. The report was received by the Scottish Government on 5 October 2011. The Reporter, E D K Thomas considered the application under section 36 of the Electricity Act 1989, and whether a direction should be made under s57(2) of the Town and Country Planning (Scotland) Act 1997.

8. In Sections 4 to 8 of the report, the Reporter summarises the evidence led and the arguments advanced on behalf of the developer, the Highland Council, Scottish Natural Heritage, Spittal Windfarm Opposition Group, and various third parties. The agreed statement on matters is contained in Appendix 2 and the Reporter’s findings of fact are recorded in Section 9 of the report.

9. The Reporter’s reasoning, conclusions and recommendations that both section 36 consent and deemed planning permission be refused are given in Section 10 of the report. The Scottish Ministers have considered fully and carefully the Reporter’s findings, reasoning, conclusions and recommendation thereon.

Environmental matters

10. 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.

11. An Environmental Statement and Supplementary Environmental Information has been produced in accordance with the 2000 Regulations.

12. Schedule 9 of the 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. As required by Schedule 9, Scottish Ministers have also had regard to these features and the extent to which the Company has complied with this duty.

13. The Scottish Ministers have also considered the environmental information carefully; in addition to the Environmental Statement and addenda they have considered the submissions prepared by the Planning Authority, those designated as statutory consultees in terms of Regulation 6 of the Electricity (Applications for Consent) Regulations 1990 and those of the consultative bodies in terms of the 2000 Regulations. They have also considered representations made by other persons about the likely environmental effects of the proposed Development.

14. Two appropriate assessments, for the Caithness Lochs SPA and Ramsar site and Loch Watten SAC, were undertaken in accordance with the Habitat Regulations and the EU Birds Directive. These assessments were carried out after having consulted Scottish Natural Heritage and the Environmental Statement as produced by the Company. Ministers are satisfied that the proposal will not adversely affect the integrity of either site granted that the proposals, in respect of Loch Watten SAC, are undertaken strictly in accordance with the suggested conditions for mitigation. These conditions were agreed by the Reporter during the Inquiry should Ministers be minded to grant consent and are available at Annex 1 of the PLI Report.

The Scottish Ministers Considerations

15. The Scottish Ministers have also considered fully and carefully the Application and accompanying documents, all relevant consultee responses from consultees and third party representations received, the appropriate assessments and the report to the PLI.

Noise

16. The concerns over noise impacts, as raised by the Planning Authority, were addressed during the Public Local Inquiry and the Reporter found these could likely be addressed by way of mitigation and Scottish Ministers recognise that this alone would not justify refusal of consent.

Residential Amenity

17. The Planning Authority in particular raised objection with regard to the visual impact, including cumulative, on a number of residential properties, within 1 km of the site and with no financial interest in the proposed wind farm, and consequently would have a significant adverse impact on the occupants of these properties. These

views were supported by Spittal Windfarm Opposition Group (SWOG) and individual objectors.

18. Scottish Ministers have considered the residential receptor assessment, included in the application, which identified 89 existing or nearly completed properties within 2 kilometres of the nearest turbine, 16 of these within 1 kilometre and the remaining 72 properties lie between 1 and 2 kilometres. The Reporter examines these effects in paragraphs 9.58 to 9.68 of the report and found that overall at least 5 non-stakeholder properties would become unpleasant places to live in and that a number of others would suffer from adverse visual impacts. This view is also reflected in the public response to this application where there were 5 representations objecting to the development for the particular reason that it would devalue their property and only 3 who supported the application in that it would not devalue their property.

19. Scottish Ministers recognise that residential amenity is a material consideration in determining large scale wind farm applications and agree with the Reporter's finding that there would likely be an adverse impact on a number of properties within close proximity of the site.

Cumulative, Landscape and Visual Impacts

20. SNH objected to the proposal due to the significant adverse cumulative impacts that would result, particularly in combination with the existing Causeymire, Flex Hill and Achairn wind farms, the consented Camster wind farm and the proposed Halsary wind farm; this would mainly arise from the contrasting siting, layout and design of the Spittal Hill wind farm in relation to these developments. These views were supported by the Planning Authority, the Spittal Windfarm Opposition Group ("SWOG") and other third parties objectors. SNH also objected on the significant landscape and cumulative visual impacts that would arise from this proposal on the wider setting of the landscape particularly when experienced from the A9, an identified tourist route.

21. The effects of the proposal on the local landscape was also assessed by SNH and examined by the Reporter during the Inquiry who shared the concerns expressed by SNH concluding that the proposed turbines would be a dominant feature in relation to the surrounding land resulting from the height, number and positioning of turbines which would give a congested appearance by itself and would also relate unfavourably to existing wind farms.

22. SNH's views in this regard were supported by SWOG and other third party objectors. The Planning Authority also supported SNH's grounds for objection and as such raised objection to the same effect and assessed that the associated effects would be contrary to provisions of the development plan in place at that time. The Reporter agreed that the proposals fail the tests in relation to a number of policies within the development plan and the Reporter details his findings in paragraphs 9.94 to 9.101 of the report. The Report recommends refusal of consent on the grounds of the effects of the proposal on cumulative, visual, landscape and residential amenity.

23. The Reporter also considered the 27 turbine alternative suggested by the Company and in paragraph 9.35 states that this would not change the nature or character of the proposal and site boundaries would remain unchanged. Scottish Ministers agree with his conclusion here that such a change would not make a significant difference in addressing the adverse effects of the proposal.

Compliance with Local and National Policy

24. Scottish Ministers agree with the Reporter's findings in paragraphs 9.94 to 9.101 of the report that the proposed development would not be consistent with the relevant provisions of the development plan. The Scottish Ministers note the approach taken by the Reporter with regard to section 25 of the Town and Country Planning (Scotland) Act 1997. The Scottish Minister's view is that this approach is not appropriate for consents under the Electricity Act 1989. This does not however alter the position that the fact the development is inconsistent with the provisions of the relevant development plan is a material consideration which can justify refusal particularly when considered along with other factors such as that there would be significantly detrimental effects in terms of landscape, cumulative and visual impacts and residential amenity.

25. The Highland Council adopted the new Highland-wide Local Development Plan on 5 April 2012 and adopted the Interim Supplementary Guidance for Onshore Wind Energy on 14 March 2012. In relation to this application, there has been no change of substance which Scottish Minister consider would affect the conclusions previously drawn.

26. Scottish Ministers appreciate the potential significant contribution a wind farm, with a rated output of 77.5 megawatts, could make toward meeting the Scottish Government renewable energy targets, and are mindful of the economic benefits which the proposed development would bring. This has been weighed against the significant adverse and detrimental impacts identified with regard to noise, cumulative visual and landscape impacts and residential amenity.

27. While Scottish Government policies strongly support electricity generation from renewable sources, Scottish planning policy is clear that the design and location of any wind farm should reflect the scale and character of the landscape and should be considered environmentally acceptable. Scottish Ministers agree with the Reporter's findings in paragraph 9.102 and 9.103 of the report and conclude that the site is not capable of accommodating the significant relative number and size of turbines as proposed and therefore does not comply with the policy.

Public Representations

28. Scottish Ministers have also considered the objections raised within the 2814 public representations received and these raised concerns on a number of subjects including noise, location, cumulative and visual impacts and residential amenity. In the letters of support received the main comments were the development would have a positive impact in terms of community benefits, jobs will be created, CO₂ emission would be reduced and it would help combat climate change. Scottish

Ministers are not satisfied that all environmental issues can be appropriately addressed by way of mitigation.

Conclusions

29. In reaching their decision, the Scottish Ministers have taken into account the environmental information submitted with the Application, including the Environmental Statement and its addenda, the representations made by statutory consultative bodies and others, in accordance with the Electricity Works (Environmental Impact Assessment)(Scotland) Regulations 2000; the two appropriate assessments, further representations received, in the context of the expert advice provided by statutory consultees and the Reporter.

30. Scottish Ministers have also considered carefully the Reporter's findings, reasoning, conclusions and recommendation thereon. Scottish Ministers adopt the Reporter's findings, reasoning and conclusions, subject to two exceptions set out below and agree with the Reporter's conclusion that consent under section 36 of the Electricity Act 1989 be refused and deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 be refused. The two exceptions are that Scottish Ministers disagree with the Reporter's view that the Schedule 9 duties would not be met and the Scottish Ministers also do not consider the approach set out in section 25 of the Town and Country Planning (Scotland) Act 1997 to be appropriate for energy consent determinations.

The Scottish Ministers' Determination

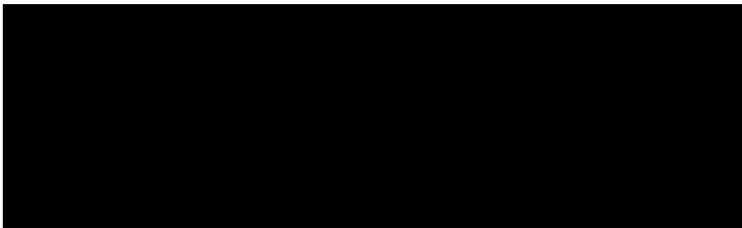
31. Scottish Ministers have concluded that **consent under section 36 of the Electricity Act 1989 should be refused and that no deemed planning permission be granted.**

32. In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended), the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land to which the Application relates is situated.

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

34. The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine Applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts – <http://www.scotcourts.gov.uk/session/rules/print/rules/CHAP58.pdf>. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely



SIMON COOTE

Head of Energy Consents and Deployment Unit
A member of the staff of the Scottish Ministers

Description of the Development

The Development shall have a maximum capacity of 77.5MW and shall comprise a wind powered electricity generating station at Spittal Hill, near Spittal, Caithness in the Highland Council area including:

Construction of the wind farm will follow a rolling programme over an 18 month period, with the following infrastructure being provided within the site:

- 30 Turbines and Transformers;
- Temporary Contractors Compound and Turbine Laydown Area;
- 2 Anemometer Masts;
- Site Tracks;
- Cabling; and
- Substation.

The following activities will take place on site during the construction period:

- **Enabling works;**
- **Sourcing of stone:** stone for site tracks will be sourced from the existing stone quarries within the site boundary;
- **Cement batching:** concrete will either be brought in from a local batching plant or a temporary batching plant will be established on site;
- **Turbine Delivery:** turbines will be delivered from Wick Harbour on semi-low extendable trailers and erected using a 350 tonne crane; and
- **Construction of infrastructure and turbines.**

On-going maintenance will be carried out throughout the 25 year operational life of the wind farm. Decommissioning of the wind farm will involve dismantling and removal of the turbines and on-site substation. Tracks and foundations will either be retained on site or dismantled where appropriate.

Definitions

In this letter of determination:-

“the Company” means Spittal Hill Windfarm Ltd (no. SC256693, registered office at 16 Charlotte Square, Edinburgh, Mid Lothian, EH2 4DF)

“the Application” means the Application and Environmental Statement submitted by the Company on 24 April 2007;

“Construction Period” means the period from work commencing on the Development until the Site compounds have been reinstated in accordance with the conditions of this consent;

"

“the Development” means Spittal Hill wind-powered electricity generating station near Spittal, Caithness, comprising no more than 30 turbines and associate works as described in Annex 1

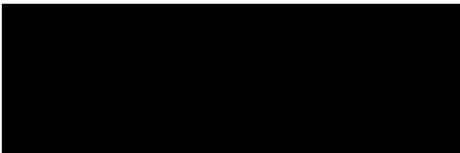
“Environmental Statement” means the Environmental Statement submitted by the on 24 April 2007 as part of the Application as defined above;

“Planning Authority” means the Highland Council

“SEPA” means the Scottish Environment Protection Agency;

"SNH" means Scottish Natural Heritage;

“Site” means the area of land outlined in red on Figure 1, attached;



SIMON COOTE

HEAD OF ENERGY CONSENTS AND DEPLOYMENT UNIT

A member of the staff of the Scottish Minister

SPITTAL HILL REPRESENTATIONS

OBJECTIONS: 1546

SUPPORT: 1268

BREAKDOWN OF OBJECTIONS:

Environmental

Designated site / protected: **461**

Habitat: **1212**

Wildlife: **1284**

Forestry: **31**

Noise pollution / vibration: **855**

Water pollution: **899**

Planning / Policy

Scotland has met targets: **30**

Intermittent / inefficient: **92**

Other forms of energy: **96**

Local planning policy / strategy: **1186**

Inadequate public consultation: **889**

Need PLI: **7**

Visual

Visual impact: **1413**

Cumulative effect: **1223**

Amenity / location: **1284**

Economic

Tourism: **1436**

Local economy: **1392**

Devalue property: **5**

Other impacts

Transport: **103**

Archaeological / heritage sites: **357**

Telecommunications: **18**

Aviation / radar: **4**

Strobe effect / shadow flicker: **661**

Peat destruction: **224**

Health & safety: **236**

BREAKDOWN OF SUPPORT:

Community benefits

Financial benefits: **845**

Amenity: **825**

Houses not devalued: **3**

Jobs will be created: **433**

General community benefit: **431**

Tourism benefits

Will attract tourists / will not reduce the amount of tourists: **9**

Renewable energy

Will help meet targets: **2**

General support: **9**

Good Planning / Policy

Renewable energy / grid network / windy area: **1216**

Easy decommissioning: **821**

No new pylons needed for area: **1210**

Good location: **414**

Good planning / policy: **1**

Tackle global warming

Combat climate change / reduce emissions: **1253**

Power homes and reduce CO2: **1236**

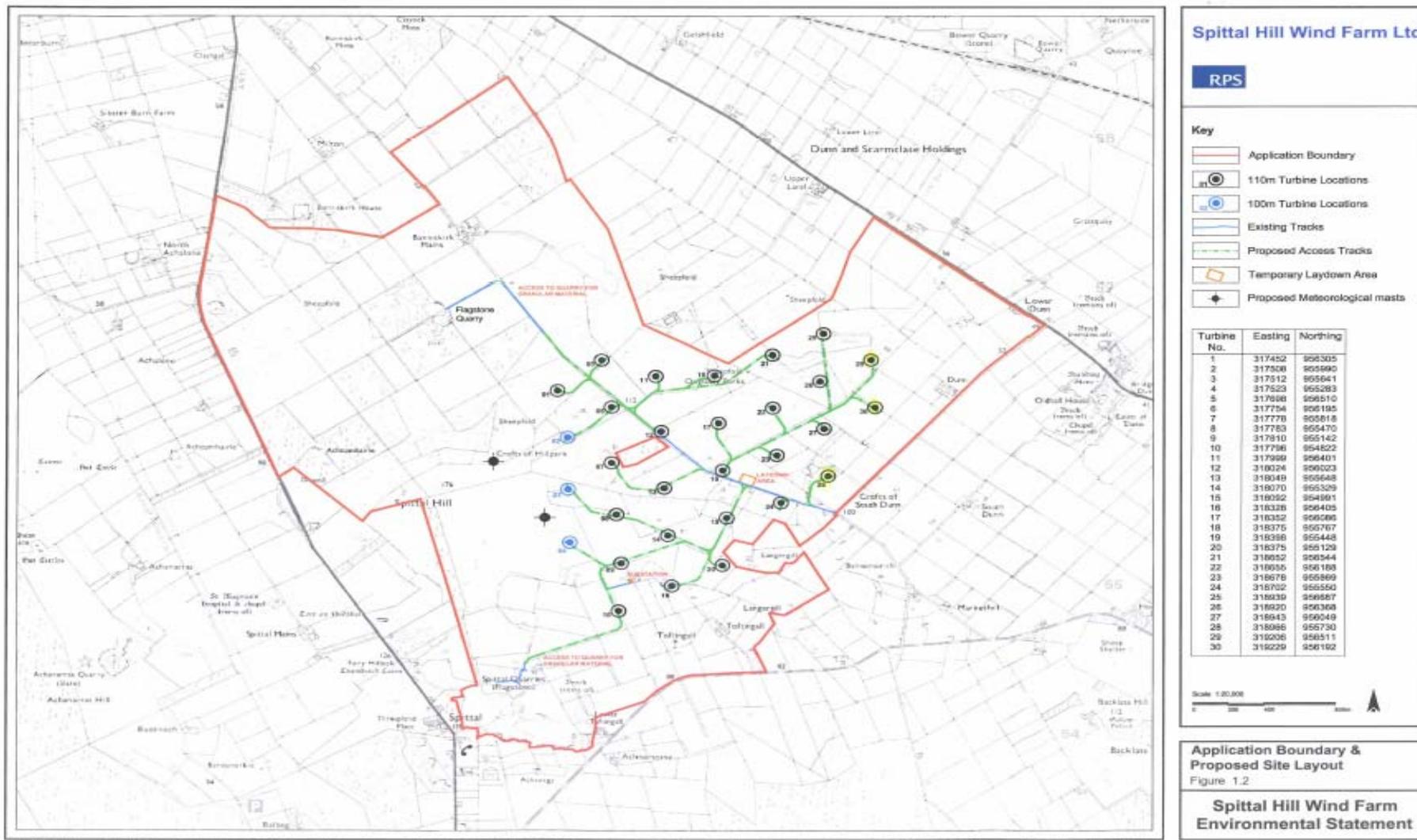
Understanding the need to compromise

Wind farms should be grouped together: **4**

Clean, safe and sustainable

Turbines are not polluting: **1254**

Clean, safe and sustainable: **1**



sp0309 Spittal Wind Farm - 01/04/18(2)RPS(2018) drawings(800)sp_03_012 -App Boundary & Proposed Site Layout (Fig 1.2) (Layout revC 20/07/18) 30/06/21 12:08 Based upon Ordnance Survey Maps with the permission of The Controller of Her Majesty's Stationery Office. © Crown Copyright. License Number AL10001023