

Enterprise , Energy and Tourism Directorate

Energy and Telecommunications Division

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Dear Mr Forrest

CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH MINISTERS FOR THE CONSTRUCTION AND OPERATION OF THE CARRAIG GHEAL WIND POWERED ELECTRICITY GENERATING STATION.

1. It is recognised in this correspondence that GreenPower (Carraig Gheal) Ltd ("the Company") is the Section 36 Applicant.

2. I am directed by the Scottish Ministers to refer to the application dated 15 November 2004, as amended by the supplementary environmental information submitted on 20 October 2005, 27 February 2006 and 11 October 2007, under section 36 of the Electricity Act 1989 ("the Act"), for the consent of the Scottish Ministers to construct and operate the Carraig Gheal wind powered electricity generating station on Fernoch Farm, near Kilchrenan in Argyll and Bute (grid reference 197022E 720568N) and for 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.

3. The Scottish Ministers have considered the submissions prepared by you in support of the application, submissions made following 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

4. The proposed Carraig Gheal wind farm would be located on Fernoch Farm approximately 8km west of Kinchrenan on the north-west side of Loch Awe in Argyll and Bute. The development is on, around and to the south and east of the summit of Carraig Gheal. The site consists mainly of upland heather moorland interspersed with small water bodies. The development would comprise 20 turbines with a maximum total capacity of 60MW.

Consultation

5. A number of relevant organisations and directorates were consulted by the Scottish Ministers who have considered all recommendations and other material considerations and imposed a number of mitigation conditions as detailed in the consent and identified below.

Planning Policy and Advice

6. Argyll and Bute Council supported the application subject to a number of conditions derived from their own consultation which are detailed in paragraph 6 of the consent (planning conditions).

7. In their response, Argyll and Bute Council stipulated that their support was subject to the Company agreeing that the site would be accessed via the north-western route i.e. from the A85 at Fearnoch and that a section of Strategic Forest Haul route be created to by-pass Kilchrenan. However, the access route was the subject of further extensive consultation which resulted in the selection of a revised access from the south of the site which is suitable for both wind farm and timber traffic. This aligns fully with the need for a route Forestry Commission Scotland (FCS) had conceived of as the West Loch Awe Timber Haul Route and will remove a large volume of timber traffic off several long sections of minor public roads. Following further consultation on this issue, Argyll and Bute Council confirmed that they did not object to the amendment. It was agreed that FCS would lead on an Environmental Impact Assessment to be determined under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999, this was confirmed as appropriate by the Councils Area Development Control Officer as the majority of the activity will be undertaken within the forest area.

8. There are a number of National and Local Planning Policy Guidelines particularly relevant to the consideration of this proposal:

Scottish National Planning Policy Guideline (SPP)1: The Planning System (November 2002)

SPP1 provides an overview of the land use planning system and promotes sustainable development by encouraging the use of natural resources, highlighting the Scottish Government's commitment to tackling climate change.

National Planning Policy Guideline (NPPG) 5: Archaeology and Planning (January 1994)

Indicates that archaeological remains are non-renewable and should be regarded as part of the environment to be protected and managed. Archaeological remains should be preserved wherever feasible and where this is not possible, recorded before destruction.

SPP 6 Renewable Energy (March 2007)

SPP6 encourages the development of a diverse range of renewable energy technologies, community and stakeholder engagement, maximising economic and social benefits, guiding development to appropriate locations and providing clarity when assessing specific proposals.

NPPG 14: National Heritage (January 1999)

NPPG 14 encourages sustainable development in harmony with the natural environment including landscape, habitat and ecology, including those areas which may not form part of a formal designation.

SPP 15: Planning for Rural Development (February 2005)

SPP 15 encourages modernisation and diversification of the rural economy including renewable energy development.

Planning Advice Note (PAN) 45: Renewable Energy Technologies (revised 2006)

PAN 45 sets out good practice guidance in respect of the issues raised by wind-farm developments including siting in the landscape, visual impact and noise.

It states that - There are no landscapes into which a wind farm will not introduce a new and distinctive feature. Given the Scottish Ministers' commitment to addressing the important issue of climate change and the contribution expected from renewable energy developments, particularly wind farms, it is important for society at large to accept them as a feature of many areas of Scotland for the foreseeable future." (paragraph 71). '

But, "This is not to suggest that areas valued for their international or national landscape and nature conservation interest will have to be sacrificed." (paragraph 72).

And, "A cautious approach is necessary in relation to particular landscapes which are rare or valued, such as National Scenic Areas and proposed National Parks and their wider settings In a regional context care should also be exercised within Areas of Great Landscape Value and Regional Parks. Other landscapes are not especially valued and a significant change in some landscapes may be considered acceptable " (paragraph 75).

PAN 45 notes that "The cumulative impact of a number of neighbouring developments may also be a relevant consideration" (paragraph 89) and advises that the cumulative effects of wind farm development can arise in a number of circumstances including "an existing wind energy development and a proposed extension to that development." (paragraph 91).

Finally, PAN 45 notes the important contribution that tourism, mainly associated with Scotland's natural, scenic and cultural heritage, makes to the rural economy. "It is therefore important that the role of tourism in the rural economy and the assets on which it is based should be reconciled with the need to promote renewable energy generation" (paragraph 172).

Argyll and Bute Structure Plan November 2002 Policy STRAT SI 1 - Sustainable Development.

Argyll and Bute Council shall adhere to the following principles in considering development proposals, and in its policies, proposals and land allocations in Local Plans, It will seek to:-

- a) maximise the opportunity for local community benefit
- b) make efficient use of vacant and/or brownfield land
- c) support existing communities and maximise the use of existing service infrastructure
- d) maximise the opportunities for sustainable forms of design, including energy efficiency
- e) avoid the use of prime quality or locally important good quality agricultural land
- f) use public transport routes fully and increase walking and cycling networks
- g) avoid the loss of recreational and amenity open space
- h) conserve the natural and built environment and avoid significant adverse impacts on biodiversity, natural and built heritage resources
- i) respect the landscape character of an area and the setting and character of settlements
- j) avoid places where there is a significant risk of flooding, tidal inundation, coastal erosion or ground instability and
- k) avoid having an adverse effect on land, air and water quality.

Policy STRAT DC 7 - Nature Conservation and Development Control

A) Development likely to have a significant effect on a Natura Site will be subject to an appropriate assessment. The development will only be permitted where the assessment indicates that it will not adversely affect the integrity of the site, or, there are no alternative solutions and there are imperative reasons of overriding public interest.

B) On sites of national importance, SSSIs and NNRs, development will only be permitted where it can be demonstrated that the overall objectives of the designation and the overall integrity of the designated area would not be compromised, or where any adverse impacts are clearly outweighed by social or economic benefits of national importance.

C) Development which impacts on Local Wildlife Sites or other nature conservation interest, including sites, habitats or species at risk as identified in the Local Biodiversity Action Plan, shall be assessed carefully to determine its acceptability balance along with national - or local - social or economic considerations.

D) Enhancement to nature conservation interest will also be encouraged in association with development and land use proposals.

Policy STRAT DC 8 - Landscape and Development Control

1. Development which, by reason of location, siting, scale, form, design or cumulative impact, damages or undermines the key environmental features of a

visually contained or wider landscape or coastscape shall be treated as 'non-sustainable' and is contrary to this policy. Out with the National Park particularly important or vulnerable landscapes in Argyll and Bute are those associated with:

- a) National Scenic Areas
- b) Historic landscapes and their settings with close links with archaeology and built heritable and/or historic gardens and designed landscapes.
- c) Landward and coastal areas with semi-wilderness or isolated or panoramic quality.

2. Protection, conservation and enhancement to landscape will also be encouraged in association with development and land use proposals.

Policy STRAT DC 9 - Historic Environmental and Development Control

Protection, conservation, enhancement and positive management of the historic environment is promoted. Development that damages or undermines the historic, architectural or cultural qualities of the historic environment will be resisted; particularly if it would affect a Scheduled Ancient Monument or its setting, other recognised architectural site of national or regional importance, listed building or its setting, conservation area or historic garden or designed landscape. More detailed policy and proposals for the historic environment will be set out in the Local Plan.

Policy STRAT RE1 - Wind Farm/Wind Turbine Development

A) Wind farm development is encouraged where it is consistent with STRAT DC 7, 8 and 9. Proposals shall be supported where it can be demonstrated there is no significant adverse effect on:

- Local communities.
- Natural environment.
- Landscape character and visual amenity.
- Historic environment.
- Telecommunications, transmitting or receiving systems and

B) The Council will identify, with appropriate justification in the Local Plan, broad areas of search or, where appropriate, specific sites where wind energy development may be permitted. The Council will also indicate sensitive areas or sites which it is adjudged that for overriding environmental reasons, proposals for wind farm development would only be considered in exceptional circumstances in line with the criteria set out above. Issues associated with the cumulative impact of wind farm and wind turbine developments will be addressed. This will be done in partnership with the industry and other interested parties including local communities.

Lorn Local Plan, September 1993 POL RUR 1

The Council will seek to maintain and where possible enhance the landscape quality of National and Regional Scenic Areas and coasts and areas of local landscape significance and within these areas will resist prominent or sporadic development which would have an adverse environmental impact:

- a) National Scenic Area: (i) Lynn of Lorn; (ii) Ben Nevis and Glencoe
- b) Regional Scenic Areas: (i) Knapdale/Melfort; (ii) North Argyll
- c) Regional Scenic Coasts: North West Argyll
- d) Areas of local landscape significance: (i) Loch Etive/Benderloch Coast; (ii) Loch Awe; (iii) Loch Nell; (iv) Glen Lonan; (v) Loch Avich; (vi) Glen Gallain/Loch Scammadale.

POL RUR 2

Proposals for development in or affecting Regional Scenic Areas and Coasts or areas of local landscape significance will be required to be assessed against the following criteria:

- (a) environmental impact
- (b) locational/operational need
- (c) economic benefit
- (d) infrastructure and servicing implications

Argyll and Bute Local Plan

The Argyll and Bute Finalised Draft Local Plan 2005 is a material consideration however the Council is still considering representations received during the recent public consultation relating to wind farm policy.

Wind Farm Policy 1995

The Council's Wind Farm Policy 1995 arose from the need to address the complex issues regarding the impact of such developments on the environment and to assist developers in site selection and to indicate the type of information required. This remains relevant and in the context of this planning application relevant policies include:

Policy WF 1 states that the Council will support wind farms which are consistent with existing development plan policies and of a high quality of design but will resist developments which either cumulatively or individually, would have an adverse impact on the environment by virtue of scale, location, setting or design.

Policies WF6 and WF7 seek to resist wind farms within 300m of residential properties or which are likely to result in shadow flicker on occupied premises or be a potential distraction to drivers.

Policy WF8 states that developments which would have an adverse effect on telecommunications, will be resisted.

Policy WF9 states that the Council will protect bird species covered by EC Directives by resisting wind farms which are likely to affect the breeding, feeding, roosting and flight areas (ie., areas of caution) of specially protected bird species.

Policy WF11 seeks to minimise long term visual and ecological impact and seeks the developer to enter into a legal agreement and financial bond to secure the highest quality of re-instatement.

Policy WF12 states that wind farms should normally be operational within two years of approval.

Policy WF13 recognises that wind farms are essentially temporary structures and states that the Council will:

- impose conditions of permission to ensure that such sites are fully restored upon the expiry of consent;
- seek legal agreements to secure a financial bond to cover such costs;
- normally grant permission for an initial period of 20 years.

Other Consultee responses

9. **Scottish Natural Heritage (SNH)** objected to the proposal on the grounds that the proposal would impact on (i) the core territory of a breeding pair of golden eagles and (ii) the breeding success of red throated divers. SNH outlined conditions which included the removal or relocation of turbines and the assurance that activity at several turbines must be limited out with the period March to July inclusive. Following the addendum which addressed these issues, SNH withdrew their objection.

10. Although SNH feel the eastern shore of Loch Awe can accommodate this development, it recognised that there would be visual impact from significant viewpoints and made recommendations to reduce the impact. The addendum took these into account and implemented these recommendations (subject to the constraints of the site) to the satisfaction of SNH.

11. SNH further recommended an exclusion zone from red throated diver breeding sites - this recommendation is secured by condition 6.38.

12. The hydrological impacts of the development have been assessed by the **Scottish Environment Protection Agency (SEPA)**. SEPA has requested that a full site specific construction method statement (CMS) be submitted and approved by the Local Planning Authority in consultation with SEPA and SNH at least one month prior to commencement of the development. The CMS should systematically identify pollution risks in relation to each operation and detail monitoring proposals and contingency plans. It should (i) identify specific measures to address silt-laden run-off from temporary and permanent access tracks, soil storage and other engineering operations (ii) detail sustainable drainage system measures to deal with discharge of surface water from wheel cleaning (iii) identify procedures for dealing with water contamination from the temporary concrete batching plant (iv) identify mechanisms to ensure subcontractors will be adequately managed and well controlled (v) confirm the presence of an appropriately qualified environmental scientist during construction to provide specialist advice (vi) detail emergency procedures (vii) detail measures for dealing with all waste streams that arise for the operation phase (viii) detail welfare arrangements for the temporary compound (ix) identify appropriate timing of

construction operations, to avoid periods when pollution is most likely to occur i.e. Periods of high rainfall. These recommendations are secured by condition 6.2.

13. In addition, SEPA requested that consideration be given to imposing a condition that no turbine is sited closer than 50m to a watercourse. This is secured by condition 6.14.

14. SEPA also recommended a condition be imposed that known private water supply sites be identified and a survey undertaken to identify un-registered sites in the area to establish if water supplies will be affected by the proposal. If mitigation measures are required, details should be submitted prior to commencement of development. This is secured by condition 6.15.

15. Scottish Ministers also sought the advice of SEPA on matters relating to protection of the water environment and have had regard to Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

16. SEPA have advised that authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 ("the 2005 Regulations") is required before operations can commence. However, on the basis of the information available at this time and without prejudice to the determination process under the 2005 Regulations, SEPA are satisfied the proposed operations will be unlikely to cause a significant problem in the granting of authorisation. You should note however that it is the Applicant's obligation to ensure the development meets its legal obligations, in particular under the 2005 Regulations. Accordingly you are strongly advised to advance this matter with SEPA at the earliest opportunity.

17. **The Royal Society for the Protection of Birds (RSPB Scotland)** objected as the information in respect of some bird species (in particular Golden Eagle, Red-throated diver and Merlin) was considered inadequate. Following amendments to the layout, RSPB Scotland withdrew its objection subject to an appropriate programme of bird monitoring and mitigation being agreed in conjunction with SNH prior to work commencing. RSPB also believe it is essential that a long term monitoring and land management enhancement plan is drawn up to create positive enhancement for the bird habitats, especially for key species. However, following discussions with SNH and it was decided not to impose such a condition. SNH are satisfied that you are willing to discuss this issue further and undertake some works or initiatives as agreed appropriate.

18. **Forestry Civil Engineering (FCE)** initially felt there was insufficient information provided in the Peat Stability Assessment and made a number of recommendations. You subsequently addressed these concerns to the satisfaction of FCE.

The Applicant's Case

19. The Carraig Gheal wind farm site was identified following a site visit and evaluation in 2001, one of many sites being examined by GreenPower in Scotland that time. The site was assessed against a set of criteria including land use and context; wind resource; electricity grid; transport infrastructure; residential amenity and landscape and visual capacity. The preliminary assessment indicated that the

site had suitability for wind power and could potentially host a medium to large scale wind farm.

20. In developing the project, various studies were undertaken on assessing the sensitivities of the site, these included landscape, ecological, hydrological, archaeological, cultural heritage and noise. These sensitivities were considered in drawing up the final design in particular the turbine locations.

The Scottish Ministers' Consideration

21. In assessing the ecological impacts of this proposal, the Scottish Ministers are of the opinion that the ecological effects of the wind farm are not likely to be significant and that, subject to conditions, there is no reason why this proposal should be rejected on ecological grounds. An Ecological Clerk of Works should be appointed to monitor compliance with the ecological works which have been approved in the consent. This is addressed by condition 6.30. The Ecological Clerk of Works would also advise the Company on the conservation of nature, and advise on micro-siting of turbines and tracks.

22. While the consent is based on an assessment of impacts as they presently stand, the Company should be aware of its obligations under the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) towards European Protected Species. In this respect, the protection of otters and water voles are addressed by conditions 6.2 and 6.31.

23. In assessing the ornithological impacts of this proposal, the Scottish Ministers have determined that bird monitoring plans should be in place and mitigation measures should be implemented to protect sensitive breeding bird sites. These measures are addressed by conditions in the ornithology section of the consent.

24. In assessing the hydrological impacts of the development, the Scottish Ministers consider it necessary to protect water quality and control pollution. SEPA have requested that rigorous environmental precautions and procedures are undertaken by you during construction. In this respect Scottish Ministers have applied several conditions to address these issues. As previously stated, authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 is required before operations can commence; you are obliged to ensure the development meets its legal obligations under the 2005 Regulations.

25. In assessing the noise and traffic issues in respect of the proposals, Ministers consider it necessary to minimise disturbance of the community in the vicinity of the site as a result of the commencement of the development. Traffic and noise issues have been addressed by conditions 6.6 and 6.50 - 6.54. Forestry Commission Scotland are required to consider and approve the proposed site access routes, prior to the commencement of the development. This is secured by condition 6.5. 26 Following peat risk assessment, Scottish Ministers are satisfied the company has taken into account suitable mitigation measures to manage the risk of peat landslide associated with the development. You are strongly advised to fully assess the risk of peat landslide during construction work in accordance with the Scottish Government guidance published Jan 2007, and employ a competent multi-disciplinary team of

professionally qualified personnel to do so. This is addressed by conditions 6.2 and 6.40 - 6.49.27. The Environmental Statement and supplementary information submitted by the developer was assessed in respect of national and local economic benefit. Scottish Ministers consider the development will make a valuable contribution towards achieving renewable energy targets which aim to combat the effects of climate change. It was also considered that the development also accords with government policy to grow the Scottish economy and SPP6 planning guidance on renewable energy. The Environmental Statement and supporting information estimates that the on-site construction workforce will total between 40 and 60. Over the lifetime of the project, 3-4 full time staff will be employed in operations and maintenance.

The Scottish Ministers' Determination

Public Local Inquiry

28. Before arriving at a decision on this proposal, Scottish Ministers must consider whether a Public Local Inquiry (PLI) should be held. In terms of Schedule 8 to the Electricity Act 1989, if the planning authority made a valid objection and did not withdraw it, Scottish Ministers must convene a PLI before determining the application. As Argyll and Bute Council did not object to the Carraig Gheal application a PLI is not a statutory requirement.

29. Paragraph 3(2) of Schedule 8 to the Act, requires Scottish Ministers to consider all the objections they have received in pursuance of the Electricity (Application for Consent) Regulations 1990 ("the 1990 Regulations"), 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, cause a PLI to be held.

Decision

30. In reaching the decision not to cause a PLI to be held, Scottish Ministers are content that adequate opportunity was afforded for public representation and that those with a right to make representations could have their representations properly taken into account. The Scottish Ministers have considered all other material considerations and consider that it would not be appropriate for a PLI to be held.

31. 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.

32. The Scottish Ministers have considered the environmental information carefully; in addition to the Environmental Statement and Addenda, they have considered the submissions prepared by Argyll and Bute Council, and all other relevant consultees. Ministers have also considered representations made by other persons about the likely environmental effects of the proposed development.

33. Scottish Ministers are content that they have had access to sufficient information to assess the likely environmental impact of the project to enable them to make a determination on the application.

34. Schedule 9 of the Act places a duty on the Company to have regard to the desirability of preserving natural beauty of the countryside, of conserving flora, fauna and geological and physiographical 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 any effect that the development would have on these features. Schedule 9 also requires the Scottish Ministers to have regard to the desirability of these matters and the extent to which the Company has complied with its duty to mitigate.

35. The Scottish Ministers are satisfied that the Company has had due regard to these features and complied with this duty and consequently consent to this proposal and the mitigation measures to be implemented in terms of section 36 of the Electricity Act 1989, and issue a direction that planning permission be deemed to be granted in terms of section 57 of the Town and Country Planning (Scotland) Act 1997. The section 36 consent is subject to 6 conditions and the deemed planning permission is subject to 54 conditions. A copy of the consent is enclosed with this letter.

36. Copies of this letter have been sent to Argyll and Bute Council as the Planning Authority and to all those consultees who responded to this proposal. This letter and the consent will be published on the Scottish Government website.

37. Finally, within 2 months of the approval of the development (and within two months of the final commissioning if there has been any variation on the original approved plan), the Company shall provide to the Scottish Ministers a detailed plan showing the site boundary and all turbines, anemometer masts, access tracks and infrastructure in a format compatible with the Scottish Government's Spatial Data Management Environment (SDME), along with appropriate metadata. The SDME is based around Oracle RDBMS and ESRI ArcSDE and all incoming data should be supplied in ESRI shapefile format. The SDME also contains a metadata recording system based on the ISO template within ESRI ArcCatalog (agreed standard used by the Scottish Government) and all metadata should be provided in this format.

Yours sincerely

Colin Imrie

Head of Energy Consents

A member of the staff of the Scottish Minister