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Jilly Adams
BayWa r.e. UK Limited
By email

10 June 2020

Dear Jilly

ELECTRICITY ACT 1989

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

SCREENING OPINION OF THE SCOTTISH MINISTERS

IN RESPECT OF A PROPOSED APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE EXISTING SECTION 36 CONSENT TO CONSTRUCT AND OPERATE WHITELAW BRAE WIND FARM IN THE PLANNING AUTHORITY AREA OF SCOTTISH BORDERS COUNCIL

I refer to your application dated 27 April 2020 requesting, on behalf of Whitelaw Brae Windfarm Limited (WBWL), a screening opinion in respect of a proposed variation application under Section 36C of the Electricity Act 1989 to vary the existing consent to construct and operate the Whitelaw Brae Wind Farm generating station.

The proposed varied development is located approximately 3km south of Tweedsmuir within the planning authority area of Scottish Borders Council.

The screening request requires to be screened by the Scottish Ministers in accordance with regulation 8(1) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("regulations"). The proposed varied development is a Schedule 2 development in terms of the regulations and a determination is required on whether the proposed varied development is or is not EIA development.

The screening opinion is based on the proposed varied development to the existing section 36 consent are as follows:.

- Extension of the operational life of the development from 25 to 30 years.
- Increasing the turbine tip height by 3 metres from 133.5 metres to 136.5 metres
- Increase in rotor diameter from 107 metres to 117 metres.

The screening application was accompanied by an EIA Screening Report and supporting documentation, which sets out details of the proposed varied development, and provides updated assessments as regards the potential impacts of a varied scheme on noise, ornithology, aviation, on the landscape, and on visual amenity. The Report incorporated a range of figures to demonstrate the updated assessment findings.

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

The regulations set out (at 8(2)) the information that must be available to the Scottish Ministers in forming a screening opinion. Regulation 10 requires that the Scottish Ministers must seek that information if it is not included within the application documentation. Scottish Ministers consider that the information included within the application letter and EIA Screening Report is sufficient to meet the requirements set out in regulation 8(2), and that the selection criteria in Schedule 3 of the regulations has been taken into account.

Statutory Consultation

Under regulation 8(5) of the regulations, Scottish Ministers are required to consult the planning authority within whose land the proposed application is situated. Scottish Borders Council were consulted and responded on 19 May 2020 advising that, in their view, the proposed varied development does not constitute EIA development.

Scottish Ministers' Considerations

EIA development is defined in the regulations, in respect of an application for Electricity Act consent, as Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

The proposed development falls under Schedule 2 development.

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

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

The planning authority's response to the screening consultation is attached to this letter at Annex 1. In accordance with regulation 7(2), this opinion is accompanied by the following written statement with reference to the selection criteria within Schedule

3 of the regulations as are relevant to the development. In accordance with the regulations, a copy of the screening opinion has been sent to the planning authority.

The Scottish Ministers have adopted this opinion on the basis that all mitigation measures set out in the Whitelaw Brae Wind Farm Environmental Statement dated 2014, Further Environmental Information dated 2016 and the section 36 consent dated 7 December 2017 shall be implemented. Any future application submitted to varied the consented development must be accompanied by sufficient information and supporting documentation to allow Scottish Ministers and consultees to fully assess the application and to allow Scottish Ministers to reach a determination. The supporting information shall include but not limited to an Environmental Information Statement assessing the effects of the proposed varied development on all the relevant environmental matters.

Written Statement

The Characteristics of the Development

The proposed varied development constitute a 3 metre increase in the turbine tip height and an increase of the rotor diameter of all wind turbines by 10 metres, as well as extending the operational life of the generating station from 25 to 30 years. The location of the proposal is presented in figures 1.1, 1.2 and 3.1 and description of the proposed varied development is set out at section 5.2 of the Screening Report. The proposed varied development does not change the layout or location of the consented development. The potential cumulative impacts with other existing and approved developments will not produce a significant overall change in effect. The use of resources, production of waste, pollution risk, risk of accidents or risk to human health will not increase significantly as result of the proposed varied development. These matters would require to be subject to mitigation measures as set out in the existing consented development.

The Location of the Development

The land and the location of the proposed varied development is currently approved for wind farm development. The proposed varied development would not change the effect of the development on the relative abundance, availability, quality and regenerative capacity of natural resources in the area and its underground, or on the absorption capacity of the natural environment.

The Characteristics of the Potential Impact

The magnitude and spatial extent of the impact, the nature of the impact (including transboundary), and the cumulative effect on environmental factors including biodiversity, land, soil, water, climate, cultural heritage, landscape, and population and human health of the proposed varied development are considered not to be significant.

The table attached at Annex 2 provides further details on the selection criteria within Schedule 3 of the regulations and whether or not potential effects are likely to be significant.

The screening opinion does not constitute pre-application advice and is provided without prejudice to the assessment of any future application under section 36C of the Electricity Act 1989 and section 57 of the Town and Country Planning (Scotland) Act 1997.

Yours sincerely,

Mark Ashton
A member of staff of the Scottish Ministers

Ashton M (Mark)

From: Miller, Craig <CMiller@scotborders.gov.uk>
Sent: 19 May 2020 12:09
To: Ashton M (Mark)
Subject: RE: THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED) 20/00468/SCR

Mark

We have considered the proposed variation to the Section 36 consent at Whitelaw Brae under Schedule 3 of the above Regulations. We do not consider that the variation to tip height of 3m nor the extension of operating life to 30 years, in themselves, cause environmental effects to the extent that warrants an Environmental Impact Assessment.

In terms of landscape and visual effects, the information provided in support of this screening request identifies the areas where there would be additional visibility of the windfarm and provides wirelines of a small number of viewpoints where it is acknowledged there are significant landscape and/or visual effects as a result of the consented scheme. Having looked at the information supplied we consider the increase in effects are so minimal as to be barely noticeable. It is unlikely that, even with increased blade length, the dimensions of the tower will be so noticeably increased as to cause additional significant effects on landscape or visual amenity, including residential amenity.

The comparative ZTV does show some additional areas where the turbines will be visible when they previously weren't but this mainly extends the areas where they are visible (rather than wholly new areas where turbines are visible) and the new areas of visibility are small, limited in number and remote, increasing the visibility only very slightly. The lifetime extension is compatible with Scottish Government wind energy policy that says that 'areas identified for windfarms should be suitable in perpetuity'.

In terms of ornithological issues, the collision risk mortality calculated for the revised turbines is not predicted to have a significant effect on any of the target species identified (black grouse, curlew, goshawk, greylag goose, hen harrier, herring gull, merlin, osprey, pink-footed goose and short-eared owl) and we accept, in this respect, the conclusions of the Environmental Statement and Further Environmental Information still apply. The report does show that there is a slight increase in collision risk, notably for curlew, merlin, pink-footed goose, greylag goose and herring gull. It may be possible to account for the increase losses on a no net loss basis (LDP policy EP3 Local Biodiversity) with further measures in the Habitat Management and Enhancement Plan as required by condition (e.g. for curlew and merlin as appropriate). A revised Habitat Management and Enhancement Plan should also take into account the extension of the lifetime of the wind farm to 30 years. We, therefore, do not consider the ornithological impacts to be of any significance that would warrant an Environmental Impact Assessment in their own right.

I hope that this clarifies our views on your consultation relating to the Screening Request,

Regards

Craig Craig Miller
Principal Planning Officer
Regulatory Services
Scottish Borders Council

Tel: 01835 825029 E-mail : cmiller@scotborders.gov.uk

Topic	Baseline Description (Environmental Sensitivity)	Potential Effects of increasing tip height by 3m	Potential Effects of increasing rotor diameter from 107m up to 117m	Potential Effects of additional 5 years operation	Are Effects likely to be significant? Yes/No? Significance considered in terms of the extent, transboundary nature, magnitude and complexity, probability, duration, frequency and reversibility of any impact(s).
Landscape and Visual	<p>The landscape character assessment considered impacts on four designated landscapes comprising two Special Landscape Areas, a Regional Scenic Area and a National Scenic Area. No significant effects were predicted to impact the National Scenic Area, one of the Special Landscape Areas or the Regional Scenic Area. Localised significant impacts were predicted to the western part of the Tweedsmuir Uplands Special Landscape Area, however it is not considered that the integrity of this landscape will be compromised. Of the five Landscape Character Types (LCT) included in the assessment, predicted significant effects were restricted to the one within which the wind farm would be located - Southern Uplands with Scattered Forest LCT. Localised significant effects are predicted to affect the Talla–Hart Fell Wild Land Area, however the areas exhibiting the highest levels of wildness would not be affected. The significant cumulative landscape effects identified for these landscape areas are similar to those predicted for the scheme on its own. Significant effects were predicted to occur at eight of the twenty two viewpoints, mostly located within 3-4km of the wind farm, with the exception of three hills summits to the south and east (Hartfell Rig, Firthhope Rig). With regard to visual effects on residential properties, significant effects were identified in relation to seven properties (eight dwellings).</p> <p>As part of this screening request Pegasus Group has undertaken a review of the original baseline situation and identified that, since the submission of the ES (2014) and FEI (2016), SNH has published an updated set of Landscape Character Type (LCT) boundaries and descriptions (March 2019). The 2019 LCT map and associated Landscape Character Type Descriptions supersedes the 1990s landscape character descriptions and mapping, including the Borders Landscape Assessment (1998). However, the findings presented in the FEI, in relation to the Southern Uplands with Scattered Forest LCT, can be considered to apply equally to the “new” ‘Southern Uplands – Borders’ LCT which now applies to the landscape in which the windfarm sits, and which has the same identified characteristics.</p>	<p>Pegasus Group undertook a review to consider the potential for the height increase to bring about any change to the previously predicted landscape or visual effects.</p> <p>Pegasus concluded that there would be no change to the assessment findings and the effects would remain as previously reported in the FEI (2016) and Inquiry documents. The Pegasus Report and accompanying wirelines are included in Appendix 2.</p> <p>Pegasus conclude that the 3m increase in turbine height, and associated increase in rotor diameter, would be barely perceptible when considered in the context of the scale and nature of the existing consented scheme. On this basis, and with regard to the identified character and characteristics of the local landscape, it is not considered that there would be any change to the level of significant effects previously identified.</p>	No additional Landscape or Visual Effects predicted to occur.	No additional Landscape or Visual Effects predicted to occur.	<p>No.</p> <p>The planning authority comment that any increase in landscape and visual effects are minimal..</p>
Ecology	<p>The site overlaps the River Tweed SAC and SSSI in the north.</p> <p>The main habitats identified within the site include wet modified bog, blanket bog and marshy grassland.</p> <p>The bat surveys carried out demonstrated that bat activity on site is low.</p> <p>Otter were recorded along a number of watercourses within the site and Atlantic Salmon were recorded in high numbers in the River Tweed and low numbers in the River Tweed and moderate numbers in Fingland Burn. No other protected species were recorded on site.</p> <p>With the implementation of the proposed mitigation and enhancement measures, it was considered that all impacts associated with the proposed development, either alone or cumulatively with other projects or activities, would be reduced to either Minor or Negligible and would be therefore be Not Significant.</p>	No changes to the layout are proposed, the number and location of the turbines will remain as per the consented layout as will tracks, substation and borrow pits. Following the implementation of the previously agreed mitigation and enhancement measures, in the form of pollution prevention, species disturbance reduction measures and replanting of forestry by means of CEMP, PPP and Species Protection Plan, the proposed variations will not give rise to any significant effects.			No - subject to mitigation measures.
Ornithology	The ES (2014) and FEI (2016) reported no potentially significant effects for any species during construction, operation or decommissioning due to the proposed development.	MacArthur Green has calculated the change to collision risk resulting from the increase in turbine dimensions and lifetime extension of 5 years. The results provided in Appendix 3 state that although the increase in rotor diameter and lower ground clearance result in a slight increase to the predicted collision rates the differences are generally small and therefore within a population context are considered to be negligible for all species, and as such no significant effects are predicted.			No

Topic	Baseline Description (Environmental Sensitivity)	Potential Effects of increasing tip height by 3m	Potential Effects of increasing rotor diameter from 107m up to 117m	Potential Effects of additional 5 years operation	Are Effects likely to be significant? Yes/No? Significance considered in terms of the extent, transboundary nature, magnitude and complexity, probability, duration, frequency and reversibility of any impact(s).
Cultural Heritage	<p>There are 25 known Heritage Assets within the site boundary, two of which are Scheduled Monuments and the remainder undesignated.</p> <p>Operational impacts upon Hawkshaw Castle were assessed as being of low magnitude, resulting in a minor effect that is not significant.</p> <p>All other operational effects were of negligible significance.</p>	<p>Headland Archaeology (UK) undertook a review (included in Appendix 4) of the existing legislation, policy and guidance to cultural heritage (as applicable to the original ES (2014) and subsequent FEI) and concluded that although there have been changes to historic environment policy and guidance since December 2017, these have not resulted in any substantive changes to the methodology or validity of the conclusions of the 2014 ES and 2016 FEI.</p> <p>The supporting document also identified that both on-site and off-site heritage assets defined in the 2014 ES and 2016 FEI remain valid and applicable to the present screening document. Since there has been no changes to the on-site baseline and no changes to the construction and decommissioning footprint, it is considered that predicted and potential direct impacts remain as assessed in the 2014 ES and 2016 FEI.</p> <p>It is also concluded by Headland Archaeology (UK) that the increase in tip height and associated changes to rotor diameter and hub height will result in no change to the operational effects as predicted in the 2014 ES and 2016 FEI.</p>		<p>In the 2014 ES and 2016 FEI effects arising from the construction, operation and decommissioning of the wind farm were all assessed as permanent effects. The operational lifespan of the wind farm was effectively irrelevant to the cultural heritage impact assessment. Therefore, the potential effects arising from a proposed lifetime extension have been scoped out of this screening document.</p>	No
Ground Conditions and Hydrology	<p>There River Tweed SAC and SSSI is within and immediately adjacent to the site. The site covers three surface water Drinking Water Protected Areas (DWPA) and two Drinking Water Protected Zones (DWPZ):</p> <ul style="list-style-type: none"> - Fruid Reservoir (DWPA) - Fingland Burn (DWPA) - Hawkshaw Burn (DWPA) - The Upper Tweed Valley Sand and Gravel (DWPZ) - Galashiels bedrock and localised sand and gravel aquifers (DWPZ) <p>The ES (2014) and FEI (2016) reported no significant residual effects following application of consented mitigation measures.</p>	<p>No changes to the layout are being requested, the number and location of the turbines will remain as per the consented layout as will tracks, substation and borrow pits. Therefore, as the proposed changes do not present any additional likely effects or increase the levels of risk, the conclusion of no significant residual effect reported in the FEI (2016) and ES (2014) remains valid and unchanged.</p>			No - subject to mitigation measures.
Noise	<p>The ES (2014) and FEI (2016) predicted that for dwellings neighbouring the wind farm, cumulative wind turbine noise would meet the Noise Criteria derived in accordance with government guidance and agreed with Scottish Borders Council (SBC).</p>	<p>No changes to the layout are being requested, the number and location of the turbines will remain as per the consented layout as will tracks, substation and borrow pits. The final turbine model would comply with the noise conditions set out in Condition 19 therefore it is anticipated that no further information is required at this time and no significant effects are predicted.</p>			No
Traffic and Transport	<p>The traffic generated by the wind farm will be at its greatest during the construction phase with the traffic generated during the wind farm operations being made up of occasional maintenance and inspection vehicles.</p> <p>The results of the traffic impact assessment reported in the ES (2014) and FEI (2016) that there would be no long-term or residual significant traffic and transport effects.</p>	<p>It is considered technically feasible to use the proposed abnormal loads transportation route to the site from the A74(M) using the A701 via Moffat. To facilitate the passage of turbine delivery as specified in the ES (2014), some mitigation will be required, primarily involving the temporary removal of street furniture.</p> <p>Prior to any deliveries consultation on the route will be held with Local Planning Authority roads department.</p>		<p>There will be an additional five years of operation and maintenance vehicles visiting the site however the numbers of vehicles will continue to be low and not significant.</p>	No - subject to mitigation measures.
Socio-economics	<p>The ES (2014) and FEI (2016) reported the overall effects of the wind farm on social and economic conditions as positive.</p>	<p>It is considered that the extension of operational life and the increase in tip height would yield positive effects, whereby any benefits of the development may be sustained over a longer period. Likewise, the potential extension of the employment created as a result of the operation of the windfarm is also considered to be positive.</p>			No
Aviation	<p>The wind farm is within the operational range of National Air Traffic Services' (NATS) Lowther Hill Primary Surveillance Radar (PSR). At a blade tip height of 133.5m the turbines would be within the Lowther Hill radar Line of Sight (LOS) and therefore theoretically detectable by this radar system. The wind farm would be situated beneath</p>	<p>Due to the existence of operational mitigation measures, in the form of the radar mitigation contract, it is considered that the conclusion of no significant residual effect reported in the FEI (2016) and ES (2014) remains valid and unchanged.</p>		<p>It is not anticipated that the addition of 5 years operation would have any significant effect.</p>	No - subject to mitigation measures.

Topic	Baseline Description (Environmental Sensitivity)	Potential Effects of increasing tip height by 3m	Potential Effects of increasing rotor diameter from 107m up to 117m	Potential Effects of additional 5 years operation	Are Effects likely to be significant? Yes/No? Significance considered in terms of the extent, transboundary nature, magnitude and complexity, probability, duration, frequency and reversibility of any impact(s).
	<p>airspace established for the protection of commercial flights into and out of the Scottish central belt airports.</p> <p>A Radar Mitigation agreement has been entered into by the Applicant and NATS in order to mitigate impacts on Lowther Hill Radar. In addition Condition 5 (not numbered) of the S36 Consent requires approval and implementation of the Mitigation Scheme by NATS and the Scottish Ministers prior to any turbines being erected.</p> <p>The ES (2014) and FEI (2016) reports no significant residual effects predicted for aviation resulting from the proposed scheme.</p>				
Utilities & Wireless	<p>Following consultation, assessment and the identification of proven mitigation measures it was considered in the ES (2014) and FEI (2016) reports no significant residual effects predicted.</p>	<p>The revised turbine specifications have been communicated to the Joint Radio Company (Appendix 5) who analyse proposals for wind farms on behalf of the UK Fuel and Power Industry. In this case JRC concludes to the changes to the turbine dimensions and additional 5 year operation period would not relay any foreseeable problems based on the known interference scenarios.</p> <p>Due to the existence of proven mitigation measures and responses received to date it is considered that the conclusion of no significant residual effect reported in the ES (2014) and FEI (2016) Utilities and Wireless chapter remains valid and unchanged.</p>			<p>No - subject to mitigation measures.</p>
Carbon Balance	<p>The ES (2014) reported that the wind farm would result in carbon savings by displacing fossil fuel generated electricity. The wind farm would save approximately 2 million tonnes of Carbon Dioxide equivalent (tCO₂e) over its lifetime. Approximately 1.3 years after the construction of the wind farm it is expected that it will have paid back the carbon that was used in its construction. After this initial period all electricity generated by the wind farm would be carbon neutral.</p>	<p>These amendments are being submitted following a review of the currently available turbine model and assessment of the energy yield. The above amendments will lead to an overall energy yield increase of approximately 8.5%. This will result in further carbon savings and increase in homes supplied as shown in Table 5.1.</p>			<p>No</p>
Forestry	<p>The site is characterised by a small area of 30 year old commercial plantation forestry situated in its centre.</p> <p>The ES (2014) and FEI (2016) reported potential effects arising from the forestry operations would be largely similar to those expected due to the forestry operations required without the proposed development. Following felling and construction of the wind farm, compensatory tree planting would be carried out on the site. The effects of these changes, taking account of the habitat improvements and new planting mitigation, would result in a net gain.</p>	<p>No changes to the layout are being requested, the number and location of the turbines will remain as per the consented layout as will tracks, substation and borrow pits. Therefore, as the proposed changes do not present any additional likely effects, the conclusion of no significant residual effect reported in the FEI (2016) and ES (2014) remains valid and unchanged.</p>			<p>No - subject to mitigation measures.</p>
Other Effects	<p>The ES (2014) reported that during the operation, other than to infrastructure components on health & safety grounds (e.g. control buildings), there will be no restriction on access, recreation or tourism.</p> <p>The ES (2014) and FEI (2016) reported overall that effects on shadow flicker, recreation, tourism and access and health and safety resulting from the proposed development are considered to be not significant and so no residual effects were reported.</p>	<p>There will be no material change to the shadow flicker assessment as no sensitive receptors were identified within the revised study area (10x maximum rotor diameter (117m), 130 degrees either side of north). Badlieu, the closest property is approximately 1360m from the closest turbine, i.e. outside the 1170m study area buffer, therefore a shadow flicker assessment is not required.</p> <p>Following the implementation of the previously agreed mitigation and health & safety protocols it is assumed that the proposed changes do not present any additional likely effects or increase the levels of risk, and the conclusion of no significant residual effect reported in the FEI(2016) and ES(2014) remains valid and unchanged.</p>			<p>No - subject to mitigation measures.</p>