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Letter Reference: BAY-L-0213

Contact person	Email	Phone	Date
Jillian Adams	Jillian.adams@baywa-re.co.uk	+44 (0)141 468 0585	07/07/2020

Dear Mr Ashton,

WHITELAW BRAE WINDFARM

THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION OF CONSENT) (SCOTLAND) REGULATIONS 2013: APPLICATION FOR VARIATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 OF SECTION 36 CONSENT TO CONSTRUCT AND OPERATE WHITELAW BRAE WINDFARM IN THE SCOTTISH BORDERS AND DIRECTION VARYING DEEMED PLANNING PERMISSION UNDER SECTION 57(2ZA) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

By decision letter dated 7th December 2017 (the "Decision Letter") Whitelaw Brae Windfarm Limited (the "Applicant") was granted consent (the "Consent") by Scottish Ministers, under section 36 of the *Electricity Act 1989,* to construct and operate a 14 turbine windfarm known as Whitelaw Brae Windfarm. Scottish Ministers also directed that, under Section 57(2) of the *Town & Country Planning Act (Scotland) 1997*, planning permission was deemed to be granted **(Ref WIN-140-4).**

The Consent was issued following submission of the Section 36 application including the following documents:

- Whitelaw Brae Windfarm Environmental Statement (2014) (ES)
- Whitelaw Brae Windfarm Further Environmental Information (2016) (FEI)

In addition, a Public Local Inquiry (Inquiry) was held in Tweedsmuir Hall in August 2016 with further supporting documentation being submitted during this process.

The Applicant seeks a variation under Section 36C (s36C) of the *Electricity Act 1989* together with a direction under s57 (2ZA) of the *Town and Country Planning (Scotland) Act 1997* to vary the deemed planning permission. The application is hereafter referred to as the 'Variation Application'. The information required to support the Variation Application is provided in this letter and its appendices, as per the requirements of the *Electricity Generating Stations (Application for Variation of Consent) (Scotland) Regulations 2013* (the "2013 Regulations").

Location of the Development and Plan

Annex 1 to this letter provides the following Figures (as presented in the 2014 ES and 2016 FEI):

- Figure 1.1: Site Location Plan
- Figure 1.2: Application Site Boundary
- Figure 3.1: Proposed Site Layout

The proposed development is in the Scottish Borders, approximately 3km to the south of Tweedsmuir and directly west of Fruid Reservoir. The Site comprises a mixture of unimproved, rough, open grazing land and commercial forestry on hills and valleys between the Fruid Reservoir and the River Tweed. The site is located within the administrative area of the Scottish Borders Council (SBC), but is also close to the boundaries of South Lanarkshire Council (SLC) (approximately 3km west of the Site) and Dumfries & Galloway Council (D&GC) (approximately 5km south of the Site).

Amendments Requested

The Applicant seeks the following amendments to the Consent:

- Extension to the generation lifetime of the wind farm from 25 years to 30 years
- Increase the consented turbine tip height from 133.5m to up to 136.5m
- Provide clarification on the Drawing listed as Annex E in the consent

The proposed amendments to the Consent and deemed planning conditions are listed in Table 1.

Annex 2 of this letter presents the proposed Draft Variations, inserted as track changes, to the Consent Letter.

It is important to note that there are no prosed changes to the turbine locations.

Table 1: Section 36C Variation Application

Condition/ Section	Original wording	Amendment Requested
Changes to Section 36 Consent Wording		
The Scottish Ministers' Determination	The consent and deemed planning permission hereby granted will last for a period of 25 years from the earlier of: i) the date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; and	The consent and deemed planning permission hereby granted will last for a period of **30** years from the earlier of: i) the date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; and ii) the date falling 18 months

Condition/ Section	Original wording	Amendment Requested
	ii) the date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.	after electricity is generated from the first of the wind turbines hereby permitted.
Annex 1	• 14 turbines each with a height to blade tip of up to 133.5 metres	• 14 turbines each with a height to blade tip of up to **136.5** metres
Amendment to Deemed Planning Conditions		
5 Implementation in accordance with approved plans and requirements of the section 36 consent	*(1)Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the Application:* *(a)Including the approved drawings listed at Annex E to this decision (as supplemented or amended by any further or additional environmental information) and;* *Other documentation lodged in support of the Application'*	Condition 5 of the deemed planning consent makes reference to approved drawings listed in Annex E however no Annex E is included in the consent. Clarification of the reference is therefore requested as per suggested wording below. *(1)Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the Application:* *(a)Including the approved drawings listed at Annex E* ***(Figure FEI 3.1: FEI Site Layout)*** *to this decision (as supplemented or amended by any further or additional environmental information) and;* *Other documentation lodged in support of the Application'*
6 Design and Operation of turbines	*(1)There shall be no commencement of Development unless and until full details of the proposed wind turbines (including the size, type, external finish and colour which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the Planning authority.* *(2)The turbines shall be consistent with the candidate turbine or range assessment in the environmental statement,*	It is requested that a 3m tip height increase is applied to Condition 6 Part 2 and the wording amended as follows: *(2) The turbines shall be consistent with the candidate turbine or range assessment in the environmental statement, and the tip height shall not exceed* ***136.5 metres*** *above ground level.*

Condition/ Section	Original wording	Amendment Requested
	*and the tip height shall not exceed **133.5** metres above ground level.* *(3)The Development shall be constructed and operated in accordance with the approved details and maintained in the approved colour until such time as the wind farm is decommissioned.* *(4)All wind turbine blades shall rotate in the same direction.* *(5)None of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings/ enclosures, ancillary buildings or above ground fixed plan shall display any name, logo, sign or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the Planning Authority.*	
24 Site decommissioning, restoration and aftercare	*(1) The wind turbines shall be decommissioned and cease to generate electricity by no later than the date falling **25** years from the date of Final Commissioning. The site shall be restored in accordance with a decommissioning, restoration and aftercare scheme to be submitted for the written approval of the Planning Authority prior to the start of the 25 year permission period.* *(2)The Development shall be decommissioned, the site restored and aftercare undertaken in accordance with the approved scheme or any variation to it agreed in writing with the planning authority. Decommissioning shall be completed within 12 months of the end of the permission period or any alternative*	It is requested that an additional 5 years is added to Condition 24 Part 1 and the wording amended as follows: (*1) The wind turbines shall be decommissioned and cease to generate electricity by no later than the date falling **30** years from the date of Final Commissioning. The site shall be restored in accordance with a decommissioning, restoration and aftercare scheme to be submitted for the written approval of the Planning Authority prior to the start of the **30** year permission period.*

Condition/ Section	Original wording	Amendment Requested
	timescale that has been agreed in writing with the planning authority and shall include the dismantling and removal from the site of all turbines, buildings and ancillary development other than the access tracks which may remain in situ if the planning authority has agreed to this in writing. *(3)The scheme shall include provision for monitoring and reporting. The approved plan and Decommissioning Method Statement shall be implemented as approved and overseen by an Ecological Clerk of Works (ECoW) appointed in accordance with condition 12.*	

Development

The principle components of the consented wind farm and ancillary development comprise the following:

- 14 turbines each with a height to blade tip of up to 133.5m
- Wind turbine foundations and associated hardstandings
- Approximately 12.6km of access tracks
- 1 temporary and 1 permanent, 80m tall free-standing meteorological/ wind monitoring masts
- Substation and control room buildings and an associated compound
- 2 temporary construction and site storage compounds
- 2 battery storage units with a combined capacity of 4 MW and 1 inverter/ transformer unit
- Drainage works
- Woodland and tree management
- Landscaping and ecological enhancement works
- Associated ancillary works
- Engineering operations

The variation proposed to the principle components as outlined above is:

- 14 turbines each with a height to blade tip of up to 136.5m.

The remaining descriptions will remain unchanged.

Reason for Seeking Variation

Wind turbine technology is continually evolving, with more productive and efficient designs becoming available on the market. As part of the turbine procurement process, a review of the turbines currently available on the market and suitable for the site conditions has been carried out. This review resulted in a number of turbine models being identified which do not fit the parameters assessed within the ES (2014) and FEI (2016) due to their rotor diameter. The ES and FEI considered a turbine up to 133.5m tip height with a rotor diameter of 107m however the 'best fit' turbines currently available have a rotor diameter of 117m.

Following focussed discussions with turbine suppliers and an analysis of the energy yield, it is clear that a hub height increase of 3m would not only increase the energy yield of the turbines but would also improve their performance and decrease wear and tear during their lifetime. The increase in yield is demonstrated by the following figures provided by the turbine suppliers:

- Candidate Turbine A
    - 133.5m tip – 147.45 GWh/annum (p50)
    - 136.5m tip – 150.38 GWh/annum (p50)
- Candidate Turbine B
    - 133.5m tip – 140.94 GWh/annum (p50)
    - 136.5m tip – 147.15 GWh/annum (p50)

Moreover, there would consequently be a greater saving of carbon dioxide and other greenhouse gases – as shown in Table 2.

Table 2: Energy Generation Comparison

	Consented EIA candidate turbine	Proposed
Turbine tip height (metres)	133.5m	136.5m
Turbine rotor diameter (metres)	107m	117m
Power Output (MW)	3.6	4.2
Approx. Energy Yield (GWh/y) (p50)	**147**	**160**
Equivalent number of homes powered by development[1]	37,461	42,544
CO_2 Savings (tonnes)[2]	2,049,743 tonnes over 25 year lifetime	Approximately 2,902,017 tonnes over 30 year lifetime[3]

The five year extension to the life of the windfarm would also contribute to an increase in the energy yield over the life of the windfarm.

Annex 3 provides a Planning Statement prepared by David Bell Planning Limited in support of this Variation Application. The Planning Statement provides an assessment of the proposed development against the most relevant Development Plan policies and considers any other material considerations.

The Planning Statement demonstrates that the proposed development not only accords with local and national planning policy, but also that there is additionally a substantial need for this type of development in order that future targets in relation to the global heating crisis and renewable energy generation and greenhouse gas emission reductions can be met.

Since submission of the original application in December 2014, the UK Government has ended all new subsidies for on-shore wind and although this policy is currently under review[4], the economic climate for on-shore windfarms has changed considerably since 2014 such that the output of all windfarms must be maximised in order to ensure they are economically viable. Based on the anticipated price set out in the consultation document, onshore wind developments will effectively need to continue to be delivered at a subsidy free price.

In spring 2019, a 'Climate Emergency' was declared in Scotland by the Scottish Government. In response, the *Climate Change (Emissions Reduction Targets) (Scotland) Act 2019*[5] was enacted. This

[1] Homes equivalent calculated by multiplying energy yield per turbine with the annual UK average domestic household consumption – 3,729kWh (Accessed April 2020. Available from URL: https://www.renewableuk.com/page/UKWEDExplained)
[2] Carbon reduction is calculated by multiplying the total amount of electricity generated by wind per year by the number of tonnes of carbon which fossil fuels would have produced to generate the same amount of electricity
[3] Figures are based on Carbon Calculator version 2.9.0 consistent with previously submitted ES (2014) Technical Appendix 16.1 for consistency
[4] Consultation on Proposed Amendments to the CfD Scheme for Low Carbon Electricity Generation, Department for Business Energy and Industrial Strategy (BEIS), March 2020.
[5] Scottish Government (2019) Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 [Online] Available at: http://www.legislation.gov.uk/asp/2019/15/enacted (Accessed 23/04/2020)

Act builds upon the previous *Climate Change (Scotland) Act 2009*[6] by amending carbon reduction targets for Scotland; the 2019 Act sets out a legally binding net zero target for 2045, with interim targets for 2020, 2030, and 2040.

In order to meet the new targets there is a need to increase wind energy production and utilise ever-improving wind energy technology. Combining the removal of onshore wind subsidies in 2015[7] with substantial advances in global turbine technology, it is necessary for new onshore wind sites to be designed to maximise site yield and efficiency whilst minimising environmental impacts.

Under the right circumstances the Whitelaw Brae Windfarm could be delivered subsidy free, a key challenge the Scottish Government has set for the industry, taking advantage of effective sites with excellent wind resource.

Obtaining consent to construct and operate a windfarm is only one step in the development process. In order to deliver a windfarm project in Scotland it must be economically viable and, in the current market, this can best be achieved by optimising the project through design and cost or technology efficiencies. Typically this involves reviewing tip heights, maximising the windfarms performance and reducing its costs wherever possible. Since obtaining the Consent the Applicant has therefore been working closely with all suppliers to achieve these aims with the key areas of focus being optimising grid solutions, identifying new and efficient candidate turbines and clarifying civils costs. Granting the Variation Application will enable a significant improvement to turbine performance and represent an important step towards successful project delivery.

To date the Applicant has made good progress towards placing the key windfarm contracts and is currently liaising with SBC in order to discharge the pre-construction planning conditions. The Applicant fully expects to start construction of Whitelaw Brae Windfarm by late 2020/early 2021.

EIA Screening

The Applicant submitted a request for a Screening Opinion to the Energy Consents Unit on the 27th April 2020 to establish whether the proposed variation to the consented development constituted EIA development. This request was made under regulation 8 (1) of *the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended)* ("the EIA Regulations").

Under Regulation 8(2) of the EIA Regulations the screening request report included a description of the location of the consented wind farm, a description of the proposed variation works, and a description of the extent to which aspects of the environment would be affected by the proposed changes.

Environmental information submitted in support of the screening request included;

- Landscape and Visual Matters
- Revised Collision Risk Modelling
- Cultural Heritage Review
- Consultation with Joint Radio Company

[6] Scottish Government (2009) Climate Change (Scotland) Act 2009 [Online] Available at: http://www.legislation.gov.uk/asp/2009/12/contents (Accessed 23/04/2020)
[7] UK Government (2015) Ending new subsidies for onshore wind [Online] Available at: https://www.gov.uk/government/speeches/ending-new-subsidies-for-onshore-wind (Accessed 23/04/2020)

The submitted Screening Report contains an assessment undertaken to identify whether or not the potential exists for significant environmental effects to arise as a result of the proposed variation to the consented development. In relation to landscape and visual considerations (Appendix 2 of the Screening Report Whitelaw Brae Technical Note - Landscape and Visual Matters) the following points set out by the Applicant's landscape advisor (Pegasus) should be noted.

- There would be no change to the assessment findings for the consented development and the effects would remain as previously reported in the Further Environmental Information (FEI) (2016) and related Public Inquiry documents. (The Pegasus Report and accompanying wirelines are included in Appendix 2 of the Screening Report)
- 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.

It should be noted that the Screening Request also considered a candidate turbine with a rotor diameter of 117m and the landscape assessment was conducted on this "worst case" scenario. As the Consent only specifies a turbine height and does not specifically reference rotor diameter no formal request to amend this has been included in this application however as condition 6 of the Consent references a "*candidate turbine or range assessed in the Environmental Statement"* all potential changes to the candidate turbine were included in the environmental screening assessment.

Statutory Consultation

The Scottish Ministers consulted SBC, as the relevant planning authority, who advised on the 19th May 2020 that, in their view, the proposed varied development does not constitute EIA development.

The SBC landscape architect stated "*Having looked at the information supplied I consider the increase in effects are so minimal as to be barely noticeable"* and the SBC response also stated that *"The lifetime extension is compatible with Scottish Government wind energy policy that says that 'areas identified for windfarms should be suitable in perpetuity'."*

Scottish Ministers' Considerations

Taking account of the information provided by the applicant in the Screening Opinion request, Scottish Ministers adopted 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.

A copy of the Applicant's Screening Report and accompanying environmental information is included in Annex 4 and the Screening Opinion from the Scottish Ministers is included in Annex 5.

S36C Application Process and Advertising

This application for a variation to the s36 consent includes a draft of the proposed variations to the s36 consent and section 57(2ZA) direction. A copy of the Variation Application will be served on SBC in accordance with Regulation 4(2)(b) of the *Electricity Generation Stations (Applications for Variation of Consent) (Scotland) Regulations 2013*, as amended.

The Variation Application will be advertised in accordance with 2013 Regulations as follows:

- Peeblesshire News (2 successive weeks)
- Edinburgh Gazette (1 week)
- The Herald (1 week)

A copy of the agreed advert is enclosed with this letter (Annex 6).

Section 4(2)(a) of 2013 Regulations states that the applicant must publish on a website (i) a summary of the variation application (ii) a copy of the application (iii) the S36 Consent and (iv) any environmental statement prepared in relation to the proposed development (in this case the ES and FEI).

This information will therefore be published on the following websites: www.baywa-re.co.uk/whitelaw-brae and http://www.energyconsents.scot/ApplicationDetails.aspx?cr=EC00002090&T=0 (reference number EC00002090).

Summary

The Whitelaw Brae Windfarm location provides good windspeed, good transport links and access, a contracted grid position and acceptable environmental impacts and its delivery will help the Scottish Government reach its objective to cut carbon emissions whilst also delivering electricity to consumers at the lowest cost.

This Variation Application is being made to the Scottish Ministers in order to improve the performance of the Whitelaw Brae Windfarm ensuring the project can be delivered.

On the basis of the information provided in this Variation Application and supporting documents the Applicant respectfully requests that the Scottish Ministers allow the proposed variations to the Consent.

Yours sincerely

Jillian Adams

Jillian Adams
Senior Development Manager
On behalf of Whitelaw Brae Windfarm Limited

Enc.

Annex 1: Figures
Annex 2: Relevant Section 36 Consent Draft Variation
Annex 3 : Planning Statement (NEW)
Annex 4: Screening Request
Annex 5: Screening Opinion
Annex 6: Copy of Public Notification Advert