

**Energy and Climate Change Directorate
Energy Division**

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22 March 2016

Dear Ms MacLeod

APPLICATION UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT GRANTED UNDER SECTION 36 OF THAT ACT ON 26 SEPTEMBER 2014 TO CONSTRUCT AND OPERATE THE MIDDLE MUIR WIND FARM, LOCATED IN THE PLANNING AUTHORITY AREA OF SOUTH LANARKSHIRE (AND TO VARY THE ASSOCIATED DEEMED PLANNING PERMISSION).

I refer to the variation application made by Banks Renewables Limited, a company registered under the companies Act with company number 07376956 and having its registered office at Inkerman House, St Johns Road, Meadowfield, Durham County Durham, England, DH7 8XL ("the Company") for:

- variation under section 36C of the Electricity Act 1989 of the consent granted under section 36 of that Act on 26th September 2014 for construction and operation of the Middle Muir Wind Farm electricity generating station located in the planning authority area of South Lanarkshire ("the section 36 consent"), and
- a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 varying the planning permission deemed to be granted by the direction made under section 57(2) of that Act on 26th September 2014 ("the section 57(2) direction").

Nature of Variation Sought

The variation application originally sought to alter the section 36 consent and the planning permission deemed to be granted by the section 57(2) direction as follows:

- to allow for an increase in the consented rotor diameters from 104 metres, to a range of rotor diameters of between 100 metres and 117 metres, with the same overall tip height as in the original consent which allows for turbines numbered 1 to 7 a total tip height of 152 metres and the remaining 8 turbines a tip height of 136 metres.
- to increase the height of the consented anemometer mast from 80m to 100m
- to replace conditions 12,13 and 14 of the planning conditions with a revised set of noise conditions.

Local Energy and Consents were contacted on 23rd November 2015 by you on behalf of the Company to advise that you no longer wished to proceed with the proposed variation of the noise conditions as noted above.

This letter contains the Scottish Ministers' decision to vary the section 36 consent and deemed planning permission granted by the section 57(2) direction.

Consultation

The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the EIA Regulations) apply to this variation application. The provisions of these Regulations in respect of the publication and notification of, and consultation on, the variation application and supporting documents relating to the environmental impact of the varied development have been satisfactorily met.

The following comments were received.

The Civil Aviation Authority (CAA) confirmed that the proposed variation to the met mast require to be charted and reported to the Defence Geographic Centre at least 10 weeks prior to the start of construction. The CAA also notes the structure remains an aviation obstacle under Article 219 of the Air Navigation Order and therefore requires statutory aviation warning lighting. They indicated that any variation granted should be subject to the inclusion of conditions to cover these requirements. They advised they had no objection to the variation.

The Defence Infrastructure Organisation (DIO/MOD) note that the turbine coordinates and height to tip remain the same as the original application and noted no safeguarding objection to the proposed variation. In the interests of air safety the DIO/MOD requested that the development should be fitted with aviation safety lighting. The DIO/MOD requests that the perimeter turbines, below 150m, are fitted with 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point. The turbines in excess of 150 m will have to be lit in accordance with the CAA regulations and the Air Navigation Order.

Glasgow Prestwick Airport note that the turbine coordinates and blade to tip height of the turbines remain unchanged from the original application. Therefore Glasgow Prestwick Airports original response remains and they advise no objection to the proposed variation.

Historic Environment Scotland (HES) confirm they have no specific comments to make on the application for variation and are content that the proposed variations will not have any additional significant environmental impacts on heritage assets within HES remit as compared to the already consented wind farm.

Joint Radio Company (JRC) do not specifically object to the variation, they maintain their requirement for mitigation by way of a condition to overcome the potential interference to radio systems operated by Scottish Power in support of their operational requirements for safety management of critical infrastructure. JRC require to update their coordination study. The applicant is currently negotiating with JRC to agree a mutually acceptable mitigation scheme. The consent as varied will remain subject to the pre-commencement conditions in condition 44 of the original consent.

Marine Scotland Science (MSS) comment that the proposed changes are unlikely to alter the impact on water quality and fish populations that are reported in the original ES and associated correspondence from MSS for the consented scheme. MSS previously recommended that pre-construction site characterisation survey work be carried out prior to the submission of the Environmental Statement. It is noted that as this is a variation of an originally granted consent that this required work would not be included within the variation Environmental Statement (ES). Any variation is subject to existing conditions 10, 25, 33 and 34 of the original consent and as such MSS have no objection.

NATS Safeguarding maintained their original objection, with no specific objection as a consequence of the proposed variations, but noted that conditions 6 and 7 from the original consent meet their requirements and as such have no further comment to make.

Scottish Water note that there are no Scottish Water, water abstraction sources, which are designated as Drinking Water Protected Areas under the Water Framework Directive in the area that may be affected by the proposed development. However, the proposed access route crosses a large diameter strategic water main. Scottish Water note that it is critical that this main is protected. Scottish Water has already commenced discussions with the developer regarding the required protection measures to ensure the integrity of this asset. Scottish Water require a condition to be attached to the varied consent covering the proposed design and method statement relating to the main crossing prior to commencement of development on site. Scottish Water also note that full and free access is facilitated for Scottish Water to inspect the crossing at any time.

Scottish Environment Protection Agency (SEPA) noted no objection to the proposed variation as the changes requested would not affect SEPA interests.

Scottish Natural Heritage (SNH) advised no objection. SNH consider that the proposed changes do not materially affect the advice they gave in their response of 14 June 2013 to the originally consented scheme. SNH also note that they do not believe it is necessary to revisit the Habitats Regulations Appraisal already undertaken for the consented scheme.

South Lanarkshire Council having considered the consultation responses and supporting information and appendices, concluded that there are no major material or significant changes to the development as previously consented by Scottish Ministers. They advise no objection subject to the inclusion of an additional three conditions, which have been incorporated into the varied consent to address Scottish Water and Civil Aviation Authority (CAA) requirements. It is considered that the increase in range of rotor diameter and hub heights will not materially affect the consented development on the basis that the conditions relating to roads and transportation (conditions 19 to 26 inclusive) of the original consent will provide satisfactory control over this increase in the size of the structure. South Lanarkshire Council Environmental Services noted significant concerns regarding the proposed changes to the noise conditions but it is noted that Banks Renewables removed the proposed changes to the noise conditions from the variation application. On this basis South Lanarkshire Council have no objection to the variation subject to retention of noise conditions 12 to 18 inclusive from the original consent dated 26 September. The proposed variations comply with national and local development plan policies and therefore South Lanarkshire Council has no objection to the section 36C variation application made to the Scottish Ministers for the Middle Muir Wind Farm.

Transport Scotland did not object to the proposed variations and were satisfied that the changes associated with the variation from the consented development would not have any significant environmental impacts on the trunk road network.

Public Representations

Scottish Ministers did not receive any public representations in relation to this variation application.

Environmental Impacts

The Scottish Ministers are satisfied that the Environmental Statement submitted on 31 August 2015, prepared for the variation application, consisting of a non-technical summary, drawings, appendices and further landscape and visual figures and visualisations with details of proposed variations to the consented conditions, is sufficiently detailed to fully consider the potential changes to the environmental impact as a consequence of the proposed variations.

Scottish Ministers, in early scoping consultation with key consultees, identified that the likely changes, as a consequence of the variation, would be the landscape and visual impact of the development, the impact on traffic as a consequence of the delivery of the

component parts of the wind turbines and potentially the collision risk impact on pink footed geese. Ministers requested that the environmental information submitted with the variation should reflect and account for these potential changes.

Having considered the environmental information and the consultation responses to the likely environmental impacts of the proposed development as it would be varied, Ministers are satisfied that the proposed variations to the consented development will not result in significant environmental impacts that have not been previously considered.

The Scottish Ministers' Determination

The Scottish Ministers have considered the application documentation, the environmental information and all relevant responses from the consultees. Having granted consent for the construction and operation of the Middle Muir Wind Farm on 26 September 2014 and having set out their reasons for doing so in the decision letter to which the consent was attached; and being satisfied that the variations, in particular to the range of rotor diameter lengths, proposed in the current application do not fundamentally alter the character, scale or environmental impacts of the proposed development, the Scottish Ministers are supportive of the proposed variation of that consent on the basis that such a variation will facilitate progress in developing the proposal.

The Scottish Government supports onshore wind energy development in appropriate locations. Scottish Planning Policy 2014 (SPP) introduced a presumption in favour of development that contributes to sustainable development.

Ministers are satisfied the proposed variations will help provide the flexibility to facilitate the construction and operation of the wind farm whilst continuing to ensure development control which reflects best practice and ensures environmental impacts are mitigated accordingly.

Accordingly, the Scottish Ministers **hereby vary the section 36 consent and direct that the planning permission deemed to be granted by virtue of the section 57(2) direction is varied, all as set out in the table below.**

Annex or Condition	Variation
In Annex 1	<p>(a) after "Supplementary Environmental Information 2 submitted on 3 May 2013" insert "and the Environmental Statement submitted on 31 August 2015."</p> <p>(b) after "Other associated infrastructure" insert "In the event of any incompatibility between the terms of the initial Application, the Environmental Statement submitted on 1 January 2012, the Supplementary Environmental Information submitted on 30 November 2012 and the Supplementary Environmental Information 2 submitted on 3 May 2013, the terms of the Variation Application and Environmental Statement received 31 August 2015 prevails."</p>
In Annex 2 Part 2	<p>(e) in condition 8 after "SEI2," insert "and the Environmental Statement submitted on 31 August 2015"</p> <p>(f) after condition 45 insert</p> <p>46 Development may not commence until a detailed plan on the protection of Scottish Water's assets has been submitted to, and approved in writing by, the Planning Authority in consultation with Scottish Water. The plan shall set out the design and method statement for measures to be implemented to protect the strategic water main within the site. Thereafter, the approved plan shall be implemented to the satisfaction of the Planning Authority in consultation with Scottish Water.</p> <p><i>Reason: To protect Scottish Water's assets</i></p> <p>47 Development may not commence until the Planning Authority, Ministry of Defence, Defence Geographic Centre and NATS have been provided with the following information, and the Planning Authority has been provided with evidence of that having been done:</p> <p>(a) the date of the expected commencement of each stage of construction;</p> <p>(b) the height above ground level of the tallest structure forming part of the development</p> <p>(c) the maximum extension height of any construction equipment; and</p>

(d) the position of the turbines and masts in latitude and longitude.

Reason: In the interests of aviation safety

48 No turbines shall be erected until a scheme for aviation lighting has been submitted to, and approved in writing by, the Planning Authority. The scheme shall include details of infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety reasons, unless otherwise agreed in advance and in writing by the Planning Authority. The approved scheme shall be implemented.

Reason: In the interests of aviation safety

Definitions

(g) after the definition of "SNH" insert—

"Variation Application" means the Application submitted by the Company on 31 August 2015;

For illustrative purposes only a consolidated version of the section 36 consent and the section 57(2) direction as varied (with variations shown in tracked changes for ease of reference), is provided at Appendix A attached.

In accordance with the EIA Regulations, 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.

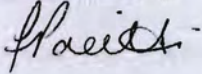
Copies of this letter have been sent to the Planning Authority. This letter has also been published on the Scottish Government Energy Consents website.

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/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=8>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely



Frances Pacitti
Head of Energy Consents
For and on behalf of the Scottish Ministers
A member of the staff of the Scottish Government

APPENDIX A –CONSOLIDATED DESCRIPTION OF DEVELOPMENT AND CONDITIONS SHOWING AMENDMENTS MADE TO CONSENT GRANTED UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND ASSOCIATED PLANNING PERMISSION DEEMED TO HAVE BEEN GRANTED ON 26 SEPTEMBER 2014 ALL AS MORE PARTICULARLY DESCRIBED IN TABLE 1– FOR ILLUSTRATIVE PURPOSES

DESCRIPTION OF THE DEVELOPMENT

The development comprises the Middle Muir wind powered electricity generating station with a nominal generating capacity of 60 MW, as described in the Application and Environmental Statement submitted on 31 January 2012, Supplementary Environmental Information submitted on 30 November 2012 and the Supplementary Environmental Information 2 submitted on 3 May 2013 and the application for variation and Environmental Statement submitted on 31 August 2015, excluding turbines T14 and T16 and any access tracks associated with those turbines. This is subject to compliance with the conditions in Annex 2.

It includes:

15 wind turbines: 8 wind turbines of up to 136m (height to tip) and 7 wind turbines of up to 152m (height to tip)

A new vehicular access track and junction from the B7078

1 borrow pit

Approximately 11.5 km of access track

5 watercrossings by access track

A temporary laydown area and construction compound including hard standing and fences

An anemometer mast

A substation and control building; and

Other associated infrastructure

In the event of any incompatibility between the terms of the initial Application, the Environmental Statement submitted on 1 January 2012, the Supplementary Environmental Information submitted on 30 November 2012 and the Supplementary Environmental Information 2 submitted on 3 May 2013, the terms of the Variation Application and Environmental Statement received 31 August 2015 prevails.

Annex 2

Part 1: conditions applying to Section 36 consent

- 1 The consent is for a period from the date of this consent until the date occurring 25 years after the date of the final Commissioning of the Development. Written confirmation of the date of final Commissioning of the Development shall be provided to the Planning Authority and to the Scottish Ministers no later than 1 calendar month after that event.

Reason: *To define the duration of the consent.*

- 2 The Commencement of the Development shall be no later than the date occurring 5 years after the date of this consent, or no later than such date as the Scottish Ministers may direct. If Commencement of the Development does not occur within the relevant period the site and the ground shall, within 6 months of expiry of the relevant period, be fully reinstated to the specification and satisfaction of the Scottish Ministers, following consultation with the Planning Authority.

Reason: *To make sure work is undertaken within a reasonable time period.*

- 3 The consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise assignation, with or without conditions, or refuse authorisation. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with this condition.

Reason: *To ensure the performance of obligations and responsibilities under the consent.*

- 4 In the event that any wind turbine installed and commissioned fails to produce electricity on a commercial basis to the public network for a continuous period of 12 months, then, unless otherwise agreed in writing with the Scottish Ministers, after consultation with the Planning Authority and SNH, that wind turbine shall be deemed to have ceased to be required. If deemed to have ceased to be required, the wind turbine and its ancillary equipment shall be dismantled and removed from the site by no later than 12 months after the end of the said continuous 12 months period, and the ground fully reinstated to the agreed specification and satisfaction of the Scottish Ministers after consultation with the Planning Authority and SNH.

Reason: *To ensure the removal of non-functional equipment and plant, in the interests of amenity and environmental protection.*

- 5 Scottish Ministers must be notified of any serious health and safety, environmental or construction incident occurring on Site during the period of consent.

Reason: *To ensure Scottish Ministers are aware of such incidents and to ensure compliance with Health and Safety Legislation*

- 6 No development shall commence until a Primary Radar Mitigation Scheme to mitigate the impact of the development on the Primary Radar Installation at Lowther Hill has been agreed with NATS (En Route) plc and subsequently approved by Scottish Ministers in consultation with the Planning Authority.

Reason: *In the interests of public safety*

- 7 No turbine shall be erected until the approved Primary Radar Mitigation Scheme has been implemented and the development shall thereafter be operated in accordance with the approved Scheme.

Reason: *In the interests of public safety*

Part 2: conditions applying to deemed planning permission

- 8 The development shall be carried out in accordance with the terms of the application and the ES, SEI and SEI2, and Environmental Statement submitted on 31 August 2015 including all mitigation and monitoring measures referred to in those documents, subject to the requirements in these conditions.

Reason: *For the avoidance of doubt and to specify the documents upon which the decision was made*

- 9 At least one month prior to the Commencement of the Development, a guarantee to cover all site restoration and aftercare liabilities imposed on the expiry of the consent must be submitted for the written approval of the Planning Authority. Such guarantee must:

- i) be granted in favour of the Planning Authority
- ii) be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
- iii) be for an amount which covers the value of all site restoration and aftercare liabilities as determined by the Planning Authority at the commencement of development
- iv) contain provisions so that all the site restoration and aftercare liabilities as determined at the Commencement of the Development shall be increased on each fifth anniversary of the date of this consent.

- v) come into effect on or before the date of Commencement of the Development, and expire no earlier than 24 months after the end of the aftercare period.

Reason: *To guarantee that the costs of site restoration will be met*

- 10 Prior to the Commencement of the Development, a monitoring plan shall be submitted to the Planning Authority setting out the steps that shall be taken to monitor the environmental effects of the development, including the effects on ground water, surface water, noise and dust, during the construction phase and the operational phase. The methodology of such monitoring, including locations frequency, gathering of information on background levels, shall be submitted to the Planning Authority for approval prior to the Commencement of the Development. Thereafter, the approved plan shall be implemented to the satisfaction of the Planning Authority and the results of such monitoring shall be submitted to the Planning Authority on a 6 monthly basis, or on request.

Reason: *To monitor the environmental effects of the development during construction and operation of the wind farm.*

- 11 Prior to the Commencement of the Development a Desk Study of the site, including the confirmed Borrow Pit location (BP01), shall be undertaken to confirm that there has been no previously potentially contaminating use of land. If any such previous usage is confirmed then a Phase 2 intrusive investigation and risk assessment is required. This shall detail any methods of proposed remediation required. This shall be submitted to the Planning Authority for prior approval and the approved measures must be implemented. All imported material that is required to be brought onto site shall be accompanied by certification from a suitably U.K.A.S accredited laboratory to confirm that it is free from contamination. If any off-site borrow pit(s) are proposed, information relating to the quantities, proposed vehicle trips and delivery routes between the proposed borrow pit site(s) and the wind farm site shall be submitted to the Planning Authority. Should these routes not be covered by the approved abnormal load route assessment referred to in condition 25 an amended abnormal load route assessment shall be submitted to the Planning Authority for approval and the approved amended abnormal load route assessment must be complied with.

Reason: *To minimise environmental impact and in order to retain effective planning control.*

- 12 i) In accordance with ETSU-R-97 the day time noise (7am to 11pm) from the wind turbines must not exceed a noise level of 35dB LA90 (10 min) or background LA90 (10 min) +5dB, whichever is the greater, at the boundary of the curtilage of any noise sensitive premises at all times at wind speeds of up to 12 metres per second at 10m height as measured within the site.

ii) In accordance with ETSU-R-97 the cumulative day time noise (7am to 11pm) from the wind turbines must not exceed a noise level of 40dB L_{A90} (10 min) or background L_{A90} (10 min) +5dB, whichever is the greater, at the boundary of the curtilage of any noise sensitive premises at all times at wind speeds of up to 12 metres per second at 10m height as measured within the site. This is based on Glentaggart and Andershaw Wind Farms operating at a consented level of 35dB L_{A90} (10 min) or background L_{A90} (10 min) +5dB, whichever is the greater

iii) The night time noise (11pm to 7am) from the wind turbines must not exceed a noise level of 43dB L_{A90} (10 min) or background L_{A90} (10 min) +5dB, whichever is the greater, at the boundary of the curtilage of any noise sensitive premises at all times at wind speeds of up to 12 metres per second at 10m height as measured within the site.

iv) The noise limits set out above are increased to 45 dB L_{A90}, or the relevant ETSU-R-97 derived "day time" or the "night time" noise limit based on the measured background noise levels plus 5dB(A), whichever is the greater, at any noise sensitive premises having a financial involvement with the wind farm. The location of any such premises must be confirmed to the Planning Authority prior to Commencement of the Development.

For the purposes of this condition background noise levels are defined as the levels presented in Tables 10.8 and 10.9 of the Environmental Statement submitted with the application.

Reason: *To safeguard the noise amenity of local residents in accordance with ETSU-R-97.*

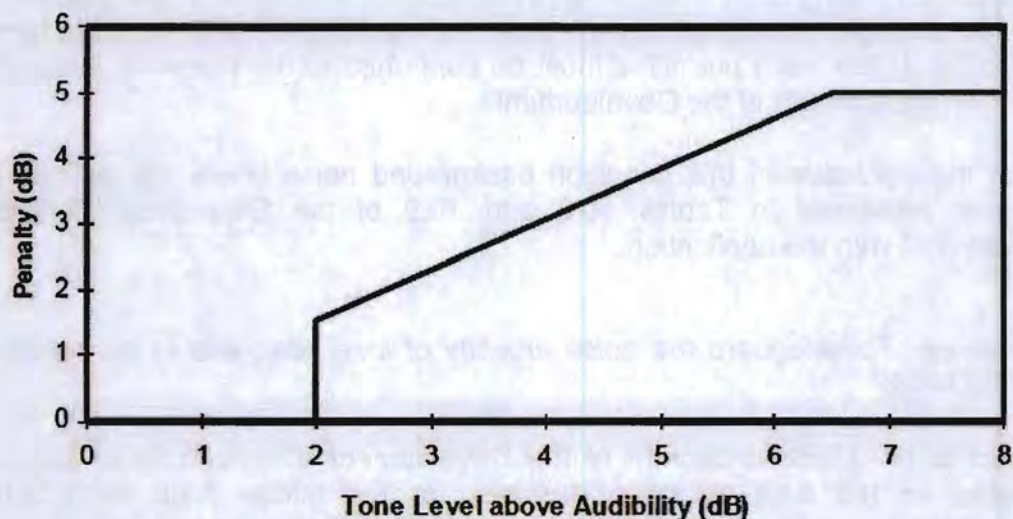
- 13 Prior to the Commencement of the Development a revised noise assessment based on the final choice of turbines for the Middle Muir wind farm, the Andershaw and Glentaggart wind farms (or, if this is not known, a range of likely candidate models as agreed with the Planning Authority) shall be submitted for the approval in writing of the Planning Authority and thereafter the approved plan shall be complied with. The assessment shall present total predicted cumulative wind farm noise levels arising from wind farms operating concurrently and compare them to noise limits established in accordance with ETSU-R-97 based on a daytime fixed limit of 40dB or background noise level plus 5dB [whichever is the greater] or a night time limit of 43dB or background plus 5dB [whichever is greater]. The limits shall be increased to a level of 45dB or background plus 5dB for both day time and night time for properties which are financially involved. An assumption shall be made that Andershaw and/or Glentaggart are operating at 35dB L_{A90} or background plus 5dB [whichever is greater] where no other information is available.

For the purposes of this condition background noise levels are defined as the levels presented in Tables 10.8 and 10.9 of the Environmental Statement submitted with the application.

Reason: *To safeguard the noise amenity of local residents in accordance with ETSU-R-97.*

14 Tonal Contribution

Where the tonal noise emitted by the development exceeds the threshold of audibility by between 2dB and 6.5dB or greater, then the acceptable noise specified in conditions 12 & 13 shall be reduced by the penalty level identified within section 28 of 'The Assessment and rating of Noise from Wind Farms-ETSU-R-97 (See figure below). The definition of audibility for the purposes of this condition shall be as described in ETSU-R-97. The penalty shall only apply at properties where the tonal noise is measured and shall only relate to the wind speeds at which the tonal noise occurs at.



Reason: *To safeguard the noise amenity of local residents in accordance with ETSU-R-07.*

- 15 i) All construction work associated with the development must be carried out in accordance with the current BS 5228, 'Noise control on construction and open sites' and all audible construction activities shall be limited to:

Monday to Friday 8.00am to 7.00pm, and

Saturday 8.00am to 1.00pm;

No audible activity shall take place on Sunday or local and national bank holidays.

Out-with the periods when construction activities are allowed, such activities are allowed if approved in writing by the Planning Authority or whether they are for the purpose of emergency works or dust suppression. The local Planning Authority shall be informed in writing of emergency works within three working days of their occurrence.

ii) Subject to condition 12 any noise solely attributable to construction noise (where borrow pits are not operational) should not exceed 65dB(A) L_{Aeq} to include both stationary and mobile plant as described within Annex F- Code of practice for noise and vibration control on construction and open sites – Part 1: Noise (BS 5228-1:2009).

Reason: *To minimise disturbance to residents in the vicinity of the wind farm*

- 16 No blasting shall take place until such time as a blasting method statement has been submitted to and approved in writing by the Planning Authority. The method statement shall include details of measures required to minimise the impact of blasting on residential and other noise-sensitive properties in the vicinity of the site.

Thereafter:

i) blasting shall be carried out using the best practicable means of ensuring that the resultant noise, vibration and air overpressure are minimised;

ii) blasting techniques and instantaneous charge levels shall be employed such that the predicted peak particle velocity shall not exceed 6 mm/s in any plane in 95% of all blasts, and no individual blast shall exceed a peak particle velocity of 12 mm/s as would be measured on the ground adjacent to any vibration-sensitive building;

iii) under normal atmospheric conditions, the peak linear overpressure level shall not exceed 120dB as measured from any neighbouring noise sensitive premises;

iv) within the constraints of safe practice, blasting shall be avoided under weather conditions which are likely to direct or focus the blast air overpressure towards neighbouring noise sensitive properties

v) blasting shall be carried out in accordance with the approved method statement, unless otherwise agreed in writing with the Planning Authority.

No blasting shall take place except between the following times:-
10.00 to 12.00 and 14.00 to 16.00 on Monday to Friday, and

10.00 to 12.00 on Saturday.

Reason: *To minimise disturbance to residents in the vicinity of the wind farm.*

- 17 At times during which the borrow pit is operational, the noise levels at the nearest noise sensitive properties shall be restricted to 65dB L_{Aeg} (1hr) or background L_{A90} (1hr) + 10dBA, whichever is the greater, and any general construction noise, which is ongoing simultaneously with the borrow pit operation, shall be considered as borrow pit noise. ES Chapter 10 mitigation measures require to be implemented as necessary to reduce cumulative construction noise levels.

Reason: *To minimise disturbance to residents in the vicinity of the wind farm*

- 18 In the event of a complaint of noise emissions relating to the operation of the wind farm, an independent noise consultant, whose appointment has been approved by the Planning Authority, shall be appointed to measure the level of noise emissions from the wind farm at the property to which the complaint relates. A noise report shall be prepared in a timescale agreed with the Planning Authority. The measurement and calculation of noise levels for the report shall be undertaken in accordance with ETSU-R-97. The report, including any mitigation measures and timescales for implementation, shall be submitted to the Planning Authority for approval, and approved mitigation measures shall be implemented.

Reason: *To minimise disturbance at properties in the vicinity of the wind farm*

- 19 Prior to Commencement of the Development the applicant shall submit a site access layout for the approval by the Planning Authority in consultation with the Roads Authority and shall thereafter implement the approved drawings prior to any other development being carried out on site. All public road works must be implemented and completed prior to Commencement of the Development

i) Details of the site access hard standing area onto the B7078 including details of road markings, traffic signs, wheel washing facilities, boundary treatments/gates and drainage to control surface water run-off into the public road.

ii) At the junction of the proposed access onto the B7078 the developer shall provide a 4.5 m x 215 m visibility splay in both directions. The visibility splay shall be maintained free of all obstructions greater than 900 mm in height above the adjacent road channel level for the duration of the wind farm construction, operation and decommissioning phases.

iii) Details of the specialist delivery run-off area at the site access. All over run areas formed adjacent to the public road shall be formed, maintained for the duration of the wind farm construction and then reinstated following completion of

the wind farm construction. All such works shall be undertaken to the satisfaction of the Council as Roads Authority.

iv) Details of proposed crossing of the site access over the National Cycle Route (NCR 74) cycle path. Priority for cyclists shall be implemented and maintained for the duration of the wind farm construction, operation and decommissioning phases. There should be no cyclists dismount signs. Instead cyclist Give Way signs must be installed. Details to maintain the NCR 74 at the new junction require to be submitted to the Planning Authority and following approval require to be implemented and maintained.

v) Details of the reinstatement proposals for items i) to iv) above.

Reason: *In the interests of road safety*

- 20 Sole access to the site shall be from the B7078, no vehicles are to access the site from the B740 or C15 Andershaw Road. The proposed site access and alterations to the public road to facilitate construction of the access shall be designed in accordance with the Design Manual for Roads and Bridges.

Reason: *In the interests of road safety and in order to retain effective planning control*

- 21 Development cannot commence until a Baseline Road Survey of any proposed haul route on the B7078 between Junctions 12 and 13 of the M74 public road network has been carried out. On completion of construction of the development a Final Road Survey shall be carried out.

Reason: *In the interests of road safety*

- 22 Prior to Commencement of the Development a detailed Traffic Management Plan (TMP) shall be submitted for the written approval of the Roads Authority, and the approved TMP shall be implemented. The TMP shall be produced in consultation with Roads and Transportation Services and Police Scotland and include a programme indicating phasing of construction of the project and details of the proposed road traffic signage directing all construction traffic to the proposed site access on B7078.

No works shall commence on site until the TMP has been approved in writing by the Roads Authority.

Reason: *In the interests of road safety*

- 23 The developer shall notify the Council in writing, as soon as reasonably practical, of any changes in construction and decommissioning related activities where these will have an impact on the approved TMP. The developer will consult with the Planning Authority and the relevant Police Authority to agree in writing any

changes to the TMP and submit these for approval of the Roads Authority for agreement, thereafter the updated changes will be adhered to and shall be implemented.

Reason: *In the interests of road safety and in order to retain effective planning control*

- 24 The TMP shall contain a Travel Plan to encourage less reliance on individual private car trips to the site for those personnel involved in construction activities on a routine basis and those attending in connection with site inspections and site meetings. Any changes to the Travel Plan must be submitted for the written approval of the Planning Authority and the approved plan must be implemented.

Reason: *In the interests of road safety*

- 25 At least 3 months prior to the delivery of abnormal loads an Abnormal Load Route Assessment must be carried out and a report together with any recommendations shall be submitted for the written approval of the Roads Authority. The approved recommendations shall thereafter be implemented in accordance with a programme approved by the Planning Authority prior to the delivery of the abnormal loads.

Reason: *In the interest of road safety*

- 26 A full Safety Audit, carried out in accordance with the Institute of Highways and Transportation Guidelines, shall be submitted for all infrastructure to be constructed and adopted, or altered, on the public road and submitted to the Roads Authority prior to Commencement of the Development.

Reason: *In the interest of road safety*

- 27 No development shall commence until a Construction Environmental Management Plan (CEMP), including a Waste Management Plan and Peat Management Plan, has been submitted to and approved by the Planning Authority in consultation with SEPA and SNH. The CEMP, which shall incorporate "good practice" methods from the Scottish UK wind farm industry to ensure that environmental impacts are reduced and incorporate all the mitigation measures identified in the ES, SEI1 and SEI2, shall be submitted no less than 2 months prior to the proposed commencement of the development unless the Planning Authority agrees otherwise. The CEMP shall be in accordance with SEPA's letters dated 17 January 2013 and 6 June 2013, and Marine Scotland Science's letters dated 13 March 2012 and 29 May 2013. Thereafter, all the

measures described in the approved CEMP, shall be implemented. The plans shall include the following:

- i) A plan of the construction operations at an appropriate scale;
- ii) A plan to an appropriate scale showing the location of any contractor's site compound and laydown areas required temporarily in connection with the construction of the development.
- iii) Method of defining track route and location (track corridors should be pegged out 500 to 1000 metres in advance of Commencement of the Development);
- iv) Track design approach
- v) Maps of tracks indicating double and single tracks and position of passing places.
- vi) The full extent of anticipated track 'footprint(s)' including extent of supporting 'geogrid' below roadstone and cabling at the edges of the track
- vii) Procedures to be followed when, during track construction, it becomes apparent that the chosen route is more unstable or sensitive than was previously concluded, including ceasing work until a solution is identified, informed with reference to advice from the ecological clerk of works.
- viii) Details of peat/soil stripping, storage and re-use.
- ix) A management plan for minimising the emission of dust from the construction and operation of the development.
- x) Specification of the means by which material to be used for the development is to be brought on site unless it has certification from a suitably UKAS accredited laboratory to confirm that the material is not contaminated.
- xi) A scheme of working for the borrow pit including method of works, drainage, implementation, and restoration and aftercare.
- xii) Compliance with the Council's Sustainable Drainage Systems (SuDs) design criteria guidance and inclusive sign off by the relevant parties carrying out the elements of work associated with the design criteria appendices 1 to 4.
- xiii) A coloured plan showing the sustainable drainage apparatus serving the site together with the contact name and emergency telephone number of the party responsible for its future maintenance. Details of the future maintenance

regime in accordance with the latest Construction Design and Management Regulations is to be provided on this plan.

xiv) The Peat Management Plan shall be in accordance with Halcrow's report dated March 2012 and include measures to ensure stability during construction of turbines and infrastructure on peat.

xv) A description of and measures to mitigate impact on surface water courses and the hydrology.

xvi) Measures to be taken to ensure that the work does not cause mud, silt, or concrete to be washed away either during the construction stage or as a result of subsequent erosion. Where possible construction works shall avoid road construction during high periods of high rainfall.

xvii) Timing and extent of any necessary re-instatement.

xviii) All work associated with construction of the access gate, access bell mouth (with associated abnormal load over run area) and wheel wash facility shall be implemented on site prior to commencement of development Details for wheel wash facility to maintain the public road network clear of any mineral/soils throughout the construction period.

xix) The Waste Management Plan shall be in accordance with SEPA's letter dated 17 January 2013.

xx) Best practice mitigation for pollution prevention.

Reason: *To ensure compliance with all commitments made in the Environmental Statement and Supplementary Environmental Information 1 and 2 and in order to retain effective planning control.*

28 Each turbine shall be erected in the position indicated in the map at annex 6 of this consent unless a variation is approved in either of the circumstances described below. At least 1 month prior to the start of construction of turbine foundations a variation of the indicated position of any turbine on the approved drawing shall be notified on the following basis: (a) if the variation from the approved drawing is less than 25 metres it shall only be permitted with the approval of the Ecological Clerk of Works (ECoW) in consultation with SEPA and West of Scotland Archaeology Service, and (b) if the variation from the approved drawing is between 25 metres and 50 metres it shall only be permitted with the written approval of the Planning Authority in consultation with SEPA and West of Scotland Archaeology Service. A variation shall not be allowed if it would:

i) bring a turbine within 1000 m of a residential property.

ii) bring a turbine out-with the site.

iii) breach the 50 m water buffer zones

Reason: *In order to retain effective planning control*

29 Within 3 months of the final commissioning of the development an "as built plan" at an appropriate scale indicating the location of any track, turbine, crane pad and borrow pit within the development shall be submitted to the Planning Authority.

Reason: *In order to retain effective planning control*

30 During the construction of the development:

i) No work shall be undertaken within a 20m buffer zone surrounding all watercourses and known functioning drains, with the exception of access route crossings, unless otherwise agreed in writing with the Planning Authority.

ii) Track layout shall minimise disruption to water courses.

iii) Existing drainage routes shall be maintained through sensitive placement of soil heaps and where necessary temporary drains.

iv) Silt traps shall be provided on all existing drainage routes affected by site works.

v) With regard to watercourses, a suitable design shall be submitted for the written approval of the Planning Authority.

vi) Any disturbance of watercourses shall be minimised utilising cofferdam temporary works.

vii) Cable trenches shall only be constructed in limited sections to reduce drainage of groundwater and prevent additional drainage routes being created.

viii) Cable trenches shall be plugged to prevent the creation of new drainage paths.

ix) The scheduling of works shall minimise disruption and working during wet weather.

x) Temporary works interception drains shall be constructed to prevent potential contamination of runoff and groundwater.

xi) Stockpiling of materials on wet ground and near drainage channels shall not take place, unless agreed in writing with the Planning Authority.

xii) Backfilled trenches shall be re-vegetated.

xiii) Temporary silt traps shall be constructed to treat runoff.

xiv) Sulphate resistant concrete shall be used to prevent leaching of chemical.

Reason: *To minimise environmental impact and in order to retain effective planning control.*

- 31 Prior to the Commencement of the details of the confirmed turbine layout height and manufacture, including illustrations as well as details of size, shall be submitted for the written approval of the Planning Authority. Only the approved type shall be installed.

The turbines:

- i) Shall have a light grey colour with a semi matt finish as stated in the ES.
- ii) shall have blades that rotate in the same direction.
- iii) Shall have no large 'logos' or other symbols or writing unless for reasons of health and safety or as agreed in writing by the Planning Authority.

Reason: *In the interests of amenity and in order to retain effective planning control.*

- 32 The site shall not be illuminated by lighting unless:

- i) the Planning Authority has given prior written approval
- ii) lighting is required during working hours which have been approved by the Planning Authority; or
- iii) an emergency requires the provision of lighting

Reason: *In the interests of amenity and in order to retain effective planning control.*

- 33 Only mechanical means of snow clearance shall be used to clear access tracks, unless otherwise agreed in writing by the Planning Authority.

Reason: *To minimise the environmental impact of snow clearing operations by avoiding the use of chemicals or salt without approval.*

- 34 Bird deflectors shall be attached to supporting guy lines in order to reduce the collision risk to birds, including both Annex 1 and Schedule 1 raptor species to the satisfaction of the Planning Authority in consultation with SNH.

Reason: *To minimise adverse impacts on habitats*

- 35 Three months prior to the Commencement of the Development, an Ecological Clerk of Works (ECoW) whose appointment is approved by the planning authority

shall be appointed and remain in place until final commissioning of the development. The scope of work of the ECoW shall include:

- i) Monitoring compliance with the ecological mitigation works that have been approved in the consent, including the mitigation measures identified in the ES and SEI 1 and 2 and the Habitat Management Plan;
- ii) Advising on adequate protection of nature conservation interests on the site;
- iii) Directing the micro-siting and placement of the turbines, borrow pits, bridges compounds and tracks, and
- iv) Monitoring compliance with the Construction Environmental Management Plan required by condition 27.

Reason: *To safeguard environmental impacts, ecology, species and habitats, to ensure development conforms to requirements and maintain effective planning control.*

- 36 Three months prior to the commencement of decommissioning an Ecological Clerk of Works (ECoW) whose appointment has been approved by the Planning Authority after consultation with SNH shall be appointed and the appointment shall last until the completion of aftercare or such earlier date as may be agreed in writing by the Planning Authority. The scope of work of the ECoW shall include

- i) Monitoring compliance with the ecological mitigation works that have been approved in the consent, including the mitigation measures identified in the ES and SEI 1 and 2 and the Habitat Management Plan;
- ii) Advising on adequate protection of nature conservation interests on the site;
- iii) Monitor the carrying out of the decommissioning and restoration plan.

Reason: *To safeguard environmental impacts, ecology, species and habitats, to ensure decommissioning and restoration conforms to requirements and maintain effective planning control.*

- 37 No later than 24 months prior to, the expiry of the period within which the turbines and ancillary development have to be removed in accordance with condition 1 or by such later date as may be agreed in writing by the Planning Authority, a method statement for the decommissioning of the wind farm and the restoration of the site shall be submitted for the approval of the Planning Authority. Decommissioning in accordance with the approved method statement shall be completed within 24 months of the end of the period of this planning permission or such other date as may be agreed by the Planning Authority in writing and shall include the dismantling and removal from the site of all turbines, buildings and ancillary development. The approved Decommissioning Method Statement shall be implemented. Implementation of the approved method statement shall be overseen by the ECoW.

Reason: *In the interests of amenity and in order to retain effective planning control.*

- 38 No fixed or mobile plant used within the site during the construction period shall incorporate bleeping type warning devices that are audible at any noise sensitive receptor. Development shall not commence until details of alternative warning devices have been approved in writing by the Planning Authority. Efficient silencers shall be fitted to, used and maintained in accordance with manufacturers' instructions on all vehicles, plant and machinery used on the site.

Reason: *To minimise disturbance to residents in the vicinity of the wind farm.*

- 39 At least 1 month prior to commencement of the development, a programme of archaeological works, in accordance with a written scheme of investigation, which has been agreed by the West of Scotland Archaeology Service shall be submitted for the approval of the Planning Authority. Thereafter the programme of archaeological works shall be implemented and all recording and recovery of archaeological resources within the development site shall be undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

Reason: *To minimise adverse impacts on archaeology on site and to ensure development conforms to Environmental Statement*

- 40 At least 3 months prior to Commencement of the Development:

i) The outline Habitat Management Plan (HMP) for the site shall be prepared in consultation with the Planning Authority's Local Biodiversity Officer, SNH and RSPB and thereafter submitted to the Planning Authority for approval. The HMP shall address the points made in SNH's letter dated 14 June 2013.

ii) The approved HMP must be implemented in full unless it is amended by the HMG, in which case the amended HMG must be implemented in full.

iii) The results of surveillance and monitoring of species and habitat shall be submitted to the HMG.

iv) The HMP will operate until the decommissioning and restoration plan referred to in condition 37 has been implemented subject to any changes approved by the Planning Authority, in consultation with SNH, shall review the retention of pads, foundations, cable/ducts and access tracks within the context of the restoration strategy to identify any elements to be retained on site or requiring alternative reinstatement.

v) Site clearance activities and, where possible, construction shall take place out-with the bird breeding season of March to July inclusive.

In this condition "HMG" means the Habitat Management Group, whose members include the Planning Authority, SNH and RSPB, established to oversee the preparation and delivery of the HMP, to review and assess the results from on-going monitoring and to make any changes to the HMP which are necessary for the purpose of achieving its aims.

Reason: *To ensure development conforms to Environmental Statement and maintain effective planning control*

- 41 Prior Commencement of the Development details of materials, external finishes and colours for all ancillary elements (including access tracks, transformers, switchgear/metering building, compound, and fencing) shall be submitted for the written approval of the Planning Authority. If required by the Planning Authority, samples of materials shall be provided. Materials, external finishes and colours shall comply with the approved details and any approved samples.

Reason: *In the interests of amenity and in order to retain effective planning control.*

- 42 Prior to Commencement of the Development, or at such other time as is agreed by the Planning Authority, detailed plans and a method statement for restoration of the borrow pit and construction compound shall be submitted for the approval of the Planning Authority, in consultation with SNH. The approved plans and method statement shall be implemented to the satisfaction of the Planning Authority within 6 months of final commissioning of the development or within such other period as is agreed by the Planning Authority.

Reason: *In the interests of amenity and in order to retain effective planning control.*

- 43 Prior to Commencement of the Development any impacts on the Scottish Water Radio and Communication Links from turbines T2, T3, T4, T5, T7, T8 and T14 shall be identified and a mitigation solution shall be submitted for the written approval of the Planning Authority, in consultation with Scottish Water. Thereafter the approved mitigation solution shall be implemented prior to turbines T2, T3, T4, T5, T7, T8 and T14 becoming operational. If the technical solution requires the re-positioning of turbine(s), these details require to be submitted to for the written approval of the Planning Authority prior to works being carried out to implement the mitigation solution. The turbines shall be re-positioned in accordance with the approved details.

Reason: *In order to maintain a secure radio and communication link and retain effective control over Scottish Water's assets*

- 44 Prior to Commencement of the Development any impacts on the Scottish Power Radio and Communication Links from turbines T3, T7, T11 and T19 shall be

identified and a mitigation solution shall be submitted to and approved by the Planning Authority, in consultation with Scottish Power. Thereafter the agreed mitigation solution shall be implemented prior to turbines T3, T7, T11 and T19 becoming operational. If the technical solution requires the re-positioning of turbine(s), these details require to be submitted to and approved in writing by the Planning Authority prior to works being carried out to implement the mitigation solution. This may result in the requirement for a planning application to be made.

Reason: *In order to maintain a secure radio and communication link and retain effective control over Scottish Power's assets*

- 45 The base of any wind turbine shall be sited a minimum distance of 100m from the public right of way SL 123 which shall remain open during construction and decommissioning unless otherwise agreed with the Planning Authority. Any diversions required for a temporary period for health and safety reasons require to be submitted for the written approval of the Planning Authority and the approved diversions shall be implemented to the Planning Authority's satisfaction. When construction of the development is complete the right of way SL 123 shall be reinstated to the original route and to the Planning Authority's satisfaction and shall remain open.

Reason: *In the interests of amenity and in order to retain Right of Way*

- 46 Development may not commence until a detailed plan on the protection of Scottish Water's assets has been submitted to, and approved in writing by, the Planning Authority in consultation with Scottish Water. The plan shall set out the design and method statement for measures to be implemented to protect the strategic water main within the site. Thereafter, the approved plan shall be implemented to the satisfaction of the Planning Authority in consultation with Scottish Water.

Reason: To protect Scottish Waters assets

- 47 Development may not commence until the Planning Authority, Ministry of Defence, Defence Geographic Centre and NATS have been provided with the following information, and the Planning Authority has been provided with evidence of that having been done:

(a) the date of the expected commencement of each stage of construction;

(b) the height above ground level of the tallest structure forming part of the development

(c) the maximum extension height of any construction equipment; and

(d) the position of the turbines and masts in latitude and longitude

Reason: In the interests of aviation safety

- 48 No turbines shall be erected until a scheme for aviation lighting has been submitted to, and approved in writing by, the Planning Authority. The scheme shall include details of infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety reasons, unless otherwise agreed in advance and in writing by the Planning Authority. The approved scheme shall be implemented.

Reason: In the interests of aviation safety

Definitions

In the letter of consent and annexes 1 and 2, unless the context requires otherwise:

"Application" means the Application submitted by the Company on 31 January 2012;

"Background Noise Level" means the ambient noise level already present within the environment of the Site (in the absence of noise generated by the Development) as measured and correlated with Wind Speeds;

"Commencement of the Development" means the date on which Development shall be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

"The Company" means Banks Renewables (Middle Muir Wind Farm) Limited, **Company No. 07376956 having its registered office at Inkerman House, St Johns Road, Meadowfield, Durham, County Durham, England, DH7 8XL** or the person for the time being entitled to the benefit of the consent;

"The consent" means the consent granted under section 36 of the Electricity Act 1989 for the construction and operation of the development described in Annex 1;

"Construction Period" means the period from Commencement of the Development until the Site compounds have been reinstated in accordance with the conditions of this consent;

"dB" means the measurement in decibels of the emitted sound power level of a wind turbine;

"dB(A)" means the measurement in decibels of the emitted sound power level of a wind turbine using the A-weighting network as referred to in ETSU-R-97;

"the Development" means the development described in Annex 1;

"the EIA Regulations" means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000

"Environmental Statement" means the Environmental Statement submitted by the Company on 31 January 2012 with the Application;

"ETSU-R-97" means the ETSU Report number ETSU-R-97 'The Assessment and Rating of Noise from Wind Farms' published in September 1996;

"Final Commissioning of the Development" means the date on which all wind turbine generators have supplied electricity on a commercial basis or such earlier date as the Scottish Ministers deem the Development to be finally commissioned;

"HMP" means Habitat Management Plan;

"Noise Sensitive Premises" means any building, structure or other development that, on the date of this planning permission exists or is yet to exist but for which extant planning permission exists, the lawful use of which falls within Classes 7 (hotels and hostels), 8 (residential institutions) or 9 (houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 or is a flat or static residential caravan. For the purposes of this definition, 'premises' includes any relevant curtilage;

"Planning Authority" means South Lanarkshire Council;

"SEI" means the Supplementary Environmental Information submitted by the Company on 30 November 2012 subsequent to the Application and ES;

"SEI2" means the Supplementary Environmental Information submitted by the Company on 3 May 2013 subsequent to the Application, ES and SEI;

"SEPA" means the Scottish Environment Protection Agency;

"Site" means the area of land outlined in red attached to this consent; "SLA" means Special Landscaped Area;

"SLC" means South Lanarkshire Council; "SNH" means Scottish Natural Heritage;

"Variation Application" means the Application submitted by the Company on 31 August 2015

"Wind Speeds" means wind speeds measured or calculated at a height of 10 metres above ground level on the site at a specified Ordnance Survey grid reference agreed in writing by the Planning Authority.