

**Town and Country Planning (Scotland) Act 1997**

**STATEMENT OF CASE**

**on behalf of**

**RWE NPOWER RENEWABLES LIMITED**

**In respect of**

**AN APPEAL AGAINST NON-DETERMINATION OF  
PLANNING APPLICATION REF: 05/00273/FULCA**

**DPEA Reference P/PPA/270/431**

**PROPOSED WIND FARM COMPRISING TWELVE WIND TURBINES AND  
ASSOCIATED INFRASTRUCTURE AT**

**STROUPSTER HILL, AUCKENGILL, WICK, CAITHNESS**

**Planning Authority : The Highland Council**

**1. Background**

- 1.1 This Statement relates to a planning application submitted to the Highland Council on the 26 May 2005. The application is for the erection of 12 wind turbines height of approximately 70 metres to hub and 113 metres to rotor tip, associated infrastructure including borrow pit, access tracks, 2 No temporary construction areas and refurbishment of part old steading to accommodate site office and grid connection. A second application 07/00244/FULCA which is identical to that the subject of this appeal was lodged with the Highland Council on the 11 May 2007 and is awaiting determination. This may or may not be determined before this appeal is heard.
- 1.2 The application was validated by the Highland Council on the 26 May 2005 under reference 05/00273/FULCA. The application is supported by an Environmental Statement set out as;
- 1.2.1 Volume 1 - Non Technical Summary
  - 1.2.2 Volume 2 - Environmental Statement
  - 1.2.3 Volume 3 - Volume of Figures, and
  - 1.2.4 Volume 4 - Technical Appendices
- 1.3 The appellant has submitted voluntarily Further Environmental Information (FEI) under the Environmental Impact Assessment (Scotland) Regulations 1999, the information contained within which is also to be considered as part of this

appeal. This FEI includes the Environmental Statement for application 07/00244/FULCA set out as;

- 1.3.1 Volume 1 – Non Technical Summary
- 1.3.2 Volume 2 – Environmental Statement
- 1.3.3 Volume 3 – Volume of Figures, and
- 1.3.4 Volume 4 – Technical Appendices

1.4 The application was also supported by a planning statement.

1.5 This Statement should be read in conjunction with the comments and conclusions set out in those documents.

1.6 The site is located in north east Caithness, approximately 15km north of Wick and 3km inland from the settlement of Nybster. The proposed site is some 2km from the settlement of Freswick which is to the north east of the proposed site, and Auckengill which is approximately 2.5km to the south east. The wind farm occupies an area of 450 hectares

## **2. Relevant Planning Policies and Consultee Responses**

2.1 The Appellant will refer to the relevant international law and national policies which support the generation of electricity by renewable means including, but not exclusively, the UK White papers on renewable energy of 2003 "Our Energy Future-Creating A Low Carbon Economy" and 2007 "Meeting The Energy Challenge", the Scottish Climate Change (2000) Programme and "Changing Our Ways: Scotlands Climate Change Programme (Scottish Executive 2006)"

2.2 The Appellant will also refer to the Highland Structure Plan which was approved by the Scottish Ministers and became operative on the 26 March 2001 and, in particular, policies relevant to renewable energy . The Appellant will also refer to the Caithness Local Plan which was adopted by the Highland Council in 2002.The Appellant will also refer to the Highland Renewable Energy Strategy May 2006.

2.3 The Appellant will also refer to relevant Scottish Planning Policy (SPP) Statements, National Policy Guidelines and Planning Advice Notes including, SPP1, SPP2, SPP4, SPP6, SPP15, SPP23, PAN 42, PAN45, PAN 51, PAN 56, PAN60, NPPG14, and Draft Consolidated Scottish Planning Policy (SPP).

## **3. The Case for the Appellant**

3.1 The Appellant will lead evidence to demonstrate that the proposed wind farm development is both in accordance with and supported by international, national and strategic policy and their aims and obligations to both improve the

generation of electricity by renewable and sustainable means as well as to reduce CO2 emissions.

- 3.2 The Appellants case will demonstrate that there will be significant benefits associated with the proposed development which outweighs any alleged harm that may be caused if the development were permitted.
- 3.3 The Appellants will demonstrate that the proposal accords with the Highland Structure Plan and, in particular, policies E1- Distributed Renewable Energy Development and E2- Wind Energy Development which support wind farm development and Policy A2 – Agriculture which encourages farm diversification through non-farming enterprises. Policies L4 and T6 of the Structure Plan seeks to protect landscape character and scenic views in the area whilst policy BC4 seeks to preserve Historic Gardens and Designed Landscapes. The Appellant will address these issues in detail and will conclude that the development will not have any significant effects on statutory designated landscapes or gardens within the study area.
- 3.4 It will also be demonstrated that the proposed development accords with the Caithness Local Plan which at paragraph 6 seeks to "support the development of renewable opportunities in suitable locations that accord with Structure Plan and National Planning Policy Guidance"
- 3.5 The Landscape and Visual Impact Assessment (LVIA) of the proposed development, which has been carried out in accordance with the *Guidelines for Landscape and Visual Impact Assessment* produced by the Landscape Institute, concludes that no unacceptable cumulative effects will arise with regard to the existing and consented wind farms in the area in relation to the proposed development.
- 3.6 Although the proposed development would have some significant visual effects within close proximity to the development, the proposed development would form a distinctive feature in the open landscape which would relate well to the landform of the site and its immediate surroundings and would have no significant effects at distances over 8km. The Appellants will lead evidence on this point and will conclude that the proposed scheme would have no significant effects which, if regarded as adverse, would outweigh the scheme being consented.
- 3.7 The Appellant will also provide evidence that the proposed scheme will have no significant adverse impact on habitat or species in the area and that accordingly, the proposal will comply with Structure Plan policy N1- Nature Conservation which seeks to minimise impact on nature conservation and enhance it wherever possible.

- 3.8 The Appellant will demonstrate that detailed study work has been carried out in the area and that the conclusions show that in respect of terrestrial ecological issues there will be no significant effects on the habitat or species identified within and in close proximity to the site that cannot be mitigated through appropriate timing and management of the construction of the scheme.
- 3.9 With regard to ornithological issues, the Appellant will call evidence to demonstrate that although significant bird species have been identified in the area (including greylag geese, red and black throated diver, hen harrier, golden eagle, merlin, golden plover, wood sandpiper, short eared owl, and the nationally important greenshank, wigeon and arctic skua) the extensive studies carried out show that limited use of the site is made by protected bird species and that no significant effects are anticipated as a result of the scheme.
- 3.10 The evidence will conclude that there is no significant effect on ecological interests in the area and that there will be no impact on the integrity of the nearby Stroupster Peatlands (SSSI) or of the Caithness and Sutherland Peatlands Special Protection Area (SPA), the Special Area of Conservation or the identified Ramsar site.
- 3.11 Policy BC1 of the Structure Plan seeks to preserve archaeological sites affected by development. The Appellant will demonstrate through evidence that the site has been already modified through afforestation or other agricultural activities and that following a detailed archaeological assessment of the area it can be concluded that the development would not cause harm to the setting of any scheduled monument or other historic site. There would therefore be no conflict with the Structure Plan policy.
- 3.12 The Appellant will also provide evidence that the proposed scheme will have no significant adverse effects on residential amenity resulting from noise. The Appellant will call evidence if necessary to demonstrate that any noise impact which may be generated by the proposed development when assessed in accordance with technical guidance in PAN 45 will fall within acceptable levels as prescribed by national guidance. Furthermore, the turbines are proposed to be located at a distance of at least 1.8km from the nearest residential properties. At these separation distances the Appellant would submit that there is no substantive reason to reject the proposed development on the basis of noise impact on residential properties. As set out below the Appellant will propose that conditions on noise are included in any consent in any event to protect residential amenity.
- 3.13 The Appellant will conclude that even if any adverse and significant effects are identified in respect of the proposed development, they are clearly outweighed by the demonstrable benefits associated with the proposed development in respect of its contribution to meeting international and national legal and policy

targets for the generation of electricity by renewable means and the reduction of greenhouse gasses. The Appellant will conclude that on that basis, the proposed development will comply with the policies in the development plan for the area.

3.14 In light of the above, the proposal is in accord with Scottish and UK energy policy, Scottish National planning policy and the development plan. Additionally, there are no identified material considerations which would support the refusal of the proposed development despite a positive finding in relation to the development plan. On that basis the Appellant will submit that planning permission for the scheme should be granted subject to the imposition of any necessary conditions to be agreed with the Local Authority.

3.15 Where agreement can be found, the Appellant will seek to agree the position in respect of those matters considered above along with other matters in a Statement of Common Ground with the Council prior to the Inquiry opening

#### 4. **Evidence**

4.1 At present, the Appellant intends to lead 3 witnesses, namely

4.1.1 David Stewart M.A. (Cantab.) Dip.T.P., M.R.T.P.I of David Stewart Associates, who will give details of the need and demand for the development in light of international, national and local policy and how the proposed development can meet the identified need. He will also describe the proposed development in detail

4.1.2 Lindsey Guthrie M.A. Hon, MPhil Landscape Architecture, MLI, of SLR Consulting who will give evidence in relation to the effects of the proposed development on landscape and visual amenity including the cumulative effects arising from the proposed development with other wind farm developments either existing or proposed in the locality.

4.1.3 Dr Steve Percival, BSc (Hons) PhD, MIEEM (Ornithology) Principal Ecology Consulting who will give evidence in relation to ornithological issues and, where necessary, in respect of other nature conservation matters. He will also consider what, if any, cumulative effects may occur on ornithological interests in the area when the proposed scheme is considered together with other wind farms in the area.

4.1.4 The right is reserved to call additional witnesses in order to address matters raised by other parties within their Statements of Case.

4.1.5 It is anticipated that the Appellants evidence will last approximately 2 days subject to the extent of the cross examination which takes place.

4.1.6 The Appellants will be represented at the Inquiry by Marcus Trinick of Eversheds LLP

5. Proposed Conditions

5.1 The Appellant will seek to formally agree conditions with the Council prior to the commencement of the inquiry. The conditions proposed are presented below ;

*Time Limits and Site Restoration*

1. The development hereby permitted shall be commenced within 5 years of the date of consent.
2. By the end of 25 years from the first generation of electricity from the development to the grid all surface elements of the development shall have been removed from the site in accordance with a scheme which shall be approved in writing by and submitted to the Planning Authority for approval not later than 12 months prior to the expiry of the said period of 25 years.
3. If any wind turbine fails to produce electricity to the grid for a continuous period of 12 months, and if so instructed by the Local Planning Authority, the wind turbine and its associated ancillary equipment shall be removed from the site within a period of 6 months from the end of that 12 month period unless otherwise be agreed in writing by the Local Planning Authority.
4. In the event that a wind turbine and its associated ancillary equipment are removed in accordance with condition 3 the land shall be reinstated in accordance with a scheme to be submitted on the instruction of the Local Planning Authority and implemented as approved by the Local Planning Authority such scheme to include management and timing of the works and a traffic management plan.

*Micro-siting*

5. Turbines and tracks may be micro-sited within 50 metres of the positions shown on figure [ ] in the Environmental Information submitted with the application.

*Construction Traffic Management and Construction Method Statement*

6. Development shall not be begun until a Construction Traffic Method Statement has been submitted to and agreed in writing by the Local Planning Authority. The Construction Traffic Method Statement shall include proposals for construction vehicle routing, the management of junctions to and crossings of the public highway and other public rights of way, the scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs and banksman/escort details. The approved Construction Traffic Method Statement shall be carried out as approved in writing by the Local Planning Authority.
7. Prior to the commencement of development a Construction Method Statement shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, the construction of the development shall only be carried out in accordance with the approved Statement, unless otherwise agreed in writing by the Local Planning Authority. The Construction Method Statement shall address the following matters:
  1. Details of the timing of construction works, and the construction and surface treatment of all hard surfaces and tracks,

2. Details of the proposed temporary site compounds for storage of materials and machinery (including areas designated for car parking)
3. Siting and details of wheel washing facilities
4. Details of the timing of works and methods of working for cable trenches and foundation works
5. Details of the timing of works and construction of the substation/ control buildings and anemometry mast
6. Dust management
7. Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway
8. Pollution control: protection of water courses and ground water and soils, bunding of fuel storage areas, sewage disposal
9. Disposal of surplus materials
10. Post construction restoration/reinstatement of the temporary working areas, including seed mixture
11. The external appearance and materials to be used in the site substation
12. Construction noise management plan (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise)

#### *Highways*

8. No development shall commence until details of the proposed access to the site from the public highway and temporary or permanent improvements to the public highway have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details.

#### *Construction Hours*

9. The hours of work during the construction phase of the development and any traffic movements to or from the site associated with the construction of the development shall be to 0730 to 1900 hours on Mondays to Fridays and 0700 1400 hours on Saturdays other than as allowed for under condition 10. No work shall take place outside these hours (including on Bank Holidays) unless otherwise previously agreed in writing by the Local Planning Authority.
10. Notwithstanding the provisions of condition 9, delivery of turbine and crane components may take place outside the hours specified subject to not less than 24 hours prior notice of such traffic movements being given to the Local Planning Authority and such deliveries first being approved in writing by the Local Planning Authority.

#### *Appearance*

11. Prior to the commencement of the development, a scheme for the finish and colour of the wind turbines shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall incorporate a semi-matt finish for all of the wind turbines and shall be implemented.
12. All wind turbine blades shall rotate in the same direction. The turbines shall not be illuminated.

#### *Shadow*

#### *Flicker*

13. No development shall commence until a scheme for the avoidance of any shadow

flicker effect for dwellings within 10 rotor diameters of any turbine in the development has been submitted in writing to and approved by the Local Planning Authority. The approved scheme shall be implemented as approved.

*Archaeology*

14. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

*Wildlife*

15. No turbines shall generate electricity until a Habitat Management Plan providing for the management and enhancement of hedgerows has been submitted to and approved in writing by the Local Planning Authority.

*Television interference*

16. No wind turbine shall be erected until a scheme to secure the investigation and alleviation of any electro-magnetic interference to terrestrial TV caused by the operation of the turbines has been submitted to and approved in writing by the Local Planning Authority.

*Noise*

17. The rating level of noise emissions from the combined effects of the wind turbines (including the application of any tonal penalty), when calculated in accordance with the attached Guidance Notes, shall not exceed the values set out in the attached Tables 1 and 2. Noise limits for properties within 2km of a wind turbine which are lawfully existing at the date of this consent but not listed in the Tables attached shall be those of the nearest location listed in Tables 1 and 2 unless otherwise requested by the local planning authority.
18. At the request of the local planning authority following a complaint to it the wind farm operator shall, at its expense, employ a consultant, to assess the level of noise emissions from the wind farm at the complainant's property following the procedures described in the attached Guidance Notes.
19. Wind speed, wind direction and power generation data for each wind turbine shall be continuously logged and provided to the local planning authority at its request and in accordance with the attached Guidance Notes within 28 days of such request.

## SCHEDULE OF GUIDANCE NOTES RELATING TO CONDITIONS 17 - 19

These notes are to be read with conditions 17 - 19. They further explain these conditions and specify the methods to be deployed in the assessment of complaints about noise immissions from the wind farm.

### NOTE 1

- (a) Values of the  $L_{A90,10min}$  noise statistic should be measured at the complainant's property, using a sound level meter of IEC 651 Type 1, or BS EN 61672 Class 1, standard (or the equivalent relevant UK adopted standard in force at the time of the measurements) set to measure using a fast time weighted response. This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent relevant UK adopted standard in force at the time of the measurements).
- (b) The microphone should be mounted at 1.2 - 1.5 m above ground level, fitted with a two layer windshield or suitable equivalent approved by the local authority, and placed outside the complainant's dwelling. Measurements should be made in "free-field" conditions, so that the microphone should be placed at least 3.5 m away from the building facade or any reflecting surface except the ground.
- (c) The  $L_{A90,10min}$  measurements should be synchronised with measurements of the 10-minute arithmetic average wind speed and with operational data from the turbine control systems of the wind farm or farms.
- (d) The wind farm operator shall continuously log arithmetic mean wind speed and arithmetic mean wind direction data in 10 minute periods from the nacelle anemometers of each turbine, duly corrected for the presence of the rotating blades, to enable compliance with the conditions to be evaluated. Such data shall be averaged over the data from all turbines and 'standardised' to a reference height of [10 metres/ 70 metres] as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres.

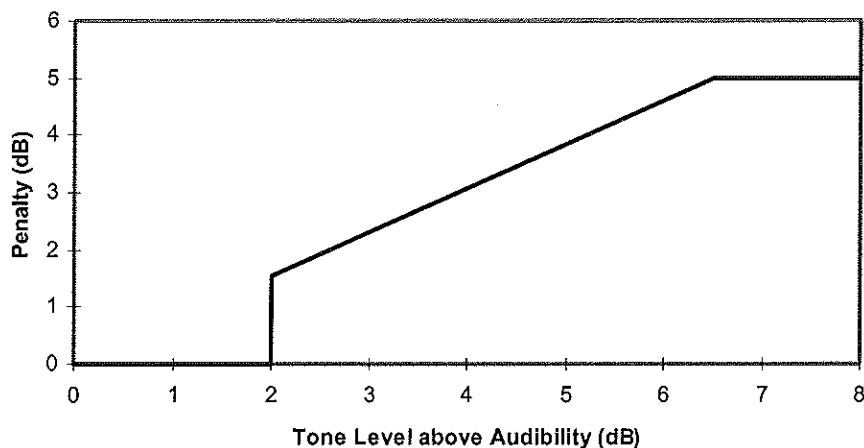
### NOTE 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements should provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the Local Planning Authority. In specifying such conditions the local planning authority shall have regard to those conditions which were most likely to have prevailed during times when the complainant alleges there was disturbance due to noise. At its request the wind farm operator shall provide all of the data collected under condition 2 to the local planning authority
- (b) Valid data points are those that remain after all periods during rainfall have been excluded.
- (c) A least squares, "best fit" curve of a maximum 2<sup>nd</sup> order should be fitted to the data points and define the rating level at each integer speed.

### NOTE 3

Where, in the opinion of the Local Planning Authority noise emissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure should be used.

- (a) For each 10-minute interval for which  $L_{A90,10min}$  data have been obtained as provided for in Note 1 a tonal assessment is performed on noise emissions during 2 minutes of each 10 minute period. The 2 minute periods should be regularly spaced at 10 minute intervals provided that uninterrupted clean data are available. Where clean data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from standard procedure shall be reported.
- (b) For each of the 2-minute samples the margin above or below the audibility criterion of the tone level difference,  $\Delta L_{tm}$ , should be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- (c) The margin above audibility is plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, substitute a value of zero audibility.
- (d) A linear regression should then be performed to establish the margin above audibility at the assessed wind speed for each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic average shall be used.
- (e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed is the arithmetic sum of the wind farm noise level, as determined from the best fit curve described in Note 2, and the penalty for tonal noise.



#### NOTE 4

If the rating level is above the limit set out in the conditions, measurements of the influence of background noise should be made to determine whether or not there is a breach of condition. This may be achieved by repeating the steps in Note 2, with the wind farm switched off, and determining the background noise at the assessed wind speed,  $L_3$ . The wind farm noise at this speed,  $L_1$ , is then calculated as follows where  $L_2$  is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$

The rating level is re-calculated by adding the tonal penalty (if any) to the derived wind farm noise  $L_1$ . If the rating level lies at or below the values set out in the conditions then



\* a property occupied by someone with a financial interest in the development, as defined on page 66 of 'The Assessment and Rating of Noise from Wind Farms' (ETSU-R-97)).

## 6. Documents

6.1 The Appellant will seek to agree with the Council how the documents listed below will be referenced and, in addition, the Appellant reserves the right to amend the list of documents prior to the commencement of the Inquiry.

- Doc 1 SPP1 - The Planning System
- Doc 2 SPP2 - Economic Development
- Doc 3 SPP4 - Planning for Minerals
- Doc 4 SPP6 - Renewable Energy
- Doc 5 SPP15 - Planning for Rural Development
- Doc 6 SPP23 - Planning and the Historic Environment
- Doc 7 PAN42 - Archaeology
- Doc 8 PAN45 - Renewable Energy Technologies
- Doc 9 PAN 51 - Planning and Environmental Protection
- Doc 10 PAN 56 - Planning and Noise
- Doc 11 PAN 60 - Planning for Natural Heritage
- Doc 12 NPPG 14 - Natural Heritage
- Doc 13 Draft Consolidated Scottish Planning Policy (2008)
- Doc 14 The Highland Structure Plan (2001)
- Doc 15 The Caithness Local Plan (2002)
- Doc 16 The Highland Renewable Energy Strategy (2006)
- Doc 17 Planning Application Form and drawings
- Doc 18 Planning Statement (application ref 07/00244/FULCA)
- Doc 19 Environmental Statement Volumes 1,2,3 and 4 (Application ref; 05/00273/FULCA)

- Doc 20 Environmental Statement Volumes 1,2,3 and 4 (In respect of application ref 07/00244) submitted as further environmental information
- Doc 21 Further Environmental Information (FEI) (2009)
- Doc 22 Guidelines on the Environmental Impacts of Wind Farms and Small Scale Hydroelectric Schemes, SNH (2001)
- Doc 23 UK White Paper "Our Energy Future - creating a low carbon economy" (2003)
- Doc 24 UK White Paper "Meeting the Energy Challenge" (2007)
- Doc 25 The Scottish Climate Change Programme (2000)
- Doc 26 "Changing our ways: Scotland's Climate Change Programme" (2006)

Ornithology References

- Doc 27 Whitfield, P., Bullman R. and Band, W. 2005. Survey methods for use in assessing the impacts of onshore wind farms on bird communities. Scottish Natural Heritage guidance.

Further documents will be added

Landscape Reference

- Doc 28 The Landscape Institute, Institute of Environmental Management and Assessment, 2002, Guidelines for Landscape and Visual Impact Assessment, Second Edition.
- Doc 29 Landscape Character Assessment: Guidance for England and Scotland Countryside Agency and SNH (SNH) publication, produced by the University of Sheffield and Landuse Consultants, 2002.
- Doc 30 University of Newcastle (2002) Visual Assessment of Wind Farms Best Practice. SNH Commissioned Report F01AA303A
- Doc 31 Visual Representation of Wind Farms Good Practice Guidance, Prepared for Scottish Natural Heritage, The Scottish Renewables Forum and the Scottish Society of Directors of Planning by Horner Maclennan and Envision, 2006.
- Doc 32 Guidance for the Assessment of Cumulative Landscape and Visual Impacts Arising from Windfarm Developments, SNH Advisory Services Landscape Group, 4th Draft May 2004. and Guidance: Cumulative Effects of Wind Farms, Version 2, Scottish Natural Heritage, 13/04/05.

Doc 33 Tayside Landscape Character Assessment, SNH Review No. 122, produced by Landuse Consultants 1999.

Doc 34 South and Central Aberdeenshire: Landscape Character Assessment, SNH Review No. 102, produced by Environmental Resources Management 1998.

Technical References

The Appellant reserves the right to submit additional documents