

Akbar S (Smerah)

From: Ramsay, Lesley <Lesley.Ramsay@shepwedd.com> on behalf of Innes, Colin <Colin.Innes@shepwedd.com>
Sent: 18 November 2019 16:47
To: Akbar S (Smerah)
Cc: 'Laura.Whitelaw@dumgal.gov.uk'; [REDACTED]; [REDACTED] 'Paul.Taylor@nature.scot'; 'skiclub@lowtherhills.com'; 'Oliver.Mundell.msp@parliament.scot'; [REDACTED] 'david.mundell.mp@parliament.uk'
Subject: North Lowther [S+W-LegalDiv.FID4354234]
Attachments: Letter to DPEA.PDF

Dear Ms Akbar,

Please see attached response to the Council's submission in relation to the Procedure Notice of 21 October 2019.

Kind regards

Colin

Colin W Innes

Partner, Planning and Environment

For and on behalf of Shepherd and Wedderburn LLP

T: +44 (0)131 473 5104

www.shepwedd.co.uk



This email is strictly confidential, protected by copyright and may be legally privileged. It is intended solely for the addressee. If you are not the intended recipient you must not copy, disclose, distribute or take any action in reliance on it. If you have received this message in error, please delete it and notify us immediately. References to "Shepherd and Wedderburn" are to the international legal practice of Shepherd and Wedderburn LLP and/or its affiliated entities. Any emails by a named individual are sent for and on behalf of Shepherd and Wedderburn. Shepherd and Wedderburn does not accept any liability for any harm that may be caused to the recipient's system or data by this message or any attachment. For information about how we use your personal data please read our privacy policy at shepwedd.com/privacy-policy. Shepherd and Wedderburn's systems are subject to random monitoring. Shepherd and Wedderburn LLP is a limited liability partnership incorporated in Scotland with number SO300895 with its registered office and principal place of business at 5th Floor, 1 Exchange Crescent, Conference Square, Edinburgh EH3 8UL. The term partner in relation to Shepherd and Wedderburn LLP is used to refer to a member of Shepherd and Wedderburn LLP. A list of the names of the members is available for inspection at the principal place of business. Shepherd and Wedderburn LLP is regulated by the Law Society of Scotland and is authorised and regulated by the Solicitors Regulation Authority (with number 447895). Shepherd and Wedderburn LLP (Singapore Branch) is a

registered branch (with registration number T19FC0004K) and is licensed to operate as a Foreign Law Practice in Singapore. Shepherd and Wedderburn Europe is registered with the Law Society of Ireland (with number F9807). Details of the country or jurisdiction in which our lawyers are professionally qualified are set out at shepwedd.com/legal-notices.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

Ms Smerah Akbar
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Contact person	Email	Phone	Date
Ian Simms	ian.simms@baywa-re.co.uk	+44 1475 333 650	18/11/2019

Dear Ms Akbar,

NLEI Eskdalemuir Position

The Applicant has considered the submission of Dumfries and Galloway Council in respect of the Eskdalemuir Consultation/Exclusion Zone. The Applicant's position is clear in its submission of 4th November 2019; however, this letter sets out a limited number of points that the Applicant would like to make in response to the Council's submission.

The Council raises the Little Hartfell and Twentysilling Hill (Section 42) Applications, which are also discussed in the Applicant's submission. Both received objections from the MOD in respect of Eskdalemuir and have been approved with a suspensive condition on this matter. At 5.2 of its submission the Council acknowledges that there is no material available regarding the likelihood or timescales for a solution to this issue. The lack of any evidence that a solution is likely to come forward raises significant uncertainty about the ability of these permissions and any others with similar suspensive conditions to be implemented.

The fact that this issue has been overcome previously does not necessarily indicate that it will be overcome again. The previous release of budget and removal of objections was possible because sites with budget allocated to them, but which had been refused or not implemented, had their budget allocation returned to the MOD to in turn re-allocate to new projects to allow them to proceed. The budget is now exceeded again, currently being approximately 100% over subscribed and with further significant developments understood to be waiting in the budget queue beyond this.

The current ESA budget constraint creates an effective embargo on the implementation of wind farms within a very large area of Dumfries and Galloway, unless schemes already have budget allocated to them *and* a no objection from the MOD. The Council has provided no evidence to counter this clear position, nor any evidence that a solution to this issue is forthcoming. Indeed, the Council accepts that there is no material available giving any indication of certainty or timescales for a mitigation solution.

The MOD itself has highlighted that there is a risk there could be no solution. It is of course possible to consent further additional schemes with suspensive conditions, but in the absence of any evidence of a solution, there is significant uncertainty about whether such consents can go on to contribute to meeting renewable energy targets.

The Scottish Government's targets for renewable energy relate to its delivery and not to consent alone. CD5.13 makes it clear that the Scottish Government would like to see the limiting constraint created by ESA used in an "efficient" manner. In the context of the current guidance, this would seek to maximise the number of turbines that were located at the periphery of the consultation zone. Such locations would maximise the budget used per MW of electricity installed. NLEI can be implemented as it is clear of the current embargo, it makes very efficient use of this limited resource requiring only 3.3% of the total budget, and it has not attracted an objection from the MOD. Significant technical issues such as this must form part of the balance when considering applications, and in this case, it is a matter which the Applicant submits should attract positive weight in the consideration of the application.

Yours sincerely



Ian Simms
Senior Development Manager
BayWa r.e. UK Limited