|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| |  |  | | --- | --- | | **Energy Directorate**  **Renewable Energy Division**  **T: 0300-244 1257**  **E: jamie.hume@scotland.gsi.gov.uk** |  | |  |  | |  |

Mr David Lowes

Chairman

Osspower Ltd

58 John Street

Penicuik

Midlothian

EH26 8NE

\_\_\_

20 April 2010

Dear Mr Lowes

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH MINISTERS TO CONSTRUCT AND OPERATE THE BEN GLAS HYDRO ELECTRIC GENERATING STATION AT GLEN FALLOCH ESTATE, NEAR CRIANLARICH**

**Application**

I refer to the application made by Osspower Ltd (“the Company”), dated 21 July 2009 for:

(i) consent under section 36 of the Electricity Act 1989 (“the Electricity Act”) for construction and operation of the Ben Glas hydro electric generating station at Glen Falloch Estate, near Crianlarich, with a generating capacity of 1.6 MW; and

(ii) a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 (“the Planning Act”) that planning permission be deemed to be granted in respect of the hydro electric generating station and any ancillary developments.

**Consultation**

In accordance with Statutory Requirements, advertisements of the application had to be placed in the local press. Ministers note that these requirements have been met. Under Schedule 8 of the Electricity Act, the relevant planning authority is required to be notified in respect of a section 36 consent application. Notifications were sent to Loch Lomond and The Trossachs National Park as planning authority, as well as to Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).

**Environmental Matters**

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”) prohibit the Scottish Ministers from granting consent unless they have fully considered the environmental information, as defined in those regulations. The Scottish Ministers have considered the environmental information carefully; in addition to the Environmental Statement, they have considered the comments made by Loch Lomond and The Trossachs National Park Authority, those designated as statutory consultees in terms of Regulation 6 of the 1990 Regulations and those of the consultative bodies in terms of the 2000 Regulations. No objections were received in relation to the proposed development.

Scottish Ministers are content that they have had access to sufficient information to assess the likely environmental impact of the project to enable them to make a determination on the application.

**Determination**

Subject to the conditions set out in Part 1 of Annex 2, Scottish Ministers grant consent under section 36 of the Electricity Act 1989 for construction and operation of the Ben Glas hydro electric generating station at Glen Falloch Estate, near Crianlarich, as described in Annex 1.

Subject to the conditions set out in Part 2 of Annex 2, Scottish Ministers direct under section 57(2) of the Town and Country Planning (Scotland) Act 1997 that planning permission be deemed to be granted in respect of the development described in Annex 1.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008, you 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.

Yours sincerely

**JAMIE HUME**

Deputy Director – Renewable Energy

A member of staff of the Scottish Government

**Annex 1**

**Description of Development**

**Ben Glas Hydro Electric Generating Station**

The construction and operation of a 1.6 MW Ben Glas hydro electric generating station, including:

* Two intakes: one on Ben Glas Burn and one on a tributary;
* A powerhouse located in a flat area adjacent to the River Falloch;
* Approximately 3.4 km of buried pipeline;
* A pipe bridge crossing the Ben Glas Burn;
* A tailrace to take water from the powerhouse to the River Falloch;
* An access track, following and extending from an existing track, for construction purposes which will be reduced to an all terrain vehicle track for maintenance.

**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 75 years after the date of the Commissioning of the Development. Written confirmation of the date of Commissioning of the Development shall be provided by the Company to the Planning Authority and to Scottish Ministers no later than one calendar month after that event.
2. The commencement of the Development and the substantial commencement of all material operations relevant to the Development shall be no later than 3 years from the date of this consent, or (in substitution) no later than such date as the Scottish Ministers may hereafter direct. If commencement of the Development does not occur by such date, then by no later than the date occurring 6 months after such date, the site and the ground shall be fully reinstated by the Company to the specification and satisfaction of the Scottish Ministers, following consultation with the Planning Authority.
3. The Company shall not be permitted to assign, alienate or transfer this consent without the prior written authorisation of the Scottish Ministers.
4. In the event of a serious Health and Safety, Environmental or construction incident occurring on site during the period of consent, the Company must notify Scottish Ministers within 24 hours of the incident occurring.

**Part 2**

**Conditions applying to deemed planning permission**

1. The Development shall be implemented fully in accordance with the Application and Environmental Statement and all of the mitigation measures identified therein shall be undertaken (except in so far as amended by the terms of this consent and direction or any approval required thereunder). Unless otherwise agreed with the Planning Authority, the works hereby approved shall be carried out in accordance with the mitigation measures in the Company’s Clarification Note 4 (dated October 2009) and the additional mitigation measures listed in Appendix 2 of the Planning Authority report no. NPAPC/11/2009/01 to the Planning and Access Committee (dated 19 November 2009

*Construction*

1. The development shall be undertaken in its entirety, in one continuous phase, with no partial implementation. Construction activities shall be completed within a 26 month period from the Commencement of the Development unless otherwise agreed in writing by the Planning Authority.

*Construction Method Statement*

1. Prior to Commencement of Development, a Construction Method Statement shall be submitted to, and approved in writing by, the Planning Authority, after consultation with SNH and such other parties as the Planning Authority consider necessary. The Company shall liaise with SEPA to ensure that the construction shall follow the relevant Pollution Control guidelines. This final Construction Method Statement shall detail the following matters in particular:

* Detailed construction methods and timings of compounds, tracks (temporary, permanent and upgraded), pipeline, tailrace, powerhouse, borrow pits;
* Detailed drainage proposals, including treatment on peatland to avoid peat slide;
* Details of pipeline restoration through burial or mounding;
* Appropriate restoration proposals for all habitats (including peatland, heath, grassland, woodland, etc.);
* Details of disposal of excavated material (e.g. in borrow pits);
* Confirmation that the scheme will be built within the construction corridor surveyed and limited to 20m for high performance polyethylene pipe and 30m for glass-reinforced/ductile iron pipe;
* Mitigation measures as outlined in the Company’s Clarification Note 4 (dated October 2009) and Appendix 2 of the Planning Authority report no. NPAPC/11/2009/01 to the Planning and Access Committee (dated 19 November 2009);
* A peat stability and slide risk assessment, to inform detailed construction methods and micro-siting and take into account issues such as whether there is evidence of a relict or incipient peat failure.

Thereafter, the approved Construction Method Statement shall be complied with and implemented as part of the proposed Development unless revised to secure an equivalent or higher standard of protection/restoration with the prior written consent of the Planning Authority.

*Loch Lomond Woods Special Area of Conservation (SAC)*

1. Prior to Commencement of Development, the boundary of the SAC shall be clearly marked and site staff shall be made aware of its presence. A cordon sanitaire shall be erected to ensure no vehicle movements, storage of material, parking, ground works or construction shall take place within 2 metres of the dripline of the trees whose trunks stand within the SAC boundary. All construction shall be sited outside the boundary of the SAC.

*Tree Protection and Woodland Management Scheme*

1. Prior to Commencement of Development, a tree protection plan and woodland management scheme shall be submitted to, and approved in writing by, the Planning Authority in consultation with SNH. These shall include:

* The working area within and around the woodland to be marked out with tape and approved;
* Trees to be removed or branches lopped to be marked on the plan;
* Low-impact vehicles to be used within the woodland to avoid compaction;
* Compaction around tree roots to be avoided through micro-siting;
* Topsoil and vegetation to be stored separately from subsoil and backfilled in sequence;
* Any standing timber to be left in situ;
* Deadwood to be left on site; and
* A timescale for the ongoing maintenance of the woodland as agreed in writing by the Planning Authority in consultation with SNH.

The protection plan and management scheme, once approved, shall be complied with and implemented over the agreed timescale unless revised to secure an equivalent or higher standard of protection/restoration with the prior written consent of the Planning Authority.

*Details of Intake/Powerhouse*

1. Prior to the construction of the intake and powerhouse, a sample or details of the materials and colour to be used to construct all aspects of the intake and the roof, walls and door of the powerhouse, including any railings and lighting, shall be submitted to, and approved in writing by, the Planning Authority. Thereafter, the intake and powerhouse shall be constructed in accordance with the approved details.

*Site Landscape Architect*

1. Prior to Commencement of Development, a suitably qualified site landscape architect shall be appointed, and approved by the Planning Authority, to oversee the setting out, construction and restoration of all project elements likely to have a landscape impact, including:

* Location and extent of the construction corridor, including lay-down areas;
* Micro-siting of intake and detailed design of mitigation measures, such as placing of boulders;
* Detailed routeing of pipeline and location of infrastructure such as pipe bridges;
* Location and design of tracks and their subsequent restoration;
* Restoration of any disturbed vegetation and landform.

*Landscape and Tree Planting Plan*

1. Prior to the Commissioning of the Development, details of landscaping mitigation works, including tree planting, details of species, nursery stock size and density of planting, maintenance and protection and details of reinstatement and management of areas of grass/seed turf shall be submitted to, and approved in writing by, the Planning Authority. Unless otherwise agreed in writing with the Planning Authority, all landscaping works as approved shall be carried out during the first planting season following the commissioning of the Development and any trees or plants that, within a period of 5 years thereafter, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species.

*Archaeological Investigation*

1. Prior to Commencement of Development, a programme of archaeological works shall be implemented in accordance with a Written Scheme of Investigation which has been submitted by the Company and approved in writing by the Planning Authority. Thereafter, the Company shall ensure that the approved programme of archaeological works is fully implemented and that all recording and protection of archaeological resources within the Development site is undertaken to the satisfaction of the Planning Authority.

*Public Access*

1. Prior to Commencement of Development, a detailed plan of public access across the site (existing, during construction and upon completion) shall be submitted by the Company for the written approval of the Planning Authority. This will show:

* All existing paths, tracks and rights of way;
* Any diversions of paths – temporary or permanent – proposed for the purposes of the Development;
* Details of temporary signage;
* Specifications for reinstatement of public access routes at post-construction stage.

*Ecological Watching Brief*

1. Prior to Commencement of Development, an Ecological Clerk of Works (ECoW) or Site Ecologist shall be appointed and a document containing the scope of works to be overseen by the ECoW shall be submitted to the Planning Authority for approval, in consultation with SNH. The ECoW shall be appointed for the duration of the detailed design, construction and restoration and will provide:

* Advice in relation to micro-siting project elements to avoid important habitats, including blanket bog and areas of deep peat;
* Ecological toolbox talks and emergency procedures if protected species are identified within or close to the construction corridor.

*Otter Mitigation Scheme*

1. Prior to Commencement of Development, an otter mitigation scheme shall be submitted to, and approved in writing by, the Planning Authority in consultation with SNH. This scheme shall detail all relevant mitigation measures, including measures for dealing with situations of disturbance and/or actual damage to places of shelter.

*Bat Mitigation Scheme*

1. Prior to Commencement of Development, a bat mitigation scheme shall be submitted to, and approved in writing by, the Planning Authority in consultation with SNH. This scheme shall detail all relevant mitigation measures, including measures for dealing with situations of disturbance and/or actual damage to places of shelter.

*Breeding Birds Protection Plan*

1. Prior to Commencement of Development, a breeding birds protection plan shall be submitted to, and approved in writing by, the Planning Authority in consultation with SNH and RSPB Scotland . This shall include the following:

* An on-site ecologist shall regularly check the construction corridors for signs of breeding bird activity;
* Toolbox talks shall be given to all personnel to alert them to wildlife legislation and breeding bird signs;
* Methods for keeping the construction corridor clear of breeding activity;
* Procedures to be followed in the event of a nest being located within the construction corridor.

The breeding birds protection plan will be implemented in its entirety to the satisfaction of the Planning Authority, in consultation with SNH and RSPB Scotland.

*Monitoring Plan*

1. Prior to Commencement of the Development, a Monitoring Plan shall be submitted for the approval of the Planning Authority. The Monitoring Plan shall include:

* the steps that shall be taken by the Company to monitor the environmental effects of the Development during the construction phase and the operational phase as well as monitoring other conditions as set down in the consent;
* a commitment to submit a Monitoring Report to the Planning Authority for approval, in liaison with SNH if required, on a monthly basis during the construction period, and on a six monthly basis for the first five years following commissioning;
* a methodology for developing avoidance and mitigation measures to address any adverse environmental effects identified during the course of the monitoring.

*Decommissioning and Restoration*

1. Unless otherwise agreed in writing with the Planning Authority, in the event of the scheme not generating electricity for a continuous period of 12 months and with no realistic expectation of resumption in the foreseeable future, the site shall be reinstated within a period of 18 months following the expiry of such period of cessation or within such timescales as agreed in writing with the Planning Authority. Reinstatement shall comprise the removal of the above ground infrastructure, if considered necessary, and restoration of the natural water regime to normal flows, all to the written satisfaction of the Planning Authority.

##### Definitions

21. In this consent and deemed planning permission:-

“the Company” means Osspower Limited (Registered Company Number SC310177) having its Registered Offices at Osspower Limited, c/o Andersons, 58 John Street, Penicuik, Midlothian, EH26 8NE.

the “Ecological Clerk of Works” means the person appointed under condition 15;

“Ecological toolbox talks” means lectures to educate workers about the protection of ecological interests should they be identified under the terms of conditions 15 and 18;

“the Environmental Statement” means the environmental appraisal report submitted by the Company on 21 July 2009;

the “Application” means the application submitted by the Company on 21 July 2009;

the “Planning Authority” means Loch Lomond and The Trossachs National Park Authority;

the “Commencement of the Development” means the date on which the Development is taken to be initiated in accordance with section 27(1) of the Town and Country Planning (Scotland) Act 1997;

the “Commissioning of the Development” means the date on which the new hydro electric generating station first supplies electricity on a commercial basis;

"Construction Method Statement" means a set of procedures detailing activities to be undertaken, sequencing of activities, assessment of risks, and an outline of mitigation and contingency measures;

the “Monitoring Plan” is the plan required to be submitted by the Company to the Planning Authority under the terms of condition 19 and to be implemented as approved;

a “Monitoring Report” is a report submitted by the Company to the Planning Authority under the terms of condition 19;

the “relevant Pollution Control guidelines” means the guidelines relevant to pollution control as produced by SEPA and found at <http://www.sepa.org.uk/>;

“RSPB” means the Royal Society for the Protection of Birds;

the "Site" means the area of land outlined in the attached plan;

“SNH” means Scottish Natural Heritage;

“SEPA” means the Scottish Environment Protection Agency.

the “Written Scheme of Investigation” means a written scheme to be produced by the Company which fully reflects the FIRAT report of October 2009 (Glen Falloch Hydro Schemes: Clarification of Archaeological Survey Results: Additional Archaeological Survey Report and Recommendations for Hydroplan UK).

###### JAMIE HUME

###### Deputy Director - Renewable Energy

Authorised by the Scottish Ministers to sign in that behalf