

IN THE SCOTTISH LAND COURT  
under the  
CROFTERS (SCOTLAND) ACT 1993

**Name of Applicant** .....SSE Generation Limited.....

Address of Applicant or Applicant's agent:

...c/o Gillespie Macandrew LLP, 5 Atholl Crescent, Edinburgh.....

.....Post Code ...EH3 8EJ.....

Email address for communication with applicant or agent...alan.white@gillespiemacandrew.co.uk..

Telephone number for communication with applicant or agent.....0131 260 7537.....

**Name of landlord or owner** of the land referred to in this application (if not the applicant)

...Scottish Ministers.....

Address of landlord/owner or agent

...c/o Morton Fraser LLP, Quartermile Two, 2 Lister Square, Edinburgh.....

.....Post Code...EH3 9GL.....

Email address for communication with landlord/owner or agent ...gail.watt@mfmac.com.....

Telephone number for communication with landlord/owner or agent ...0131 247 3178.....

**Name of the scheme for development** which is the subject of the application:

.....Strathy South Wind Farm Access.....

**Location and extent of the land** to be developed in accordance with the scheme:

.....Strathy East, Strathy West and Baligill Common Grazings, forming part of Armadale Estate,  
Strathy, Sutherland as described in the Scheme for Development.....

*Delete whichever of the following does not apply:*

I/we hereby apply under section 19A(1)(a) of the Crofters (Scotland) Act 1993 for the Court's consent to the land specified above being developed in accordance with the scheme more particularly described in the appended Statement of Facts.

Or

~~I/we hereby intimate to the Court in terms of section 19A(1)(b) of the Crofters (Scotland) Act 1993 that every person who has right in or over the land specified above consents to it being developed in accordance with the scheme more particularly described in the appended Statement of Facts.~~

.....  
Signature of Applicant or Applicant's agent

.....  
Date

### Statement of facts

The following information should be provided:

#### *Purpose of the scheme for development.*

The purpose of the Scheme for Development is to provide access to a wind powered generating station known as Strathy South. The extent of the land to be developed within the Strathy East, Strathy West and Baligill common grazings is shown (i) coloured orange (defined in the Scheme for Development as "the Access Track") (ii) shown outlined green (comprising a construction compound/laydown area) (iii) an area shaded mauve (the site of a security cabin) and (iv) an improved bellmouth/sight-line shaded red on the plan which is lodged as production [1] together these are referred to as "the Application Site". Only the area shaded red will be leased by the Applicant. The Access Track is estimated to average 8 metres in width and 3,682 metres in length, and includes an existing hardcore access track which will be utilised for the purpose of the development. The total extent of the common grazings is shown indicatively cross-hatched red on Production 1. Whilst no wind turbines will be located on the Application Site, use of the hardcore access track within the Application Site is crucial to the Applicant's ability to develop the wind powered generating station for the production of energy, which is a reasonable purpose in terms of Section 19A(2)(a) of the Crofters (Scotland) Act 1993 ("the 1993 Act").

#### *Consent of the Landowner*

The Applicant makes the Application with the consent of the Scottish Ministers as Landowner.

#### *Description of the development*

As noted above there is an existing hardcore access track within the Application Site. The hardcore track has been previously utilised in connection with other wind farm developments and only minimal (if any) works will be required to upgrade the track itself. The Applicant anticipates that it may be necessary to oversail land adjacent to the hardcore track when long goods vehicles are being used to transport wind turbine components on the hardcore track. It is expected that the bellmouth of the track at the point where it adjoins the A836 public road will require to be widened and upgraded as shown shaded red on Production [1] to enable wind turbine components to be delivered to the wind farm site. These works will have only minimal effect on the crofters having rights in the Strathy East, Strathy West and Baligill Common Grazings. The wind farm development has a consented life of 50 years, however it is anticipated that any upgrading of the hardcore track and its bellmouth at the junction with the A836 public road will be permanent. Accordingly it is proposed that the Scheme for Development should endure for 55 years to allow for construction, operation and decommissioning of the wind farm development.

#### *Names and Addresses of those holding a crofting interest*

The names and addresses of the persons having grazing rights in the Strathy East, Strathy West and Baligill Common Grazings, and their respective souming rights, are shown in table form in Production [2]. The Clerk to the Common Grazings is Mr George Mackay of Schoolhouse, 6 Bayview, Portskerra, Thurso KW14 7YW.

#### *Payments to persons having grazing rights in the common grazings*

The Applicant proposes that those having grazing rights in the Application Site will be paid one half of the rent due to the Landowner in respect of the Application Site in terms of the Lease which it is proposed will be entered into between the Applicant and the Landowner. That sum will then be distributed among the various persons holding grazing rights in the Strathy East, Strathy West and Baligill Common Grazings according to their souming rights. The leased subjects, insofar as within Application Site will comprise only the improved bellmouth adjacent to the A836 public road. Full details of the rental payments and how the rent in respect of the Application Site is calculated are contained in the Scheme for Development.

*Assessment of payments as against payments had the development proceeded by resumption*

The Applicant considers that the payments in terms of the Scheme for Development compare favourably with the payment which would be due to the persons holding an interest in the Application Site under Sections 20 and 21 of the 1993 Act. Were the development to proceed by way of resumption under sections 20 and 21, rather than under Section 19A of the 1993 Act, a capital payment would require to be made at the point of resumption. An application under Sections 20 and 21 of the 1993 Act could only be made by the Landowner, as such the capital payment would normally be 50% of the value to the Landowner of the area to be resumed, which would be paid to the persons holding an interest in the Strathy East, Strathy West and Baligill common grazings. The Applicant suggests the normal approach to establishing the development value under resumption would be assessed by calculating a capitalised payment based on perhaps 10 years of income under the proposed lease, to reflect the risk taken by the Landowner that the development may not proceed, or may not result in the financial return originally anticipated. In contrast under the Scheme for Development, annual payments, which are index linked, are made such that those holding an interest in the Common Grazings will receive payments for the duration of the development's lifetime and those payments will retain their value over time.

Further, if the development were to proceed by way of resumption, only the small area of land to be leased to the Applicant from within the Strathy East, Strathy West and Baligill Common Grazings would require to be resumed so as to provide the Applicant with a "real right" capable of registration in the Land Register of Scotland. It is noted that in terms of Paragraph 11(d) of Schedule 2 of the 1993 Act a landowner may authorise third parties (such as the Applicant) to take entry for the purposes of "Opening or making roads...". The exercise of such right does not require payment to the crofter affected or, by extension, those holding grazing rights in a common grazing, other than in respect of compensation for damage or loss suffered as a result of the exercise of that right. In this case, given the hardcore track is already in existence, is used by other developers and is largely suitable for the Applicant's purpose, any loss or damage caused to the Common Grazings will be minimal. The payments proposed under the Scheme for Development could therefore be considered generous in comparison to the payment which would be made if the development proceeded by way of resumption under Sections 20 and 21 of the 1993 Act rather than under Section 19A of the 1993 Act.

*Financial benefit to the community*

The Applicant has undertaken to make payments totalling £5,000/MW/annum of the installed capacity of the proposed windfarm for a period of 25 years, or the life of the windfarm if less. These payments will be shared equally between a fund for the benefit of the local community and a wider regional fund. Further details are specified in the Scheme for Development.

*Adverse consequences of the development*

The Applicant does not consider that upgrading (if required) of the existing hardcore track and the construction of the upgraded/widened bellmouth will have any adverse effects, or any more than minimal adverse effects, on those having grazing rights in the Strathy East, Strathy West and Baligill Common Grazings. The area of land affected by the upgrading works will be minimal. There will be no restriction on crofters' grazing rights in respect of the common grazings, or their ability to make use of the existing hardcore track.

*Measures to ensure the development is not unfair to the crofting community*

The Applicant considers that there are no more than minimal adverse consequences of the development, as such those consequences will not be significant. Any adverse consequences, if such do occur, will affect each member of the crofting community in the same way, and will not be greater for some members of the crofting community than they are for other members of that same community. The development is not therefore unfair for the purposes of the 1993 Act