GS/415/IK

The Highland Council (the Planning Authority) and CWAG (Local Objectors)

Town and Country Planning (Scotland) Act 1997

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000

Section 36 Application for the proposed Baillie Wind Farm, Caithness

PROPOSED ERECTION OF 21 WIND TURBINES (EACH 110M HIGH) ON LAND AT BARNAHEIGH FARM, WESTFIELD, BY THURSO

Ref: IEC/3/105/3

Public Inquiry

PRECOGNITION – FULL

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Planning Policy and Related Material Considerations

Background

1. I am Ian Kelly MRTPI, Head of Planning at Graham and Sibbald, and I am a chartered planner with some thirty years experience in the public and private sectors mainly in Scotland but also involving work in Europe, mainly in Scandinavia.

2. I appear at this Inquiry on behalf of The Highland Council (THC) and the Caithness West Action Group (CWAG). The detail of my clients is explained further below.

3. I would stress that, in the preparation of my expert witness evidence, and in my advice to my clients, I have sought to focus on the key determining issues in respect of a section 36 consultation which THC, having regard to all of the information before them (and following a Hearing), decided to object to thus triggering this Public Inquiry. I note that the proposed development was assessed by THC Planning Officers, who recommended that the Council did not object to the proposals subject to a legal agreement and conditions. However, the concluding paragraphs in the report to Committee (**CD5**)**,** and paragraphs 8.4 and 8.5 in particular, do not exactly read as fulsome support for the development. I consider this report further in my precognition.

4. The Council formally notified the ECU of their objection on 30th January 2008.

5. The Council objected on five grounds as below:

    a. The proposal is contrary to the provisions of the Caithness Local Plan, the site being covered in part by a PP3 designation, which presumes against development
    b. The proposal is contrary to SPP6, in relation to the proximity of the proposed wind farm to existing dwellinghouses
    c. The proposal is unacceptable in terms of its cumulative impact with other windfarms in the vicinity, and in relation to the likely adverse impact on tourism, tourism routes and tourist destinations such as Dunnet Head and Strathy Point
    d. The proposal is unacceptable in terms of its adverse visual impact and is contrary to the Highland Renewable Energy Strategy policy and guidance
    e. The application should be the subject of an appropriate assessment carried out to the satisfaction of Scottish Natural Heritage to address the issues raised by the RSPB and Historic Scotland

6. Had I been engaged by the THC at that stage then I would have sought to slightly reword the reasons for objection to better reflect the discussion at the Hearing (as set out in the Minute) and to ensure that the reasons were fully related to Policy and properly expressed in terms of best practice.

7. A Pre-Inquiry Meeting (PIM) was held in relation to this Inquiry. I did not attend that Inquiry and, therefore, I do not comment on the matters discussed at that meeting including the matter of the scope of the Inquiry. The outcome, as I understand it, is that the scope of the Inquiry is not limited.

8. Following the PIM it appeared to both THC and CWAG that there was a significant coincidence in their cases and that there was clear scope for co-operation. Having regard to the submitted objections it was agreed, between THC and CWAG, that a joint case would be presented to the Inquiry but on the basis below:

    a. **Landscape Character and visual impact and Planning Policy** would be regarded as being areas of evidence presented on behalf of both parties
    b. **Noise, traffic, safety, ornithology, errors in the ES (including addenda) and other issues (including amenity)** would be regarded as being areas of evidence to be presented on behalf of CWAG
    c. **Counsel** would represent both parties, for reasons of economy

9. I was first contacted in relation to this application in mid November 2008 when I was supplied with various background material including the updated ES NTS, the Committee report and the minute of the special meeting of the Committee. At that stage I was already very familiar with both the application site and the surrounding area, as well as the wider Caithness area, as a result of many years of professional work at Dounreay and in Caithness generally. When working on site at Dounreay I had often used the roads past the application site. In regularly driving from Perth to Dounreay between 1995 and 2002 I saw the development of some of the Caithness wind farms taking place. My initial assessment was that I would be able to act as an expert witness on planning policy and related matters. I also had earlier involvement in section 36 applications in the Highland Council area having advised objectors in relation to the Lochluichart and Gordonbush wind farms.

10. I commented on various matters by email to the Council and provided a fee proposal in late November 2008. My formal appointment was from the first working day in 2009. I was appointed on the verbal instructions of Ms Karen McLeod, Principal Solicitor at THC. I arranged to undertake a detailed site visit to the application site on 21st January

2009 and I also met with CWAG representatives at that time. I subsequently met with Ms McLeod and with Cllr Bremner, at the Highland Council Offices on 22nd January for further discussions on the case. I was able to confirm, following these visits and discussions that I was able to act for the Council. I intend to make a further visit to the site and the area before the Inquiry.

11. Following that meeting on the 22nd January I arranged for papers to be issued to Mr Mark Steele, consultant Landscape Architect, whose appointment was also authorised by Ms McLeod.

12. Prior to that visit and discussions I had assisted Counsel in seeking a postponement of the start of the Inquiry to allow for effective preparation given the timing of my appointment and of the appointment of the landscape witnesses. The request for a short postponement was declined.

13. In the limited time available I have sought to deal with all relevant issues but clearly some have had more time devoted to them than others as a result of the time constraints. Given the timing of my appointment my evidence focuses on the decision taken by THC and on the consideration of the proposal in the light of the Development Plan and other material considerations.

14. In formulating my evidence I have had regard to the evidence of Cllr Bremner and to the evidence given by the CWAG representatives. In relation to my planning policy assessment I have had particular regard to the evidence of Mr Mark Steele and Mr Dick Bowdler. Prior to completing this precognition I was also able to see the full series of correspondence from Historic Scotland setting out their views.

15. I am aware of my duties to the Inquiry as an expert.

The Statutory Tests

16. The application is one that was considered by THC as Planning Authority following a consultation in respect of the section 36 application. That form of application gives rise to two sets of tests as follows. Should Ministers decide to grant permission under section 36 of the Electricity Act (the 1989 Act), then section 57(2) of the Town and Country Planning (Scotland) Act provides that planning permission can be deemed to be granted at the same time for any operation that constitutes development within the meaning of the Planning Act.

17. Paragraph 3 of Schedule 9 of the 1989 Act provides a specific requirement on the Scottish Ministers to have regard to:
    a. The desirability of preserving natural beauty, of conserving natural beauty, of conserving flora and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeology interest: and
    b. The extent to which the developer has complied with its duty to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites buildings or objects"

18. These requirements, which are set out in an Act that was designed to control the connecting of major electricity generation stations (of the traditional type) to the Grid, do not give a specific set of criteria or thresholds against which to assess a project. Indeed they set a very low level of acceptability in the generality of their expression as can be seen from reading most section 36 consent letters where Ministers do not even set out how they have taken into account diametrically opposing scientific and technical submissions. However, at their simplest, the requirements do clearly indicate that there is a balance to be struck among the policy, technical and economic justifications for any project and its environmental and other impacts.

19. Given the deemed planning permission aspect of the process and given the lack of clear guidance in the Electricity Act tests it is clear, in my view, that a Section 25 Planning Act test should also be carried out in order to consider whether the proposed development complies with the Development Plan and also to consider whether there are any material issues which change the presumption that flows from the Development Plan Assessment. It would be my expectation that such a basis should be the approach taken by the Planning Authority when it is consulted on such an application. This was, indeed the approach taken by THC Highland Council as set out in paragraphs 6.1, 6.2 and 7.1 of the report to the Committee.

National Energy Policy

20. In considering National Energy Policy I have read and had regard to the applicant's Renewable Energy Policy Report **(BWL 13).** In terms of paragraph 3.1.2 of that document I would agree that the drive for increasing renewable energy can be seen as relating to a number of factors and not just emissions savings. I also agree that, in terms of paragraph 3.1.1 that, notwithstanding national energy policy, developments have to be acceptable in planning terms as well as being effective.

21. The Scottish Government's renewable policy, which sits within National Energy Policy, is set out, under renewable policy, on the Scottish Government web site. Ministers are fully committed to promoting the increased use of renewable energy sources. According to Ministers, this commitment recognises renewables' ability to tackle causes of climate change as well as their potential to support economic growth. Scottish Ministers have set clear targets for renewable electricity, announcing an increase in November 2007. Ministers want 50% of the demand for Scottish Electricity to be supplied from renewable sources by 2020, with an interim milestone of 31% by 2010. The last published figures show that all renewables contributed 20.1% of electricity consumption in Scotland at the end of 2007.

22. Ministers want to see targets exceeded rather than merely met, and have made it abundantly clear that they do not wish targets to be viewed as a cap on what renewables can deliver. It is considered important that momentum towards the 2020 target and beyond is maintained. This will require more technologies to start playing a major role – for example, marine energy and biomass energy.

23. The Planning System has already played its part in ensuring that the 2010 target has been met. There is therefore no especially pressing or acute need to permit further installed capacity nor to send out any panic signals to society. It is accepted that the policy environment generally favours developments such as Baillie Hill but it does not do so unquestioningly. Indeed policy is clear that on shore wind farms are not to be permitted at any cost. They are only to be permitted where they can be satisfactorily accommodated and where the benefits of the scheme outweigh its adverse impacts. That is clearly the overall thrust of the guidance in SPP 6 and related documents, and it is also the tone of the caveats which appear throughout energy policy.

24. Ministers wish the future targets to be met by as wide a range of renewable sources as possible. It is expected that deep water offshore wind, wave power, tidal stream and biomass will make increasing contributions in the future.

25. However, I would caution against the approach of being over driven, in planning decision making, by these types of targets in the absence of them being translated into proper spatial planning frameworks at national and regional level and in the absence of associated strategic environmental assessments. Such a situation, in my view, leads to pressure to approve developments which are not properly acceptable in terms of their impacts and, conversely, despite the targets not being caps, it can also lead to the

rejection of otherwise acceptable schemes just because a target has been met by other projects.

26. The other clear difficulty with this approach (apart from the ongoing policy debate which is not for this Inquiry) is that when it is translated into decisions, such as the recent Lochluichart decision, there is absolutely no balanced assessment (as opposed to the setting out of the policy framework and the applicant's assertions) of the proposal in the way that I would normally expect to see in a committee report on a major planning application. In addition, with regard to the section 9 tests, as set out above, the same decision letter simply says "The Scottish Ministers have considered the desirability of these matters and are satisfied that the Company has had due regard to these features and complied with this duty ...." Therefore, in the light of experience, I would maintain my approach of fully assessing the application in terms of the Development Plan and other material considerations.

The Submitted ES, Addenda and Updates

27. I have read the original ES from 2004 **(CD 2 A)** and the Addendum from 2006 **(CD 2 B).** These are both of a fairly standard format in comparison with other ES reports for wind farm projects. I have noted the various assessments undertaken by consultants on behalf of the applicants and I have had regard to these in my own Development Plan assessment. I have also noted the ES assessments of planning policy. I am aware that there is some technical criticism of the ES and Addendum and I am aware of the concerns of CWAG in relation to the ES assessments. However, I was not formally involved with this proposed development until January 2009 and, given this limited time availability, I did not consider that it would be the best use of either my time or the Inquiry time to embark on a detailed assessment and critique of the ES documents.

28. The only matter on which I would comment is that of alternatives. Site selection is addressed in paragraph 3.5.1 of the original ES. Reference is made to sites throughout Caithness, Grampian and Invernesshire being examined, but no detail is given of these sites or of their assessment. The relevant regulations do not seem to have been lodged as a Production but, as I recall the requirements, where alternatives have been considered then the ES should include an outline of the main alternatives and the main reason for the choice of the ES scheme. These requirements are found in Schedule 2, Part II of the EIA Regulations. This is also good practice and more information on these aspects would have been helpful in the understanding of the project and project rationale. More details on the alternatives would also have assisted in the consideration of the Council's HRES guidance (see later in my precognition).

The Proposed Development and Its Benefits

29. The proposed development is as described in the ES Addendum and in the report to Committee. I refer to these documents for their terms and I do not repeat that information in my precognition.

30. As set out in **CWAG/050** the benefits of the project, in terms of carbon dioxide savings, should now be calculated at 430 grams per kilowatt hour of electricity generated. In this case the applicant has not set out any claimed environmental benefits in relation to the proposal nor is there any claimed climate change benefit.

31. But, in my view, the developer could have made an attempt at setting out these types of benefits. The developer is aware of the wind regime at the site and of the capacity of the turbines to be selected.

32. Furthermore, the ES does not give any detail on the proposed economic benefits of the proposed development although I understand that the applicant has discussed such matters with the Council Planning Officers and that some figures might have been included in earlier leaflets issued by the developers but these are not before the Inquiry.

33. Given this lack of specific information about the benefits of the proposal, and pending any evidence of this in the precognitions, it is difficult to make a balanced assessment of the proposal other than on the basis of generic assumptions about its benefits. Yet it is clear that such generic benefits deriving from wind energy generation are already inherent in the favourable policy context for such developments. Therefore, in the absence of specific claims there are no other material benefits of this proposed scheme which should be weighed in its favour.

Consideration of the Proposals by THC

34. The application was assessed by Planning Officers from THC and a report was prepared originally for a Committee meeting on 4th December 2007. The report is lodged as **CD 5.** The report is referred to for its full terms. The report describes the application and the site, sets out public participation results and the results of consultations undertaken by the Officers, and then it sets out the relevant policy basis before proceeding to the assessment of the application. I would offer only a few comments on section 7 (assessment) and section 8 (conclusion) in that Committee report. In making these

comments and I have read and noted the comments made in the evidence of Mark Steel in this regard.

35. In my view paragraphs 7.7 through to 7.11 do not really follow through in detail on the HRES (**CD 10)** position. In particular 7.10 needs to be stronger, in my view, on the alternatives in relation to the location of this site within an HRES "red" area. It is unclear from reading this section of the report as to what weight the Officer intends to give to HRES. I give further consideration to HRES under material considerations.

36. I have read paragraphs 7.12 to 7.19, dealing with the key area of landscape and visual impact, several times. Mark Steel has made detailed comments on this section. It appears that (and I have not carried out a word for word check) the text, apart from a sentence or two, seems to either replicate or paraphrase text from the ES or the SNH responses. There is no independent assessment of the landscape and visual impacts, including cumulative impacts presented for Members. In particular, in terms of cumulative impacts, there is no testing of the trigger that seems to be applied by SNH in the text in the last two sentences of 7.19.

37. Paragraphs 7.20 to 7.24 on Natural Heritage, contain an internal contradiction in my view. My preference would have been to present Members with a fuller picture of the views that were differing from those of SNH. However, the report at paragraph 7.22 states that "as the Council has no specific ornithological expertise, it is entitled to rely on the advice and guidance of the Government advisors in this respect. In any case, as the Council is not the determining authority but Scottish Ministers it is for the latter to undertake the necessary "appropriate assessment" required by European law". That is one approach, but paragraph 7.24 goes on to give an unqualified conclusion of "in view of the above, it is considered that the impacts on species and habitats will not be significantly detrimental". Given the first quotation Members would have been entitled to ask "considered by whom?"

38. In paragraph 7.25 of the report the Officer states that "Historic Scotland is concerned that the proposal will have an adverse impact upon the relationship between and intervisibility of some of what are considered to be the oldest scheduled monuments in Caithness and their landscape setting". This seems to me to have been a rather "light" way to sum matters up for Members. The letter of 24th March 2006 from Historic Scotland to the ECU concluded that Historic Scotland was unable to support the application and refers to very serious concerns. That letter, along with its detailed appendix, was copied to the Planning Officer. The subsequent letter of 14th June, along with its appendix was also copied to the Planning Officer. That letter concluded that

Historic Scotland continued to have serious concerns about the impact of the development on significant elements of the historic environment. Finally, there is the detailed letter of 17th January 2007, which concludes that Historic Scotland remain of the view that this application will have an unacceptable adverse impact on the setting of a number of scheduled monuments and that they believe that those impacts cannot be reduced to an acceptable level by the mitigation suggested by the applicant. The letter continues "in terms of the section 36 application we do not believe that the applicant has fulfilled his duty under Schedule 9(3) of the Electricity Act 1898 because of the adverse impact of his development proposal on the setting of the nationally important monuments discussed in this letter and in our earlier response to the application". Paragraph 5.17 in the report is expressed in slightly stronger terms but, in my view, members should have been given a fuller appreciation of the position of Historic Scotland.

39. Paragraphs 7.29 to 7.31 on transport impacts do not address any aspects of the relationship between the access strategy and the Dounreay evacuation plans, or the fact that the applicant does not appear to control the land necessary for the access improvements. Nor is the potential for additional trips arising from the possible use of off site stone mentioned. These might not be key determining issues but they should have been before Members in my view.

40. Paragraphs 7.32 to 7.34 of the report consider noise and other perceived health aspects. I have discussed the noise aspects of this section of the report with Mr Bowdler. He advises that the Officers seem to have just accepted the developer's assertions, especially about financial involvement and noise exposure. The Officers do not seem to have carried out any sort of check on whether the turbine noise levels or the background noise levels were correct (and they were not as is now admitted in **BWL 86.** It is fully appreciated that the noise issues are difficult and highly technical matters but it is still considered that Members should have been presented with some form of assessment.

41. Members were then presented with an uncertain set of conclusions in section 8 of the report. I take the view that the expression of the conclusions simply reflects the lack of independent assessment in the report. Mr Steel comments on this aspect in relation to visual impact assessment. So far as planning policy and material considerations are concerned the Members were not presented with any firm conclusions in relation to either Development Plan policy or in relation to HRES.

42. The Officer's report and recommendation on the consultation on this application was considered at the special meeting of the Caithness, Sutherland and Easter Ross Planning Application and Review Committee on 15th January 2008. The meeting proceeded by way of a formal Hearings procedure and the applicants, the community council, and the third party objectors all addressed the Committee. The applicants were then afforded the opportunity to respond to the points raised. Following summing up, by the Principal Planner, and further discussion, the Committee unanimously agreed to object to the proposals for the reasons set out earlier.

43. Based on my comments above, and having regard to the evidence of Mr Mark Steele and Mr Dick Bowdler, I take the view that Members were justified in taking a different view from Officers in relation to the consultation on this proposed development.

The Submitted Statements of Case

44. I contributed to the joint Statement of Case lodged on behalf of THC and CWAG. I have read the Statement of Case lodged on behalf of the developers. I have also read the Statement of Case lodged on behalf of Historic Scotland. I am satisfied that these Statements all properly set out the issues that will be addressed in evidence before the Inquiry and that are likely to be summed up in the closing submissions. Therefore, there are no particular issues about the Statements that need to be addressed in evidence.

The Lodged Written Submissions

45. I have read the written representation from **RSPB Scotland** along with the various appendices. I note that they maintain their objection on the basis that "there may be an adverse affect on the integrity of the Caithness Lochs SPA". I also note that CWAG will give evidence in this regard from Mr Laybourne. I return to this aspect below.

46. I have read the Written Submission from **SNH** in relation to Natura impacts. That detailed submission contains copies of earlier correspondence from SNH. I have had no involvement in discussing the application with SNH during the earlier stages of the assessment of the project and I rely only on their Written Submission. That submission follows a standard format that is now used by SNH. The SNH submission is based on additional data supplied by the applicant's consultants but it is not clear of this is only **BWL 49** or if there is further data that is not before the Inquiry. SNH remain of the view that an Appropriate Assessment is required. No such Appropriate Assessment is before the Inquiry. The task, therefore, falls to Scottish Ministers as the "competent authority".

47. The applicants will present ornithological evidence to the Inquiry with evidence to be given by Mr Richard Walls.

48. Having regard to the above I consider that the absence of SNH from the Inquiry is not helpful at all to the decision maker. There is considerable concern on the part of the RSPB and CWAG that there are likely to be significant adverse effects that could affect the integrity of the Caithness Lochs SPA. In such circumstances it would have been much preferable for SNH to give oral evidence to the Inquiry and to have that evidence tested in cross examination. That would then, in my view, provide the Reporter with better evidence on which to base his assessment and recommendation. So far as CWAG are concerned, it would also be a fairer process in that SNH would have been seen to have properly justified and defended their assessment and advice.

49. The SNH position in respect of landscape and visual impacts is assessed in their letter of 10th March 2006 which is attached to the Written Submission. In paragraph 1.3 of that letter the position is summed up as "It is our opinion that the landscape and visual impacts of this proposal when considered on its own are acceptable. With regard to cumulative landscape and visual impacts, our advice is that the landscape capacity for wind farm development within this part of Caithness and the A9 corridor between Dunbeath and Thurso is very close to being reached."

50. Further advice is given in 2.2(vi) in this March 2006 letter and this is considered by Mr Steele. However, this advice does not contain any detail of any assessment or review by SNH. Rather it is just a commentary on conclusions reached in the ES. I find the last paragraph of b. in this section to be confusing. If the majority of significant impacts are all relatively close to the proposed site then I do not see how the nature of the wider landscape then leads to a position of not objecting.

51. I would partly agree with SNH in the assertion that, for landscape and visual impacts, the cumulative impact is a crucial factor (not the only one as local impacts on receptors are crucial too as asset out by Mr Steel). The matter is addressed in three short paragraphs by SNH. There is no indication of the methodology used to reach the conclusions. There is no indication of what the threshold is of acceptable cumulative impact. There is no indication of how the different combination of sites might then relate to such a threshold. In addition, the position set out by SNH raises an interesting development planning issue that is not addressed in the Officer's report to Committee. If a threshold is close to being reached, with the implication that subsequent proposals will not be acceptable, then should the planning authority (or indeed Scottish Ministers)

proceed simply by considering individual applications as they arise or should they not take a more strategic approach to ensure that any remaining "capacity" is allocated to the best sites, allowing for greatest efficiency in production of electricity.

52. Having regard to these comments on SNH's position in relation to landscape and visual impact assessment I am of the view that SNH should be in attendance at the Inquiry to also give oral evidence on these aspects. I also say this in the light of my experience in the last few weeks where SNH objected on landscape and visual impact grounds to a marine fish farm whose 12 cages were 1.5m high and over 1.5km from the nearest receptor; they co-funded new visualisations, and then turned up at the Inquiry to give evidence in this regard. That was a welcome development in many ways if followed up in a consistent way by SNH. The Reporter has the powers to do so, and in this case in my respectful submission, he should use them to summon SNH to the Inquiry.

Consideration in relation to the Development Plan

53. The relevant Development Plan policies are set out in the Committee report, although the 2004 ES does list some additional policies in Chapter 4 – Planning Policy. My assessment below looks to address all of the policies raised in both documents. I accept that both Development Plan documents are now around 7 to 8 years old and that, in the absence of the new Local Plan it would have been helpful to have had new Supplementary Guidance, particularly post SPP6. However, as matters stand, there are relevant Development Plan policies against which the development can be assessed.

54. I first consider the **Approved Structure Plan March 2001 (CD 8).**

55. The individual Structure Plan policies sit within the sustainable objectives and strategic themes as set out in sections 1.4 and 1.5 of the document.

56. The first key Structure Plan policy is **G2 Design for Sustainability.** In terms of the sub criteria set out in that policy, and having regard to the evidence that will be before the Inquiry I would conclude that the development:

    a. Is compatible with service provision (subject to consideration of transportation impacts)
    b. Is accessible by walking and cycling
    c. Seeks to deliver an energy efficient layout
    d. Is not directly affected by natural hazards (although the policy does not address any potential hazards that arise from the development itself)

e. Is not affected by safeguarding zones (although there is no evidence on the relationship of the traffic management scheme with the Dounreay emergency evacuation plans)
f. Does not use a brownfield site or an existing building or recycled materials
g. Has serious adverse impacts on individual and community residential amenity that is significantly detrimental
h. Has no adverse impacts on non renewable resources or approved routes for road or rail links
i. Has adverse impacts on habitats/species, landscape and cultural heritage
j. Makes a marginal, positive contribution to the local economy

I have not considered the criteria which I take to be not directly related to this type of development. Having regard to my conclusions, which are based on reading the various documents before me when preparing my evidence, including drafts of the precognitions for THC and CWAG witnesses, the proposed development is therefore not fully in accord with this policy on account of its amenity impacts and its adverse impacts on the specified resources in (i) above.

57. Structure Plan policy **G3 Impact Assessments** sets out policy on such assessments. The evidence is that this development will have significant adverse effects. No reasonable alternatives have been set out and eliminated. The developers have not set out any over-riding strategic benefit or overall mitigating measures. Therefore, the proposed development does not comply with policy G3.

58. Policy **G6 Conservation and promotion of the Highland Heritage** is mentioned in the Committee report. I assume that this policy provides a framework within which to consider the evidence of Historic Scotland. If that evidence is accepted in relation to setting then the development would fail this policy as it would be incompatible with the Council seeking to conserve and promote the archaeology of the area. I consider landscape separately.

59. The Structure Plan's tourism policies do not provide a policy basis for the assessment of the likely impact of other developments on tourism strategy and tourism interests. The potential impact of wind farm development on tourism is often an emotive issue in the consideration of proposals. The matter is addressed in paragraphs 7.38 and 7.39 of the report to the Committee and these should be referred to for their terms. The conclusion seems to be that whether there are likely to be significant adverse impacts on tourism is still very much a matter of subjective judgement. This formed the basis on which the Members took the view that there were likely to be such impacts and so

this contributed part of reason (iii) for objecting to the proposal. I take the view that faced with this report and faced with the expressions of local concern, and in the absence of a quantitative assessment by the applicants, the Members were entitled to reach this conclusion. In my own professional opinion this matter is likely to be the subject of continuing debate until there are, in the public domain, full before and after studies of the strategic and local impacts on tourism in areas affected by wind farms set against control areas. I am not aware of any such studies having been carried out to date.

60. Policy **T6 Scenic Views** sets out a general policy on the protection of scenic views. I make no finding in relation to this generic policy as I prefer to consider the specific landscape and visual impacts of the proposed development.

61. Policy **E1 Distributed Renewable Energy Developments** expresses general support for renewable energy and provides that such developments should be consented for a temporary period only.

62. Policy **E2 Wind Energy Developments** is the key Structure Plan policy directly relating to wind farms. It provides that proposals will be supported provided that the impacts are not shown to be significantly detrimental. In this case the evidence of THC and CWAG is that there will be significantly detrimental impacts. In addition to the general strategic policies **E2** advises that developments will be assessed in respect of six issues (no thresholds are set out and therefore I assume that the whole policy has to be considered under the context of significantly detrimental impacts). Having regard to the evidence before the Inquiry, particularly to that of Mr Steel and Mr Bowdler, I conclude that the proposed development will have:

    a. Significantly detrimental local visual impacts
    b. Significantly detrimental noise impacts
    c. No significantly detrimental electro-magnetic interference
    d. No significantly detrimental impacts on roads, bridges and traffic (although I do consider that there are aspects which require further consideration)
    e. No significantly detrimental impacts on aircraft flightpaths or MOD interests
    f. Significantly detrimental cumulative impacts in terms of landscape and visual effects

    I therefore conclude that the proposed development is not in accord with Structure Plan policy E2 on account of its significantly detrimental impacts.

63. The Structure Plan's approach to nature conservation takes full account of NPPG 14 (see paragraphs 2.13.2 and 2.13.3). Policy **N1 Nature Conservation** provides that developments should seek to minimise their impact on the nature conservation resource and enhance it wherever possible. The policy then sets out a hierarchy for conserving and promoting sites. The provisions of that hierarchy have been followed in terms of the assessment of the development's impacts. The proposed development does not set out to enhance the nature conservation interest and therefore the question that arises is whether its impacts are acceptable or not. In the face of competing evidence in the specialist area of ornithology it is difficult to reach a conclusion. It would have been preferable, in these circumstances, for SNH to have been in attendance at the Inquiry. As I have explained before I was not involved in any earlier dialogue with SNH.

64. In terms of policy **A1** on agricultural land and **A2** on farm income diversification, I accept that there is no agricultural land objection to the proposal and that, if income is to be re-invested in the local enterprises, the development could contribute to farm diversification.

65. Policy **L4 Landscape Character** provides that the Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals. The preceding text, in 2.14.8 refers to the SNH commissioned LCA reports and how these provide a basis for assessing developments. However, the policy wording only relates to the Council considering the desirability of maintaining and conserving landscape character. Therefore, whilst the evidence on behalf of THC and CWAG is that there will be significant adverse effects, particularly cumulative effects, on landscape character there is no particular test that flows from this policy wording.

66. In terms of **archaeology** Structure Plan **policies BC1 – 3** relate to archaeological sites. Paragraph 2.15.6 confirms that it is strategic policy G2 that addresses the preservation of archaeological sites and their settings. I have considered this policy earlier.

67. In conclusion, in terms of the **Approved Structure Plan,** and having regard in particular to the evidence of Mr Bowdler and Mr Steel, as well as to Cllr Bremner and the local CWAG witnesses, I conclude that the proposed development is not in accord with the Structure Plan on account of its breach of policies G2 (in part), G3, and E2 (on three out of six criteria).

68. I now consider the **Adopted Caithness Local Plan September 2002 (CD 9).**

69. Looking at the overall proposals Map the development site lies partly in an area covered by Primary Policy PP2 and partly in an area covered by Primary Policy PP3. Both policies also provide the basis for further detailed topic policies in the Local Plan. The application site also lies within 5km of the Dounreay site. I have not seen any response from the NII in terms of their interest in this regard – see (a) on page 21 of the Local Plan Written Statement.

70. Policy **PP2** provides that the Council will favour development unless this would significantly affect important features. The attributes of PP2 areas are listed on page 6 of the Local Plan General Policies annex. Heritage resources are included within this. It is therefore possible to conclude that a significantly adverse effect on areas of archaeological/heritage interest would result in a breach of PP2. The Council did not reach such a conclusion although they might have had the full extent of the position of Historic Scotland been made clear.

71. Policy **PP3** provides that the Council will presume against development particularly where there would be significant damage to heritage, amenity of public health. A list of resources relating to PP3 areas is set out on pages 7 and 8 of the Written Statement Annex. The policy gives no specific guidance on how the assets are to be taken into account in the presumption against development. However, landscape resources are identified and I assume that the intention is to preserve and/or enhance these. At its simplest the policy presumes against development and the application ES at 4.3.2 (2004) does not set out why this presumption should be set aside. I consider that the basic policy presumption against development should be applied unless such a reasoned justification is offered.

72. The annex also contains a number of **supporting policies** that are based on the relevant Structure Plan policies. These were not assessed in the report to Committee. In relation to **SP1,** I consider that the proposed development is not compatible with the adjoining, residential uses, that it does not take into account the amenity of neighbouring buildings, and that it would have adverse effects on amenity and heritage features. Therefore, the development would not accord with SP1. **SP27** relates to archaeology. It basically sets out a procedure for both assessing impacts and for undertaking pre development investigations and recording. There is no breach of this policy as it relates to process. If the proposal were to be permitted it would be subject to a standard archaeological condition (condition 14 as placed before Members).

73. Therefore, in relation to the Adopted Local Plan, and having regard in particular to the evidence of Mr Bowdler and Mr Steele, as well as to Cllr Bremner and the local witnesses, I conclude that the proposed development is not in accord with the Local Plan on account of its breach of policies PP3 and SP1 (recognising that this latter aspect was not addressed in the Council decision). As set out above it is possible that there is also a breach of policy PP2.

74. Overall, in terms of the Development Plan, the proposed development is in breach of the specified Structure Plan and Local Plan policies based on the evidence that will be before the Inquiry. Therefore, for a normal planning application and in respect of the deemed planning permission aspect of this section 36 consent application, the presumption is for refusal of the proposed development.

Material Considerations

75. Paragraph 4.4.1 of the 2004 ES and paragraph 6.6 of the Committee report identify relevant statements of national planning policy and advice to be taken into account as material considerations. These require to be updated to reflect current advice and, in that regard I consider the key aspects below.

76. **SPP (CD 16)** sets out the Scottish Government's view of the purpose of planning and of the objectives for the planning system. The generality of this advice does not change any of the evidence that I wish to present to the Inquiry. It is clear, from paragraph 25 that the planning system should operate in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another.

77. SPP6 **(CD 18)** sets out the Governments policy approach to renewable energy. This whole document is a key material consideration. It sets out Ministers support for the development of renewable energy. The principles that should be followed by Planning Authorities are set out in paragraphs 16 and 17. There is no suggestion that THC has not been following these principles in their approach to renewable energy proposals. Wind farms are addressed in paragraphs 23 to 25 and specific guidance for wind farms of over 20MW is given in Annex A.

78. That Annex A addresses the spatial framework for wind farms of over 20MW. The guidance is directed at Development Plans as Ministers wish to promote a plan led system. However, the guidance does address a range of key considerations all of which, apart from greenbelts, are set out in the documents and anticipated evidence before the Inquiry. The section on cumulative impacts does recognise that in some areas there

might well be a limit to development. Again, I consider that the relevant aspects are all likely to be addressed in evidence before the Inquiry.

79. Within Annex A, on page 18, reference is made to the 2km distance mentioned in PAN 45 (which was prepared at a time when the "average" height of turbines was smaller). The text sets out the circumstances in which Ministers would generally support this as a separation distance between turbines and the edges of cities, towns and villages. It is accepted that this is set out as a spatial planning tool rather than as a decision making tool, but it does give an indication of the sensitivity of the relationship between turbines and houses, including in my view, houses in dispersed settlements. It is also noted that HRES proposes a separation distance of 1km with a presumption against major developments where this is not achieved. The CWAG witnesses will give evidence on separation distances as does Mr Steele.

80. Paragraph 52 of SPP6 provides that:

"Applications should include details of the environmental, social and economic benefits that will arise from the project, both locally and nationally, including the overall number of jobs and economic activity associated with the procurement, construction and operation of the development. Planning authorities should consider whether any such benefits could or should be secured by way of a planning condition or planning agreement."

81. As set out earlier, in the absence of any patented technologies being held locally and in the absence of any turbine manufacturing capability in Scotland, the local and regional economic benefits of the proposal will not be extensive and will be concentrated at the construction stage. Nonetheless, it would be appropriate to have some form of programme to enhance the local opportunities arising from the project if it is consented. This could be separately discussed between the developers, THC and HIE at a later stage.

82. I would expect that any local community benefit fund would be a matter to be addressed by the applicants and the Council, outwith the Planning process, should the proposal be consented. This is set out in Structure Plan policy G4.

83. That leaves the potential greenhouse gas savings and the associated climate change impacts as the principal benefits. If this application is to be permitted it can only be on the basis that the decision maker takes the view that these benefits outweigh the adverse impacts including the adverse impacts on the local communities. In such

circumstances it is only right that the benefits should be verified and guaranteed in some way or else the approval will have been an unbalanced decision. It is therefore proposed that the requested section 75 agreement (see later in this precognition) should set out a means for the independent verification of the annual output of the site, the related greenhouse gas emissions savings and climate change benefits that the developer may claim for the project. These figures should include a tolerance allowance to reflect annual variations in output from the project. Should, at the end of any year, the development fails to meet these specified benefit levels then, unless agreed otherwise by the Planning Authority, the development shall be dismantled and the site restored because the development would not have been doing what was predicted and it would not be fulfilling the premise on which the permission was based. In those circumstances it should not be allowed to continue impacting upon its receptors. This approach could also be adapted to a two or three year cycle if it was felt that tis was more appropriate.

84. In relation to national planning policy on the Historic Environment the Statement of Case from Historic Scotland clearly sets out that extensive evidence will be led in that regard. Historic Scotland intends to lead evidence to demonstrate that, inter alia, the project is contrary to local and national planning policy. I have read the earlier Historic Scotland correspondence in this regard and I will defer to the evidence to be led by them. I accept the general proposition that Scheduled Ancient Monuments are resources of national importance that should be maintained in an appropriate setting.

85. National Planning Policy and advice on Natural Heritage is set out **NPPG 14 (CD 15)** from January 1999 and in **PAN 60 (CD 26)** from August 2000. I consider that the relevant aspects of these are captured in the Development Plan policies which make specific reference back to these documents. I do not consider that a detailed trawl through the text of the documents would add any material new evidence to that which is likely to be before the Inquiry.

86. **PAN 45 (CD 23)** provides advice on renewable energy technologies. Revised in January 2002 I consider that most Planners would now consider its advice to be well out of date in many respects. Wind power is considered in paragraphs 36 to 93. It is certainly worth reading these paragraphs but I take the view that specific evidence on the various aspects raised will already be before the Inquiry without, again, having to trawl through this paragraph by paragraph.

87. **Pan 56 (CD 24)** sets out advice on planning and noise. In relation to noise this matter has been fully assessed by Mr Bowdler and I adopt his evidence for my own conclusions.

88. There are no particular additional issues from **PAN 58 (CD 25)** on Environmental Assessment that I would wish to raise.

89. I consider SPP 15 to be of limited relevance other than its support for farm diversification.

90. CWAG has lodged copies of two previous appeal decisions for wind turbines proposals for sites that are in the vicinity of this application site. The references are CWAG 090 and CWAG 091. These decisions do not set a mandatory precedent for the current Inquiry Reporter but they are important material considerations in that both proposals were found to be contrary to the Development Plan on account of adverse impacts, principally visual and amenity impacts. The two decision letters are referred to for their terms.

91. In relation to the Borrowston Mains decision letter the Reporter's reasoning is summed up in paragraph 5.25 (the full terms of which should be referred to) in which he finds that there would significant detriment to individual and community accepting that loose semi-rural clusters of houses constitute a community. This was in relation to a proposal for 10 turbines each 93m high to blade tip. The appeal was dismissed.

92. In relation to Hill of Lieurary, a proposal for three 3MW turbines, a site visit was followed by a determination of the appeal by Ministers. The Reporter's conclusions on visual impact and cumulative effects are set out in paragraphs 54 and 55 of his report. In paragraph 56 the Reporter finds that the proposed development would be significantly detrimental in terms of both its visual impact and its cumulative effects, and as such is contrary to Structure Plan policy E2.

93. The applicants have also lodged various appeal decision letters. These are always an interesting read. They demonstrate a number of matters including views on the weight to be given to national energy policy. However, the overall conclusion that I take from these various decision letters is that wind farm proposals fall to be considered in a balanced way, within a planning policy framework, of comparing and balancing their benefits with any adverse impacts and reaching a conclusion on the acceptability of the proposals. There is nothing to indicate that proposals should be approved anywhere.

94. A key material consideration is **HRES (CD 10).** This is addressed in paragraphs 7.7 to 7.11 of the report to the Committee. It is clear that there are many different views of HRES. The document has been dissected in detail at other Inquiries. In my own experience Officers have seemed to be quite ready to set aside the provisions in relation to the "red" areas on its locational guidance. The Baillie wind farm site lies wholly within an area where there is a presumption against major onshore wind development. No detailed assessment of alternative sites has been given as required by the strategy in these circumstances. Currently, it is not possible to comply with the guideline levels for local content a set out by the Council. There is, within these sections of the report, a "debate" on whether re-scoring of the underlying RERA factors might create a "possible development area". My understanding of matters, based on this case and on others, is that Members took a very simple and pragmatic view of the HRES guidance and applied the presumption against development of this scale.

95. It is clear that HRES has been criticised at Inquiries, including the Lairg public inquiry, and that the approach in HRES does not fully comply with the guidance in SPP6 Annex A nor with the very recent guidance in PAN 45 Annex 2 which is not before the Inquiry. Work is underway to prepare new SPG, which will replace the wind energy section of HRES and which will:

    a. Comply with SPP6 and provide a sound basis for decisions on onshore wind proposals
    b. Help meet renewable energy targets
    c. Protect Highland's most valuable landscape and tourism assets

96. It is anticipated that the draft of the SPG will be placed before Committee in May 2009 with public consultation thereafter. Until that process is complete the current HRES remains the Council's SPG on these matters and it remains a material planning consideration. I consider that, in all of these circumstances the Members were not unreasonable in reaching the view that they did.

97. In order to assist the Inquiry THC Planning Officers were asked to prepare a statement on HRES and I have sought to have this lodged as a late Production.

98. Having regard to all of the above material considerations there is nothing in them that leads me to change my conclusions based on the Development Plan assessment that this proposal should be rejected. The two appeal decisions lodged by CWAG would support such a conclusion.

Other matters

99. I am aware that the CWAG witnesses will give evidence in relation to previous planning applications in relation to this site, in relation to breaches of planning control and in relation to the community consultation undertaken by the applicants. I was not involved with this project at that time and I have no direct knowledge of these matters and therefore I cannot comment on this specific evidence. However, if the evidence is established as correct then, in my view, the Reporter is entitled to have regard to the past planning history of the applicants when considering the matter of the likely compliance with conditions on any new consent or deemed planning permission.

100. I am also aware that the CWAG witnesses will also raise health and health and safety issues. I recognise that these are validly held concerns that are of considerable importance to the local objectors but I must also recognise that there is a question as to the extent that they can be considered as material planning considerations beyond the aspects of noise and shadow flicker.

Section 75 Agreement and Conditions

101. A suggested suite of 24 conditions were set out in the report to Committee and these will form the basis of the discussion of conditions at the Inquiry. However, there are four possible areas for revised or additional conditions as set out below and I expect these matters will be discussed at a separate conditions session in the Inquiry:

    a. On noise issues I would expect that Mr Bowdler will advise you of a different form of wording to be applied, in his view, to the noise condition should consent and deemed planning permission be envisaged although Mr Bowdler's evidence is that the application should be refused
    b. Mr Bowdler will also give evidence on the proposed wording of the noise condition as set out in the report to the Highland Council Committee. I have discussed this with Mr Bowdler and he has advised that not only is the specification in the condition wrong but that it is probably unenforceable as set out
    c. Given the position of Historic Scotland I would anticipate that they also might suggest additional conditions should you be minded to recommend approval of the proposed development
    d. I note that the applicants have proposed some minor changes to the conditions and these are set out in the annex to their Statement of Case

102. In relation to conditions it is clear, from the recent Lochluichart and Gordonbush wind farm section 36 consents and deemed planning permissions issued by Ministers, that the deemed planning permission can be accompanied by numerous complex conditions designed to make the development acceptable, usually in terms of various environmental impacts. Subsequent to the issue of the Gordonbush consent and deemed planning permission I have been retained, by local objectors, to monitor the implementation of the consent with particular regard being paid to the monitoring of compliance with conditions. The site has been visited several times by myself and local residents but not by THC staff. Potentially serious breaches of planning control have been identified and reported, including an unauthorised start on the on site works prior to the signing of the required Section 75 Agreements and prior to the submission of the required Construction Management Scheme. The THC Officer's response to this has been to check with the developers who have explained what they are doing, confirmed that they then vacated the site and the matter has been left there. Thus, no monitoring has been followed by no enforcement action on the part of THC. Clearly, the allocation of staff resources is a matter for the Head of Planning at the Council, a particularly difficult task at present in my view, but the simple point is, in relation to this Baillie Hill application, that the decision maker cannot (at present) rely on the proper monitoring or enforcement of conditions by THC. The current budgetary issues facing THC planning service will only make this situation worse.

103. The report to Committee advised that the position of "not objecting" should be subject to a prior legal agreement covering:

a. Site restoration
b. Safeguarding against radio or communications interference
c. A "wear and tear" agreement to cover any damage to the local road network

104. These requirements remain as matters to be addressed. As set out in my evidence, and in accordance with paragraph 52 in SPP6, the legal agreement should also seek to secure the local and national environmental, social and economic benefits that will arise from the project with the principal focus being on the environmental benefits.

Conclusions

105. As set out in this precognition I have sought to consider both the benefits of the scheme and the likely adverse impacts, or disbenefits of the scheme. For the reasons set out in my precognition the benefits of the scheme are only those generic benefits

associated with wind energy generation and these generic benefits are already factored into the favourable policy environment.

106. It is clear that there are two decisions that will be before Ministers. Firstly, whether to grant section 36 consent and, secondly, whether to grant deemed planning permission. The approach of the Reporter in the Abercairny decision sets out what, in my view, is the correct step by step aapproach.

107. The Electricity Act tests set a very low level of acceptability. There are no thresholds or tests set out. There is no consideration actually do anything by way of mitigation. It seems almost impossible to fail these tests unless there is a major breach of other legislation, including the legislation protecting habitats and species. Furthermore, the tests only require Ministers to have regard to the aspects mentioned. In my view the tests do not provide a sound basis, in planning terms, for the overall assessment of proposals.

108. In relation to the requirements of Section 25 of the Act I have assessed the application against the Development Plan, having regard to the assessment by THC and taking into account the matters set out in the ES, the Statements of Case and the Productions before the Inquiry, and other material considerations aspects, as well as my own professional judgement.

109. A substantial range of representations were submitted at the earlier stages of the consideration of this proposal. Some of these have been lodged as Productions. However, proper regard should still be had to this full range of representations as expressed at both stages of consideration of the proposal by the Council and as lodged with the Energy Consents Unit. I say this because, as I have found out in my experience, where objections are submitted to the ECU, there is no provision whatsoever for the ECU to respond to them, provide an assessment of them or meet to discuss them. Therefore, at this stage I have no way of knowing how the ECU would have factored these objections into a recommendation to Ministers if there had not been an Inquiry, or indeed whether they would have done so at all.

110. In addition to my own evidence THC has presented evidence from a policy witness and another expert witnesses as below:

a. Councillor David Bremner has spoken on the representations that he received prior to the Committee Hearing and to the views of Members on the matters discussed at the Hearing

b. Mr Mark Steele has assessed the landscape and visual impacts as well as the cumulative impact position. He concludes that the proposed development should not be approved. I have referred to his evidence and conclusions in my evidence and in my Development Plan assessment

111. The local objectors, CWAG, have led the following witnesses and I have had regard to all of their evidence and I would commend their evidence to the Reporter:

a. Mr David Craig
b. Mr Alastair MacDonald
c. Mr Stan Laybourne
d. Mr Dick Bowdler

112. I have taken the above evidence and conclusions into account in reaching my own conclusions on the assessment of the project in terms of planning policy and other material considerations.

113. Based on the above evidence and having regard to my own evidence I conclude that the proposed development is contrary to the Development Plan on account of its breach or failure to adhere to Structure Plan policies G2 (in part), G3 and E2 (in part) and on account of its breach or failure to adhere to Local Plan policies PP3 and SP1 (in part). Therefore, my conclusion is that the proposal is not in accord with the Development Plan and that, therefore, the presumption, in law, is in favour of the refusal of deemed planning permission.

114. As set out in my evidence I have considered a range of material considerations including the Council's extant and emerging guidance on wind farms, National Planning Policy and Advice and the applicant's Environmental Statement. My conclusions on all of these matters are set out in my evidence. However, in summary, I conclude that there are no material considerations that would change the conclusion that arises from the Development Plan assessment and, indeed, that a number of these material considerations re-inforce my conclusion that the proposal should be rejected.

115. Having regard to the above conclusions and to the evidence lodged on behalf of the THC and CWAG I consider that the decision of THC Members can be supported and I would respectfully request that you should recommend rejection of this proposal both in terms of the section 36 consent and the deemed planning permission.

[END]