Directorate for Planning and Environmental Appeals

Telephone: 01324 696 452 F: 01324 696444
E: dpea@scotland.gsi.gov.uk

The Scottish Government

Susan Blease
Solicitor
The Highland Council
84 High Street
Dingwall
Ross-Shire
IV15 9QN

Our ref: P/PPA/270/438

13 December 2007

Dear Madam

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPEAL: ACHANY ESTATE, LAIRG, SUTHERLAND

I attach for your information a copy of an intentions letter issued by the Reporter. This indicates that conditional planning permission will be granted provided an agreement under Section 75 of the Act is negotiated between the planning authority and the owners of the land comprised in the planning application. The planning permission will not be issued until that agreement is made and registered.

Yours faithfully

EMMA BUTLER

Enc.

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 FALKIRK
www.scotland.gov.uk/Topics/Planning/Appeals

Directorate for Planning and Environmental Appeals

T: 01324 696400 F: 01324 696444
E: dpea@scotland.gsi.gov.uk

The Scottish Government

Mr Stuart Waddell
6Senior Commercial Solicitor
Scottish and Southern Energy Ltd
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Our ref: PPA/270/438
13 December 2007

Dear Sir

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4
PLANNING APPEAL BY SSE GENERATION LTD: WIND FARM AT ACHANY ESTATE, LAIRG, SUTHERLAND

1. I refer to the above appeal, which I have been appointed to determine, against the refusal of planning permission by the Highland Council (THC) for a wind farm comprising 23 wind turbines, a control building, access tracks, 3 anemometer masts, temporary borrow pits and on-site underground cabling at the above location. I conducted a conjoined public local inquiry regarding this appeal, and an appeal by Airtricity Developments (UK) Ltd against the refusal of planning permission by the Council for a wind farm at Beinn Rosail, Invercassley, Strath Oykel, within Lairg Community Hall between 23 July and 14 August 2007. I made unaccompanied inspections of the appeal sites and their surroundings prior to, and in the course of, the inquiry, and accompanied inspections and further unaccompanied inspections on 13 and 15 August. For the reasons explained in paragraphs 129-194 of this letter, I am minded to allow the Achany appeal subject to the conditions listed in the annex that is attached and to the completion and registration of a legal agreement covering the matters described in paragraph 193.

2. My decision on the appeal by Airtricity Developments (UK) Ltd has also been issued today and a copy is enclosed. I will determine the claim for an award of expenses to SSE Generation Ltd (SSE) against the planning authority when I formally determine the Achany appeal.

INTRODUCTION AND BACKGROUND

The appeal site

3. The appeal site comprises about 300 ha of moorland to the north of the A839 about 6 km west of Lairg. The turbines would extend for 4.5 km along a ridge south-east of Loch na Fuaralaich across Cnoc a' Choire, Sron nan Iarnachan and Cnoc na Cloich-bhuaile to Meall a' Gruididh. From the ridge, which varies in height between 360 m and 400 m Above Ordnance Datum (AOD), the land falls steeply to the north-east towards Strath Grudie.

Coniferous woodland at Rosehall Hill to the south-west contains recreational paths and the Sika Bike Trail (the Rosehall trails). Watercourses in the eastern part of the site flow north-eastwards to the Grudie Burn which joins the River Shin 4 km south-east of the site. Those to the west and south drain to the River Cassley, which runs south through Glen Cassley to join the River Oykel, or direct to the Oykel.

4. Rosehall Cottage, a timber building granted a certificate of lawful use as a dwelling in 1999, is located in the woodland at Rosehall Hill, 750 m from the nearest turbine. West Durcha, 1.7 km from the nearest turbine, is the closest of 5 houses to the south of the site at Durcha. Glen Rossal House lies in Glen Cassley, 2.4 km west of the nearest turbine. The nearest village is Rosehall about 3.5 km to the south-west, where houses, local facilities and buildings on Invercassley Estate extend around the junction of Strath Oykel and Glen Cassley. The Airtricity appeal site at Invercassley is about 5 km west of the Achany site, beyond Glen Cassley. The Caithness and Sutherland Peatlands Special Protection Area (CSPSPA), Special Area of Conservation (CSPSAC) and Ramsar Site and the Grudie Peatlands Site of Special Scientific Interest (SSSI) extend to the north-west of the site. The River Oykel SAC and the Kyle of Sutherland Marshes SSSI are about 4 km to the south-west and south respectively. North-east of Lairg are the Lairg and Strath Brora Lochs SPA and SSSI. The Dornoch Firth National Scenic Area (NSA) is 14 km to the south-east. The Assynt-Coigach NSA is 16 km to the north-west.

The appeal proposal

5. The Environmental Statement (ES) submitted with the application states that large vehicles delivering turbine components and other materials (including aggregate and cement for an on-site concrete batching plant and bedding sand for cabling) would travel to the site via the A9(T) to the Mound, west along the A839 and south along the A836 through Lairg to rejoin the A839 at the Black Bridge. A total of 1,046 such deliveries, mostly by Heavy Goods Vehicle (HGV), is envisaged over a 9 month construction period. An existing 1.6 km long forest track would be upgraded to provide access to the site from the A839. Thereafter, about 13 km of new hardcore tracks (including 1.4 km of "floating" tracks) would be built. A construction compound would be formed adjacent to the A839. Three borrow pits, one adjacent to the compound, one at the end of the forest track, and the third near the centre of the site, would provide stone for the project.

6. The turbines would have a maximum tower height of 70 m, a maximum rotor diameter of 70 m, a maximum height of 105 m to rotor tip and a capacity of up to 1.8 megawatts (MW), giving the wind farm a maximum total capacity of 41.6 MW. Each turbine would be erected on a concrete foundation, 18 m by 18 m in plan, and is intended to have an external transformer. A hardstanding adjacent to each turbine would be used to lay down turbine components and to support the equipment needed to lift the tower sections into place. The control building would be located between Sron nan Iarnachan and Cnoc na Cloich-bhuaile. The anemometer masts would be of lattice construction and up to 70 m high. One would be located at each end of the site and the third near the centre. Underground cabling alongside the tracks would connect the turbines to the control building. From there, a 33 kV underground cable would link to an existing sub-station at Lairg. The wind farm is designed to have an operational life of 25 years. At the end of this period, it is envisaged that the site would be decommissioned, the turbines and most other surface infrastructure removed, and the ground reinstated, or that an application would be made to retain or redevelop the site as a wind farm.

The Council's decision on the application

7. The planning application was submitted in October 2005. It was refused at a meeting of THC's Planning, Development, Europe and Tourism (PDET) Committee on 29 September 2006, when the Airtricity application and an application by E.ON UK Renewables Ltd (E.ON) for 19 wind turbines at Rosehall Hill were also considered. The decision notice for Achany, issued on 13 October 2006, listed as reasons for refusal that the proposal was contrary to:

- the Council's Renewable Energy Strategy and Planning Guidelines (HRES) in that the proposal is within an area classed as having a "presumption against development" for national and major scale onshore wind farm projects and where Policy E.7 would apply and the applicant had failed to satisfy the precautionary approach to development in National Planning Policy Guideline (NPPG) 14 and Policy E.7.
- Policy E2 of the Highland Structure Plan (HSP) in that its visual and landscape impacts would be significantly detrimental and adverse and the cumulative landscape impacts when considered with the proposal for Invercassley and/or Rosehall would be likely to be significant and adverse.
- Policy L4 of the HSP in that the proposal does not maintain and enhance present landscape character.
- Policy N1 of the HSP in that insufficient information had been provided to show that the proposal would not have an adverse effect on the Caithness and Sutherland Peatlands SAC and watercourse which is (sic) a priority habitat under the Habitats Directive.

8. The Council subsequently advised that a further reason, which the Director of Planning and Development had also recommended as a reason for refusal, had been inadvertently omitted from the notice. This was that the proposal would be contrary to Policy T6 of the HSP in that it would have an adverse effect on important scenic views enjoyed from tourist routes and viewpoints.

9. The fourth reason for refusal reflected an objection by Scottish Natural Heritage (SNH) that a peat stability assessment provided by SSE did not contain sufficient information for SNH to determine whether peat instability was likely to have a significant effect on the CSPSAC and watercourses. However, following consideration of a further assessment undertaken in May 2007, SNH stated that the proposal was unlikely to have a significant effect on the qualifying interests of the SAC if suitable conditions were imposed. The Council confirmed at the start of the inquiry that it was no longer relying on Policy N1 as a reason for refusal.

10. The PDET Committee accepted on 29 September the Director's recommendation that Rosehall Hill should be granted permission, subject to conditions and a legal agreement. It also agreed, contrary to the Director's recommendation, to grant permission for the Invercassley wind farm. However, the latter decision was reversed at a meeting of the full Council in December 2006. At the inquiry, the Council stated that the legal agreement for Rosehall Hill had been progressed and that it expected to issue permission for that scheme soon.

Development plan policies

11. **The Golspie and Lairg Local Plan** of July 1983, which is the adopted local plan covering the vast majority of the appeal site, does not contain any renewable energy policies. However, **Policy 30** encourages the development of innovative rural land uses where these are compatible with neighbouring interests. **Policy 31** encourages provision for increased public access and enjoyment of forest areas, and **Policy 46** encourages

proposals to develop additional facilities and activities which would help to draw or hold tourists in the area.

12. A small area of land just within the south-western boundary of the site is covered by **the South & East Sutherland Local Plan** (SESLP), which was adopted in May 2000. The plan includes this part of the site in a fragile area where **Policy ENV 3** presumes against development, particularly where there is significant damage to heritage, amenity, or public health. **Strategic Policy 3** includes Rosehall among locations where opportunities to upgrade and improve tourist business are to be encouraged. **Strategic Policy 4** states that the Council will support action, including in the Rosehall area, to reduce social and economic fragility. Special initiatives include extra resources for tourist promotion and development and the upgrading of infrastructure. **Strategic Policy 10** states that the Council will seek to ensure that key roads are brought up to an acceptable standard for all users and identifies the A837 between Rosehall and Invershin as a priority for improvement. **Strategic Policy 11** commits the Council to seeking to reduce the environmental impact of through traffic in villages. **Policy 22** requires proposals for wind farms in indicative Primary Search Areas, north of Gordonbush and north-east of Bonar Bridge, and elsewhere in the local plan area, to be assessed against the provisions of Strategic Policies 16 and 17. **Strategic Policy 16** expresses the Council's support for renewable energy developments in accordance with the (then) approved structure plan and national planning guidance. **Strategic Policy 17** states that the Council will promote biodiversity and safeguard and enhance the natural and cultural environment by safeguarding statutorily designated natural heritage sites, species and habitats, protecting the integrity of national and local landscape designations, including NSAs and Historic Gardens and Designed Landscapes (HGDLs), and protecting significant archaeological sites and landscapes, listed buildings .... and their settings.

13. The **HSP** was approved by Scottish Ministers in May 2001. Policies discussed at the inquiry included:

Policy G1: Conformity with strategy, which states that the Council will support developments, having regard to the plan's sustainable objectives, which promote and enhance the social, economic and environmental wellbeing of the people of Highland.

Policy G2: Design for sustainability. This policy requires developments to be assessed to the extent to which they:

- are compatible with service provision, including roads;
- are accessible by public transport, cycling and walking as well as by car;
- maximise energy efficiency in terms of location, layout and design, including the utilisation of renewable sources of energy;
- are affected by significant risk from natural hazards, including flooding and land instability, unless protective measures are incorporated, or the development is temporary;
- are affected by safeguard zones whether there is a significant risk of disturbance and hazard from industrial installations;
- make use of brownfield sites, existing buildings and recycled materials;
- impact on individual and community residential amenity;
- impact on non-renewable resources, such as mineral deposits and prime or locally important agricultural land;
- impact on habitats, species, landscape, scenery, freshwater and marine systems, and cultural heritage;
- demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials;

- promote varied, lively and well-used environments that will enhance community safety and security;
- accommodate the needs of all sectors of the community, including those with special needs and disadvantaged groups;
- contribute to the economic and social development of the community;

stating that developments judged to be significantly detrimental in terms of the criteria will not accord with the plan.

Policy G3: Impact assessments (in summary) requires impact assessments for developments likely to have significant environmental and/or socio-economic impacts; and states that schemes that will have significant adverse effects will only be approved if no reasonable alternatives exist, if there is a demonstrable over-riding strategic benefit, or if satisfactory mitigating measures are incorporated.

Policy G4: Community benefit and commitment states that the Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands, whilst recognising wider national interests and sets out the circumstances in which the Council will seek to enter into agreements with developers on behalf of local communities for social and economic purposes.

Policy G6: Conservation and promotion of the Highland heritage states that the Council will seek to conserve and promote all sites and areas of Highland identified as of high quality in terms of nature conservation, landscape, archaeological or built environment.

Policy G8: Precautionary principle states that, in assessing development proposals where the potential impacts are uncertain, but where there are scientific grounds for believing that severe damage could occur to the environment or to the wellbeing of communities, the Council will apply the precautionary principle.

Policy E1: Distributed renewable energy developments expresses support for the use of the region's distributed renewable energy resource, including wind. It also states that proposals will be assessed against the provisions of the plan's General Strategic policies; that approvals will normally be for a temporary period only (tied to the lifetime of the project) with provision where appropriate for the removal and reinstatement of affected areas, and that earlier action for removal and reinstatement will be required in the event of premature permanent cessation of energy production.

Policy E2: Wind energy developments states that proposals will be supported provided that impacts are not shown to be significantly detrimental and that, in addition to the General Strategic Policies, these will be assessed in relation to visual impact; noise; electro-magnetic interference; roads, bridges and traffic; aircraft flightpaths/Ministry of Defence (MOD) operations; and cumulative effects.

Policy L4: Landscape character states that the Council will have regard to the desirability of maintaining and enhancing present landscape character in considering development proposals.

Policy N1: Nature Conservation states that new developments should seek to minimise their impact on the nature conservation resource and enhance it wherever possible and sets out the principles that will be applied in relation to sites and species of international importance, sites of national importance and sites of local importance.

Policy T6: Tourism and scenic views states that the Council will protect important scenic views enjoyed from tourist routes and viewpoints, particularly those specifically identified in local plans.

The Highland Renewable Energy Strategy and Planning Guidelines

14. **The HRES**, which the Council approved as supplementary planning policy in May 2006, subdivides Highland into 3 zones for national and major onshore wind farms - "preferred" (green) areas, "possible" (yellow) areas, and red areas where a presumption against such development applies. The zones are made up of 1 km grid squares and are identified using a scoring system derived from factors such as nature conservation considerations, visibility from dwellings, remoteness and MOD interests contained in the Strategic Renewable Energy Resource Assessment for the Highland Area (HRERA) model devised for the Council by Aquatera Ltd. **Policy E.5** applies in the 3 preferred areas (Helmsdale & Strath Brora, Beinn Tharsuinn, and the Monadliath Mountains), which are stated to contain optimal conditions in terms of planning constraints, energy production, technical feasibility and proximity to the grid and where a strong presumption in favour of onshore wind farms, subject to appropriate community and environmental safeguards, applies. **Policy E.6** states that developments in possible development areas, where constraints are relatively light, will be judged on their merits and will need to show that there is no scope for alternative development within preferred development areas. **Policy E.7**, which imposes a presumption against export wind development, applies elsewhere in Highland. This policy also requires any proposals for national and major projects to overcome a precautionary approach to planning approval and to show that there is no scope for development within preferred and possible areas. **Policy A.1** sets renewable energy targets for Highland while **Policy U.1** explains that the establishment of patterns of development that tend to concentrate around high density areas reflects the Council's view that cumulative visibility of larger scale developments in a few areas is preferable to scattered developments. **Policy U.2** states that the cumulative zone of visual influence (ZVI) within a 10 km radius for national and major onshore projects should be less than 10% of the area of Highland. Other policies seek to safeguard the natural and cultural heritage, residential amenity (including locating turbines at least 1 km from dwellings) and the landscape.

15. Three turbines at the eastern end of the appeal site and the site access track are in, or on the edge of a "possible" development area. The remainder of the site is in a Policy E.7 area. The eastern end of the Rosehall Hill site is in a "possible" development area. However, all of its turbines, and the entire Invercassley site, are in a Policy E.7 area.

BRIEF SUMMARY OF CASES FOR PARTIES WHO GAVE EVIDENCE AT THE INQUIRY

The case for the appellant

16. It is submitted that applicant did not receive the fair, open, transparent and efficient planning service that SPP 1: The Planning System entitles it to expect. The evidence demonstrates that there was no sound basis for the Council's decision or any sound basis to conclude that the proposal is contrary to Policies E2, L4 or T6 of the HSP. There are also no local plan policy implications that justify refusal of the application, which is supported by UK and Scottish Executive (SE) energy policy and by SPP 6: Renewable Energy. The locational policies in the HRES do not conform to SPP 6, which should be given greater weight. The Council's statement at the conclusion of the inquiry that it was not considered appropriate to submit that there was any basis in law to dismiss the appeal vindicates SSE's position.

The rationale for the appeal proposal

17. Government support for renewable energy development derives from international concern that increased greenhouse gas emissions, notably carbon dioxide (CO_2), are causing global warming and thus climate change. The 2003 Energy White Paper: Our Energy Future – Creating a Low Carbon Economy confirmed the target of producing 10% of electricity from renewable sources by 2010, an aspiration of increasing this to 20% by 2020, and a goal of reducing CO_2 emissions by 60% by 2050. The equivalent Scottish targets are that 18% of electricity is generated from renewable sources by 2010 and 40% by 2020. The Forum for Renewable Energy in Scotland (FREDS) stated in 2005 that the 2020 target required at least 6,000 MW of renewable capacity to be installed in Scotland, and that, taking account of schemes already consented or constructed, this would require a further 3,400 MW of built capacity.

18. The 2007 Energy White Paper confirms the policy goals of the 2003 White Paper and outlines a strategy for their achievement. This includes changes to the Renewables Obligation (RO), which obliges suppliers to provide an increasing proportion of the energy they supply from eligible renewables or pay a "buy-out" price. SSE Generation Ltd, which is a subsidiary of Scottish and Southern Energy plc, owns and operates the power generation assets of its parent company, which is the UK's leading generator and supplier of renewable energy. At forecast customer levels, the parent company requires to generate 7.5 terawatt hours (TWh) of electricity from renewable sources in 2010 and 11 TWh in 2015 to meet its obligations under the RO. Its existing sites will produce 3 TWh per annum, leaving 4.5-8 TWh (equivalent to an installed capacity of 1,700-3,000 MW at typical load factors) to be sourced. Even if the company's entire development portfolio of 1,900 MW was consented, it would be 1,000 MW short of its 2015 requirement and incur a financial penalty as a result. As it cannot rely solely on contracts with other developers and operators to address this, permission for schemes such as Achany is very important.

19. SSE's short-term RO strategy is based primarily on onshore wind and, to a lesser extent, on new-build hydro. Few other technologies can deliver the quantum of electricity required. Large scale marine energy will not be available for several years on a commercial basis. Practical difficulties for offshore wind affect costs. Landfill gas resources are limited, partly because less waste is being landfilled. Energy crops are expensive and harvesting generates transport emissions. New-build hydro projects are generally small or in areas with significant environmental constraints. Larger hydro resources are unlikely to be developed for cost or environmental reasons and existing schemes eligible under the RO have limited capacity. While SSE elects to run its hydro plants only at specific times, national energy policy does not favour one technology over another, and UK and Scottish Government Ministers have made clear that they expect onshore wind to continue to play a major role. FREDS concluded that intermittency could be managed in a UK context, although adequate inter-connector capacity between Scotland and England and Ireland would be required, and cited work by the National Grid Company as indicating that the current targets do not pose any technical problems for the electrical system.

The Achany scheme

20. Achany emerged in late 2001 from a site evaluation and selection process intended to provide a range of sites. Wind data collected from 2003 confirmed that the site has suitable wind characteristics. The borrow pit sites, which investigations indicate are likely to provide sufficient material for the project, were identified after a geological appraisal that also confirmed that ground conditions are generally suitable. A desk-top "maximum energy

yield" layout was adjusted to take account of environmental, landscape and practical considerations to produce the final design.

21. The road approach to the Black Bridge limits the maximum turbine blade length to 35 m and the Vestas V66 was selected as a typical likely candidate machine. The average construction manning level would be 20, with a peak level of 40. The foundations, track verges and cut faces, borrow pits, and the construction compound, would be reinstated following construction. SSE staff at Invershin Power Station would be responsible for the operational stages, with monitoring undertaken from SSE's control centre in Perth, and SSE's Wind Power Engineering Team carrying out routine management. Experience suggests that wind farms create 2 full-time equivalent jobs per 15 MW of new capacity, but it is impossible to say whether any of these would be based in the Lairg area. Connection to the local distribution network would reduce the losses associated with long-distance transmission. Unless there was an application to extend the scheme's intended operating life, or to redevelop the site, the turbines, the transformers, and the control building, would be removed and the turbine foundations broken out below ground level. To reduce disruption, the cables, and at least some tracks, would also remain.

22. SSE discussed the scheme with the 3 community councils in the area, notified the local Highland Councillor, MP and MSP, and held an open day in Lairg in June 2005. Unlike Rosehall Hill and Invercassley, Achany has a grid connection offer, which SPP 6 regards as a material consideration, and is thus "effective" in planning terms. The offer was accepted on 24 February 2004, currently extends to December 2009 and is not dependent on any upgrading of the grid. Construction could therefore commence soon after planning permission was obtained and is unlikely to overlap with either Invercassley or Rosehall Hill. SSE understands that Invercassley currently has a connection date of 2012, and that the connection date for Rosehall Hill is post-2016.

23. As the THC official dealing with the application had indicated that there were no issues that required further work and that he was not aware of any reason why permission should not be granted, SSE was astonished that Achany was recommended for refusal. Although most of the discussion in the PDET Committee reports on the Achany and Rosehall Hill applications is identical, opposite conclusions are drawn. Achany is described as "clearly" ... having "significant adverse cumulative impacts" and Rosehall Hill as having "the least cumulative impacts", although there is very little difference between the schemes and Rosehall would generate more traffic because the woodland on its site would be cleared. The official had subsequently stated that he considered that Achany and Rosehall could "sit together" and had recommended that both should be granted planning permission, but that Invercassley should be refused. However, the Director of Planning and Development had changed the recommendation on Achany.

Roads and transport

24. THC is now satisfied that its concerns on this issue, which relate to the cumulative impacts that could arise if more than one wind farm was to be constructed in the area at the same time, could be addressed by the conditions and legal agreement that it tabled at the inquiry. These are acceptable to SSE. While it may be necessary to close the A839 while very large loads were being delivered, this may not be required if sufficient passing opportunities are provided. In any event, delivery schedules have still to be decided and loads of this type are generally well spaced out. That said, vehicle convoys, which would breach the 20-minute interval between heavy loads that THC Roads officials recommended to ensure maximum recovery times, particularly for the section of the A839 west of Lairg which is built on peat, remain an option.

Nature conservation issues including potential effects on Natura sites

25. Natura sites such as SACs and SPAs are subject to the Conservation (Natural Habitats, &c) Regulations 1994 (the 1994 Regulations), which transpose the Habitats and Birds Directives into UK law. Regulation 48 refers to 3 steps, expressed in the flow chart in Annex E of Appendix B of the 2000 Revised Guidance Updating Circular 6/1995 in respect of the Directives as follows:

(1) is the proposal directly connected with, or necessary to site management for nature conservation?
(2) if not, is the proposal (either alone or in combination with other plans or projects) likely to have a significant effect on the site?
(3) if the answer to step (2) is "no", then planning permission may be granted. Alternatively, if the answer is "yes", then the implications for the site's conservation objectives and its integrity have to be considered and an appropriate assessment undertaken. If this indicates that there will be an effect, permission can only be granted if there are imperative reasons of overriding public interest.

Steps (2) and (3) only apply to qualifying habitats and species. As blanket bog is a qualifying interest of the CSPSAC and the answer to the first question is "no", it is necessary to establish whether the appeal proposal is likely to have a significant effect on this SAC habitat as a result of peat slide.

26. In that regard, peat across most of the appeal site is between 0.5-1.5 m deep, although over 3.0 m deep in some areas, and 4.75 m deep south of Cnoc na Cloich-bhuaile. The May 2007 peat stability assessment, which took account of published best practice guidance, focussed on the area near turbines 1 and 2 at the northern end of the site, which the 2006 assessment had identified as a medium risk area with respect to the SAC. This assessment confirmed (on the basis of conservative assumptions) that, while the risk of a peat slide occurring naturally in this area is low, construction work would increase the risk to medium. However, the risk of peat failure would remain low provided that the construction methods listed in paragraph 5.2 of the assessment are followed, excavated material is suitably stockpiled, tracks are constructed to avoid peat loading, and drainage is not discharged to watercourses or deep peat. As the ground in this area falls away from the SAC, any peat failure that did occur would be unlikely to have a significant effect on the SAC, or on the Grudie Peatlands SSSI, where blanket bog is listed in the SSSI citation. Mitigation measures should also be employed further south, where the 2007 assessment concluded that construction would pose a medium risk of peat failure to the east of turbine 13 and east of turbines 18 and 19 to the south of Cnoc na Cloich-bhuaile.

27. SNH had stated in April 2006 that appropriate mitigation, including the measures described in Section 9.1.15(b) of the ES, and the prohibition of construction-related activity within 10 m of watercourses except where track crossings are required, could avoid significant effects on otter, which is an Annex 1 species in terms of the Habitats Directive and is also part of the SAC's qualifying interests. It also advised that the proposal was likely to have a significant effect on Atlantic salmon and freshwater pearl mussel, which are qualifying interests of the River Oykel SAC, due to the discharge of suspended solids or contaminants. However it considered that this could be avoided by implementing the measures in Section 13.6.2(b) of the ES, together with monitoring and maintenance, to ensure that sediment entering the river as suspended solids did not exceed 25 milligrams/litre (mg/l). While some local objectors seek guarantees that the development would have no affect on watercourses, planning decisions are based on a balance of probabilities except where there is reason to believe that there would be

significant irreversible damage to natural heritage interests of national or international importance. That is not the case here.

28. Where a development is likely to significantly affect a bird population that forms part of the qualifying interests of a site that is nationally or internationally designated for its ornithological interest, effects are also judged against the site's conservation objectives and whether the conservation status of the species concerned and/or the integrity of the site could be significantly affected. The qualifying interests of the CSPSPA are golden plover, greenshank, dunlin, hen harrier, golden eagle, red-throated and black-throated diver, wood sandpiper, short-eared owl, common scoter and widgeon. The Lairg and Strath Brora Lochs SPA supports breeding populations of red-throated and black-throated diver, which are part of that site's qualifying interests.

29. The ornithological assessment in the ES is based on field survey methods agreed in consultation with SNH and undertaken in 2003 and 2004. The survey area for waders extended at least 500 m from turbines and tracks, increasing to 2 km for raptors. All water bodies within 5 km were surveyed for divers. These confirmed that the site contains breeding habitat for greenshank and golden plover (with 23 pairs of plover breeding along the site ridge) and foraging habitat for hen harrier. Other species of high nature conservation importance (i.e. Annex 1 species, or species listed in Schedule 1 of the Wildlife & Countryside Act 1981) recorded on the site but not breeding were golden eagle, osprey, merlin, peregrine and wood sandpiper. The site also contains habitat for black grouse, skylark and song thrush, which are red-listed Birds of Conservation Concern, and which the ES describes as breeding species of moderate nature conservation importance.

30. Although a pair of red-throated divers bred on a lochan 3 km from the appeal site in 2004, the site does not lie between suitable breeding lochs and Loch Shin, the main diver feeding site in the area. The nearest known nesting loch for black-throated divers is 6 km from the site and well outside the limits of potential influence on the CSPSPA. Loch na Fuaralaich, where one black-throated diver was seen in 2003, and more recent sightings were reported to the inquiry, is not a known nesting loch, or important for feeding. Divers are therefore very unlikely to fly across the site and incur a risk of collision. No such flights were observed in the surveys. As Loch na Fuaralaich is also well beyond the alternative breeding sites used by divers from the Lairg and Strath Brora Lochs SPA, birds seen at the loch are unlikely to have been part of the population of that SPA.

31. Hen harrier nest sites in forestry adjacent to the appeal site are well away from the SPA and are not part of its interest. There is also no evidence of harrier nests on the SPA within a distance likely to bring typical ranging/foraging birds into conflict with the wind farm. A significant effect on golden eagle or merlin SPA interests is also unlikely. The site is not suitable foraging habitat for eagles, is beyond the typical range of resident pairs in the wider area, and the only bird seen during the surveys was at the western edge of the survey area. There are no known merlin nesting sites within 7 km of the centre of the site and only one recorded sighting of a juvenile bird.

32. The ES concluded that, given the known ranging behaviour of golden plover and the distance between the appeal site and the nearest breeding sites in the SPA, displacement or disturbance did not pose a risk to the CSPSPA interest. It also concluded that the site was unlikely to lie between SPA breeding sites and off-site low pasture, "in-bye" fields used for feeding. SNH had taken no issue with these conclusions until May 2007, when it requested further work to determine whether golden plover from the SPA were in fact feeding on "in-bye" fields to the south of the site. Only one of the 50 "in-bye" fields in that area surveyed in May and June 2007 held golden plover, with 1-3 birds recorded occasionally. One bird flew off to the west, away from the appeal site and the SPA, which

also indicates that golden plover from the SPA do not use these fields for feeding. Previous surveys for E.ON produced similar results. SNH also stated that additional information in relation to the SPA was needed for greenshank, which the ES had concluded was unlikely to be significantly affected. The response to this request explained why it was considered that greenshank at Achany did not come from the SPA, and that, even under the highest potential collision mortality values, the objective of maintaining greenshank as a viable component of the SPA should not be compromised.

33. The distance between the site and the SPA also makes a significant effect on dunlin, which are fairly sedentary during the breeding season, unlikely. Dunlin on the study area also tend to be found on wetter ground, away from turbine locations, and the southern part of the peatlands to the north is largely unsuitable as habitat. The Grudie Peatlands is not a known breeding site for wood sandpiper or common scoter. No scoters were sighted in 2003 or 2004 and the one wood sandpiper seen appeared to be vagrant or passing. There are no known short-eared owl nest sites within 7 km of the centre of the appeal site and no birds were recorded in 2003 or 2004. The only observation of widgeon was an unsuccessful breeding attempt well beyond the limit of any potential effect of the scheme.

34. It is submitted that, as the appeal proposal is unlikely to have a significant effect on the SPA, there is no need to undertake an appropriate assessment of the scheme's implications for the site's conservation objectives, or to consider whether there would be adverse impact on its integrity before deciding whether planning permission can be granted. As SPA interests would not be significantly affected, it is reasonable to conclude that the relevant SSSI and Ramsar site interests would also not be adversely affected. SNH's view that an appropriate assessment is required in order to come to a view on the acceptability of a proposal in relation to SPA ornithological interests differs from its approach regarding the peatland habitat of the SAC. The SE has never suggested that the judgement of the European Court in the Waddenzee case (the Waddenzee judgement), to which SNH refers in support of its position, changes the approach set out in the 2000 Revised Guidance. In any event, the SNH witness on this issue concluded, on the basis of a "proxy" appropriate assessment, that the appeal proposal would not have an adverse effect on the integrity of the SPA, having regard to the site's conservation objectives.

35. Where birds in the "wider countryside" could be affected, a judgement is made against an expectation that the development would not have a significant adverse impact on the overall population, range or distribution or interfere significantly with the flight paths of migratory birds. In this case, 3 breeding (Annex 1) species of high nature conservation importance - hen harrier, golden plover and greenshank - require to be considered, together with 3 species of moderate importance – black grouse, skylark and song thrush.

36. While hen harriers would be susceptible to disturbance during construction, the impact should be low and short-term and nesting harriers should not be disturbed. There is little evidence of displacement due to the loss of foraging habit to wind farms and known nests are far enough from the site not to be affected at the operational stage. As most flights would be below rotor height, collision risk would be low.

37. The centre of the territories of 8 pairs of golden plover would have a turbine within 500 m, the typical ranging distance for this species in Sutherland. Golden plover are highly sensitive to disturbance and, although a study at Ovenden Moor found no evidence of disturbance due to a wind farm, little research has been done. In the event that the 5 territories referred to above were lost, the adverse effect on the local population would be moderate, and negligible on a regional and national scale. Adverse impact due to collision in the short-term would be moderate locally, possibly reducing to low as birds became habituated to turbines and, in relation to population sizes, negligible at a regional and

national scale. Overall, the proposal is likely to have a high adverse effect on the local greenshank population in the short and long term, and 2-4 breeding pairs might be lost, but a low effect regionally, and a negligible effect nationally. With mitigation, the effect on black grouse would be low at worst. As the lek nearest to the site would be 700 m from a turbine, disturbance during construction is unlikely, particularly if the dawn period, when most lekking occurs, was avoided. The leks and feeding grounds are downhill from the wind farm, making collision risk low.

38. Skylark would be moderately disturbed during construction as over 50 of the 215 breeding pairs in the study area are within 100 m of a turbine or track. However, long-term impacts are likely to be negligible as birds are likely to reoccupy breeding grounds after construction. Any impacts on song thrush, which breed in the forest to the south, are also likely to be negligible. Of the 4 non-breeding Annex 1 species, risk to the local population of golden eagle is likely to be low at most and negligible at regional or national scales. Ospreys do not breed near the site and are unlikely to fly over it regularly. Merlin and peregrine do not nest on the site or the wider area and, while collision risk could have a low adverse impact on the local population, impacts in all other respects would be negligible. The effects on non-listed species are likely to be negligible. However, to avoid disturbing any nesting Annex 1 or Schedule 1 species on the site, a pre-construction baseline survey should be undertaken to determine whether breeding birds are present. If so, construction should be prohibited during the main (April to July) breeding season or suitable buffer zones agreed with the Council and SNH. Given their sensitivity to disturbance, golden plover and greenshank are unlikely to settle once construction had begun.

Noise, vibration and shadow flicker

39. The ES assessed construction noise, to which the excavation of the borrow pits would be the main contributor, using the methodology in BS 5228: Noise Control on Construction and Open Sites, allowing for attenuation due to soft ground but making no allowance for screening. The maximum level predicted, 37 $dBL_{Aeq\ 12\ hour}$ at West Durcha, is well below the daytime target of 55 $dBL_{Aeq\ 12\ hour}$ recommended in PAN 50: Controlling the Environmental Effects of Surface Mineral Workings. The maximum construction noise level of 55 $dBL_{Aeq\ 12\ hour}$ predicted at Durcha for Rosehall Hill is likely to reflect the fact that Durcha is significantly closer to the E.ON access track than to the track to Achany.

40. The operational noise assessment reported in the ES was undertaken in accordance with ETSU-R-97: The Assessment and Rating of Noise from Wind Farms, which PAN 45 describes as containing a series of recommendations that can be regarded as relevant guidance on good practice. ETSU-R-97 recommends the use of the $LA_{90\ 10min}$ index for operational noise, a quiet day time noise limit of 5dB(A) above background, except in "low noise environments" where an absolute limit of 35-40dB(A) should be imposed, and a fixed night time limit of 43dB(A). It considers that these indicative levels offer reasonable protection to wind farm neighbours without placing unreasonable restriction on wind farm development. The HRES also recommends using ETSU-R-97 to assess operational noise.

41. The nose assessment in the ES was based on background noise levels at Braemore (to the south of the A839) and Walkerdale (the house nearest to the A839 at Durcha), which THC agreed were representative of the residential properties in the vicinity of the site. The levels recorded at Walkerdale were applied to East Durcha, West Durcha and Glen Rossal House. Predicted noise levels at all these locations (which the ES expressed as L_{Aeq} values) were substantially below the derived criterion of 5 dB above the measured background level at all the wind speeds considered, with a maximum of 33.6 L_{Aeq} at West Durcha. Intermittent traffic on the A939 will have little effect on LA_{90} levels at Walkerdale and readings were taken as far as possible from the adjacent stream. Other properties at

Durcha also have streams nearby. The maximum predicted noise level at Rosehall Cottage, which came to SSE's attention after the ES was prepared, was 43 dBL_{A90} from Achany alone.

42. A revised noise assessment produced for the inquiry takes account of modifications to turbine design (assuming the highest warranted sound power level – 106.5 dB(A) - for the Vestas V66 turbine) and changes in established best practice. It is based on the CadnaA noise modelling package, which takes account of attenuation due to screening, and is more sophisticated than the WindFarm package used for the ES in that it is compliant with the propagation method in ISO 9613-2 to which ETSU-R-97 refers. In line with current practice, baseline readings taken during rainfall were excluded. As ISO 9613-2 considers only horizontal separation distances and disregards differences in height, true distances may be greater and the predicted levels may be conservative. The revised assessment also considered the combined noise levels in the event that Achany and Rosehall operated concurrently.

43. The revised predicted levels at all the locations considered are at the lower end of those recommended in ETSU-R-97, with a maximum of 30 dBL_{A90} at West Durcha. On the basis of background readings at Walkerdale, they are also within the derived limits of 5dB(A) above background for the quiet daytime and night-time periods and within the daytime limit of 35 dBL_{A90} and the night-time limit of 38 dBL_{A90} sought by THC. In the unlikely event that these limits were exceeded, the turbines could be set to operate at a lower sound power level or some could be switched off. The level at West Durcha would increase to 33 dBL_{A90} if Achany and Rosehall Hill were both operating, but would still meet the Council's limits. As the Rosehall Hill permission will not oblige E.ON to mitigate any cumulative noise problems that arose, SSE accepts that the onus for mitigation should lie with it.

44. A noise assessment by Hayes McKenzie for E.ON in July 2006 predicted an operational noise level of 37.9 dBL_{A90} at a wind speed of 10 m/sec at West Durcha from Achany alone, increasing to 40.2 dBL_{A90} if Rosehall was operating at the same time. However, this assumes sound power levels for the V66 turbine higher than the warranted level and a lower level of barrier attenuation than ISO 9613-2. These factors could account for most, if not all, of the differences between the levels predicted in the E-ON report and those predicted by SSE. The suggestion in the E-ON report that research for ETSU published in 2000 advised that the allowances for barrier attenuation in ISO 9613-2 are too great seems more applicable to the alternative, IEA, model and ETSU has never proposed changes to ETSU-R-97. The Hayes McKenzie assessment also assumes hard ground, whereas the ground at Achany is likely to remain porous, even in winter. Applying the latter assumption could reduce the Hayes McKenzie predictions by up to 2 dB.

45. It is likely to be possible to excavate or rip most of the rock from the borrow pits. Any blasting that is required is unlikely to amount to more than 1-2 blasts per week over a short period and local residents could be notified in advance. Shadow flicker should not be an issue given the site's distance from houses.

Landscape and visual impacts

46. The appeal site is in a Zone 1 area of lowest nature conservation sensitivity in terms of the SNH Strategic Locational Guidance for Onshore Wind Farms. The SNH Landscape Strategy and Assessment Guidance for Wind Energy Development within Caithness and Sutherland includes it in an area of "gently undulating moorland" where wind farms are likely to form a focus but not intimidate their surroundings. The guidance also suggests that a small number of larger wind farms may be more appropriate, with a sculptural and

"controlled" image and turbines located on areas of similar elevation and landform to avoid visual confusion. The turbines at Achany would present a clearly structured and balanced arrangement, most would be located at the same general level, between 320 m and 360 m AOD, with only turbine 15, at 287 m AOD and in the centre of the grouping, significantly lower. The variations in height that exist tend to be more obvious from the south and south-east, which are not the main views. Viewed from the north, the turbines would be less than half the height of the hills on which they would be located, less than one third of their height from the south, in scale with the landform, and could enhance landscape character by providing a focus of interest. The access tracks also take account of SNH guidance as they are generally located on areas of lower ground or follow the contours as far as possible. The control building would not be easily seen from outwith the site.

47. The 21 viewpoints within a radius of 30 km from the site (the "study area") considered in the ES, and for which wireframes and photomontages were prepared, were agreed in consultation with the Council and SNH. These show that the turbines would be most obvious within a distance of 10 km, with visibility in the wider area more extensive to the north and north-east. While the landscape around the site is likely to be valued locally, the access track is not frequently used for recreation. The site's proximity to commercial forestry, its location within a large-scale open landscape with expansive outward views limited to higher ground, limited visual receptors, and the absence of any formal landscape designation, means that its sensitivity to wind farms is low, and there is capacity to accommodate the development. SNH does not object to Achany on landscape or visual impact grounds and the consultation responses from THC's Landscape Officer indicate that she considered that the scheme fitted with the form of the landscape. She subsequently agreed that turbines 22 and 23, at the south-eastern end of the site, could remain and seemed satisfied that cumulative impacts with Rosehall Hill could be addressed. The PDET report did not mention the external transformers to which she initially took exception.

48. The 1997 SNH Caithness and Sutherland Landscape Character Assessment (LCA) includes the site in the Moorland Slopes and Hills Landscape Character Type (LCT), which is characterised by undulating topography, with forestry blocks on lower slopes rising to broad moorland hills, an open landform, and convex slopes that tend to limit distant visibility and views of hill tops from their bases. A review of LCAs in 2003 concluded that they are incomplete and out-of-date in some respects and that their design guidance should be treated as a generic guide to the circumstances that existed when they were prepared. Turbines are now much larger, making it impractical to set them against a backdrop, and it is generally accepted that they tend to be less visually intrusive when seen against the sky.

49. Disturbance during construction would have, at worst, a moderate/major and, in terms of the assessment categories adopted in the ES, a significant effect, on the landscape character of the Moorland Slopes and Hills LCT. However, this would be short term and temporary, reducing to minor/moderate and not significant following reinstatement of the borrow pits, cabling trenches and track edges. At the operational stage, significant effects on this LCT, and indirect effects on the Sweeping Moorland LCT to the north-east, would be confined to the area close to the site and would not be significant in terms of these LCTs as a whole. Indirect effects on the Strath LCT to the south-west and south, which has high/medium sensitivity to change, would be locally significant in the Kyle of Sutherland, due to its proximity to the site, but insignificant elsewhere. While there would be a major/moderate effect from Culmaily (Viewpoint 8), within the Small Croft and Farms LCT, this would be localised and not significant in the context of the LCT as a whole.

50. As far as effects on the character of designated landscapes are concerned, the Dornoch Firth NSA and the Assynt-Coigach NSA are far enough from the site not to be affected. Any indirect effects on the 10 km buffer zone around them would also not be

significant. Of the 4 existing or proposed Areas of Great Landscape Value (AGLV) in the study area, direct effects on the landscape character of the Ben Klibreck AGLV 20 km to the north, the Ben Dearg-Fannichs AGLV 13 km to the south-west, and the Glen Loth-Glen Fleet AGLV 25 km to the east, would be moderate/minor at most. The Ben Wyvis AGLV is outwith the site's Zone of Visual Influence (ZVI). The site is not seen from, or in association with views of, the only HGDL in the study area, at Skibo Castle, 22 km to the south-east.

51. Significant effects on visual amenity would be largely confined to within 10 km of the site. Extended views would be confined to a small part of the local road network and only a limited number of turbines would be visible from much of this area. Effects during construction, from short sections of roads and from some properties within 5-10 km of the site, would be short-term, temporary, of slight magnitude, and moderate. Significant effects on the visual amenity of residential properties at the operational stage would be confined to within 3 km of the site, such as Durcha and Netherton, in more elevated areas within 10 km, such as higher ground in Lairg, Tomich, and on the south side of the Kyle of Sutherland, including around Achnahanat and Doune. Views from properties at Altass would be minimal. Only the few houses in Bonar Bridge that have a clear view to the north-west would see the wind farm.

52. Southbound travellers on a 7 km stretch of the A836 north of the A838 junction north of Lairg and northbound travellers over a 2-3 km stretch south of Lairg (such as Viewpoint 5 at Achinduich) would experience significant effects, as would those on parts of the A839 to the south of the site, between Braemore and Rosehall (Viewpoints 1 and 2). There would be significant, but intermittent, effects from minor roads between Doune and Rhelonie, Auchintoul and Altass, Tomich-Torroble and around Culmaily (Viewpoints 4, 7, 8 and 9). Changes to views due to cyclical tree felling and replanting would balance out over time.

53. The effects on visual amenity for tourists, who are highly sensitive receptors, would be only slightly greater than for other road users and, in the context of a journey through the area, not significant. As far as important tourist viewpoints and routes are concerned, the wind farm would not be seen from the Shin Falls Visitor Centre, or from the Countryside Centre in Lairg. The 4 blade tips that would be visible from the archaeological site on Ord Hill would not have a significant effect on visitors there as the main views are in the opposite direction towards Lairg and Loch Shin. Views from caravan sites, the viewpoint at Struie Hill, and most of the Munros and other main summits in the area, would also not be significant. Although there would be locally significant effects on visual amenity for users of the Sika Bike Trail, these would not be significant overall.

54. Sequential effects on visual amenity for northbound users of the main tourist route through the area, between the Struie Hill viewpoint and the A836/A839 south and east of Lairg, would range between minor/none to minor/moderate over much of the road, with one major adverse (significant) effect around Auchinduich. There would be potential views from only a fifth of the road and the effect overall would be no greater than moderate. The effect from the Shin railway footbridge (Viewpoint 12) for tourists would be major/moderate and thus significant, although not for other users, and the turbines would be 10 km away and hidden at times of low cloud. Effects from Bonar Bridge, 14.5 km from the site and a popular stopping point, would be moderate. Views tend to focus on the river and the backdrop is of secondary importance. The overall effects for southbound tourists on the A837 would not be significant and significant effects for those on the A839 would be restricted in extent. Southbound travellers on the A836 north of Lairg would have significant views from around Dalchork Wood, although the effect overall would not be significant. Those on the A838 along Loch Shin would have significant views from Fiag Bridge southwards and experience up to moderate/major effects.

55. Effects on the landscape and for those using the 4 Search Area for Wild Land (SAWLs) identified by SNH within the study area - Ben More Assynt, 4-5 km north-west of the site at its nearest point, and Beinn Dearg, Ben Hee-Foinavon, and Ben Armine-Ben Klibreck SAWLs, which are 15 km-20 km from the site - would be minor/moderate at most and not significant. SNH agrees that the proposal would not have significant adverse effects on wild land. While the proposal could affect the sense of tranquillity in spaces in the woodland around the site and in some Strath slope settlements 5-10 km away, intermittent interruptions such as traffic mean that this is not an unbroken experience.

56. The ES considered the cumulative effects of Achany with existing and consented wind farms within a 60 km radius of the site - at Novar and Ben Tharsuinn – together with proposed schemes at Cambusmore, Kilbraur, Novar Extension, Gordonbush and Fairburn. It concluded that potential cumulative effects in relation to existing and consented schemes would relate primarily to Beinn Tharsuinn, 23 km to the south-east, but that these would not be significant. The potential for significant cumulative effects with Cambusmore would be limited by the different orientations of the sites and the fact that they would be 12 km apart.

57. Supplementary Cumulative Information (SCI) submitted in February 2006 considered the cumulative effects of Rosehall Hill (which now forms part of the baseline for assessment) and Invercassley. Adding Achany, which has a ZVI similar to Rosehall, to this baseline would have only a minor effect overall. More turbines would be seen from some areas, mainly to the north and north-east, than if only Rosehall was developed. Achany would also be seen sooner, and for a longer part of some journeys, although sometimes intermittently. Unlike Rosehall, some turbines would be visible from the outskirts of Lairg.

58. However, the main views of both developments, seen simultaneously, would be from the south and south-east. From Bonar Bridge, the Invershin footbridge, and in near views from the A839 and the south side of the Kyle of Sutherland, they would read as a single wind farm, particularly as the two layouts have a similar pattern, although Achany's more elongated layout provides an element of contrast. Significant cumulative visual effects would occur only in near views, mainly to the south, including between Doune and Badarach, where vegetation interrupts views; from above Lairg; and to the north-west at Beinn Sgeireach. Achany would double the angle of view occupied by turbines from Viewpoint 2 at Durcha compared with Rosehall. From Viewpoint 4, the angle of view occupied by turbines would almost treble. However, as the two wind farms would be adjacent to each other, sequential cumulative visual impacts would be no greater than for either development on its own. Although a "with wind farm" landscape sub-type would extend slightly further east, towards Meall a' Gruididh, the effect on the wider character of the Moorland Slopes and Hills LCT, and on the Sweeping Moorland LCT to the north, which are both widespread in this area, would not be significant. Cumulative indirect effects on the Strath LCT would be similar to those of Rosehall on its own and not significant. Achany would not have significant cumulative effects on designated landscapes over and above those of existing and approved wind farms, or increase the loss of landscape elements.

59. While the locations from which Invercassley would be seen in combination with Rosehall and Achany are fairly limited, Invercassley and Rosehall together would be unacceptable. Invercassley would extend the potential visibility of wind energy development into the east side of Glen Cassley, into Strath Oykel and Strath Mullie, west of the A835, and onto higher ground east of Ullapool. Adding Achany to Rosehall and Invercassley would reinforce the significant effects on visual amenity in this area, and sequential effects on views from the road network to the south. However, the more regimented linear layout of the turbines at Invercassley relative to the other two schemes would create a visual imbalance. The addition of Achany to this wider baseline would not be significant in itself. The same applies to effects of the Moorland Slopes and Hills and

the Sweeping Moorland LCTs. While Achany and Invercassley have the same lateral spread from Viewpoint 4, Invercassley's different design style would introduce a discordant note to landscape character as experienced within the Strath LCT, which Achany might reinforce by increasing the number of turbines near Rosehall Hill. However, there would be no additional cumulative effects on SAWLs, or on landscape elements. SNH considered that it would be the addition of Invercassley to Rosehall and/or Achany that would result in unacceptable cumulative effects. Viewed from the south-east, its two lines of turbines would present a strong contrast to the rounded shape of the Beinn Rosail ridge. Airtricity's landscape witness concluded, mainly on the basis of separation distances, that Achany and Rosehall would not have a significantly different impact on wild land from Invercassley. A more comprehensive assessment that also considered altitude, form and design could have drawn out more conclusions.

Tourism and recreation impacts

60. While tourism is important to the Highland economy and vital to Sutherland, there are few tourist facilities close to the Achany site and few that are likely to be physically affected by it. Visitors to the main tourist centres such as Lairg, Bonar Bridge and Ardgay would have only limited or distant views of the wind farm and are unlikely to be dissuaded from coming to the area. The ZVI indicates that there would be relatively limited views of the entire wind farm from tourist routes and that the effects from the A836, the A837, the A838 and the A839 are unlikely to be significant. The Struie Hill viewpoint is 22 km from the site. The secondary roads through Achnahanat and Doune, from which a significant number of turbines would be visible, are not frequently used by tourists. While there would be moderate to major landscape and visual impacts on the Rosehall trails, there is little evidence that users would be discouraged, particularly if the trails were improved. New and improved paths in Ayrshire increased user numbers there by up to 20%. Because of the separation distances involved, visitors are unlikely to be dissuaded from climbing the Munros in the area.

61. Only 4 (22%) of the 18 tourist businesses contacted by your tourism consultant considered that the wind farm would have a major impact on businesses within 10 km of the site, one (6%) predicted a moderate impact, and 13 (72%) predicted no impact. The first 4 respondents predicted a major impact on tourism in the Highlands overall, with 14% of respondents predicting a moderate impact and 57% a major impact. These results, which were obtained in a context where over 90% of respondents were satisfied with trading conditions and expected stability or growth to continue, indicate that the impact would be modest at worst. The survey was based on the best techniques available, previously used in work undertaken for THC. There is also no published research that indicates that significant impacts are likely to occur. The neutrality of an NFO System 3 report for VisitScotland in 2002, which was based on prompted responses to a biased survey, has been questioned. Work in Devon concluded that wind farms would not have a significant negative impact there, while only 3% of the businesses that responded to an "after the event" survey in Cumbria considered they had suffered adverse effects.

62. On the basis that 75% of customers to the businesses surveyed by your consultant are tourists or visitors, and that 76% of these undertake the type of outdoor recreational activities that are likely to be most sensitive to the effects of a wind farm, 57% of visitors participate in such activities. Applying to this figure the 38% of visitors that the VisitScotland report suggests might regard the Achany proposal as a significant intrusion suggests that 21.6% might be affected. If, as indicated in the VisitScotland report, 25% of those were to be deterred from returning as a result (which seems implausibly high) the impact on tourism would be only 5.4%. This would be insignificant and probably lost within the much larger annual variations that characterise the industry. While the effect could be

greater if other wind farms were also developed in the area, any such effect needs to be set against the scheme's positive economic impacts in terms of employment, any contracts procured locally, any Community Trust Fund that was established, and the additional income that would accrue to Achany Estate. Impacts during construction would be temporary and, if construction traffic did not coincide with major local events, would have very little effect on the tourist economy in the longer term.

The development plan

63. The Golspie and Lairg Local plan should be given little weight, due to its age. Read literally, Policy ENV 3 of the SESLP presumes against any development in the areas it covers, although the decision to allow Rosehall Hill shows that this is not THC's approach. In any event, the need for the scheme and its contribution to renewable energy policy outweigh any negative presumption under the policy. The proposal would not cause any significant damage to amenity that could not be addressed and its effects on heritage features do not justify a conclusion that it would contravene the policy. The objectives of Strategic Policy 3 would not be undermined. The road-related conditions and agreement address Strategic Policy 4. A Community Trust Fund could help to improve tourist facilities and local infrastructure. None of the landscape designations listed in Strategic Policy 17 would suffer significant adverse effects.

64. The appeal proposal generally accords with the thrust of the sustainability objectives to which Policy G1 of the HSP refers. It is consistent with UK and Scottish energy policy and SSE has sought to address environmental and community interests and issues. It is not necessary for a proposal to satisfy all of the criteria in Policy G2 in order to accord with the policy. The proposal would satisfy the 7 criteria that are relevant. Road infrastructural issues (criterion 1) could be dealt with and the proposed conditions and legal agreement would guard against adverse traffic effects, particularly as more than one wind farm is unlikely to be built in the area at the same time. The scheme would generate renewable energy and would be energy efficient (criterion 3); other impacts on individual and community residential amenity could be adequately addressed (criterion 7); the mitigation measures and conditions proposed would avoid unacceptable impacts on the resources listed in criteria 8 and 9; the scheme's location and design balance environmental and practical considerations (criterion 10); construction jobs would contribute to the local economy and any impact on tourism would be minor (criterion 13). As far as Policy G3 is concerned, an ES was submitted and the proposal can be regarded as acceptable in terms of the policy provided that appropriate mitigation measures and monitoring were employed. The conservation and promotion of the Highland heritage under Policy G6 has to be balanced against the benefits of the proposal. The evidence demonstrates that it would not have significant effects that would warrant refusing planning permission under Policy G8.

65. The scheme would use a renewable energy resource in line with Policy E1. SSE accepts that any permission granted would be for a limited period and that the site would have to be restored. The proposal also generally accords with Policy E2 in that it would contribute to renewable energy targets while minimising significant adverse effects. There are no objections in relation to electro-magnetic interference or aviation, and visual, noise, traffic and cumulative effects could be adequately addressed. Landscape character would be maintained and potentially enhanced, in accordance with Policy L4. The evidence also indicates that the proposal would not conflict with the objectives of Policy T6. There would be no direct impacts on any of the archaeological sites that Policy BC1 is concerned to protect and the proposed conditions address the possible discovery of archaeological remains during construction. Policy N1 would also be satisfied.

66. SPP 6 makes clear that, where a wind farm is proposed in an environmentally acceptable location, permission should be granted, irrespective of zoning under a spatial policy, and that development plan policies should be based on the principle that wind farms should be accommodated where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. It also draws a clear link between the EIA process and reaching a conclusion as to whether the location concerned is appropriate, noting that this will be particularly important where development is proposed outwith broad areas of search proposed in development plans. As the Achany ES demonstrates that the scheme's location is appropriate and that it could proceed in an environmentally acceptable way, there is a presumption in favour of granting planning permission in terms of SPP 6. PAN 45 acknowledges that wind farms can be expected to be highly visible, but regards it as important, given the commitment to addressing climate change, for society at large to accept them as a feature of many areas of Scotland for the foreseeable future. The employment that wind farms provide contributes to the economy, in line with the objectives of SPP 2 : Economic Development. SPP 6 also sees potential for a thriving renewables industry to contribute to economic development.

67. The proposal also accords with NPPG 14. The site is not covered by any statutory nature conservation designation. The proposal satisfies the statutory tests that apply to Natura sites and other aspects of national nature conservation policy. It takes full account archaeological interests in line with NPPG 5: Planning and Archaeology and PAN 42. THC's Archaeology Unit and Historic Scotland did not object to the application subject to appropriate conditions being imposed. There would be no significant adverse effects in terms of national transport policy. The National Planning Framework (NPF), which confirms Ministers' commitment to sustainability and electricity generation from renewable resources, expects the contribution from wind power to rise substantially over the next 10 years in response to the RO.

The Highland Renewable Energy Strategy and Planning Guidelines

68. It is submitted that the Council's decision on Achany was driven by the political considerations that it emerged during the inquiry had heavily influenced the spatial policies in the HRES, specifically the identification of preferred areas and the apparent restriction of clusters of wind farms to these areas. These policies are not compatible with SPP 6 and are based on considerations that are not supportive of Scottish Ministers' commitment to renewable energy developments. The Council's concession that it could not defend its decision indicates that it did not have sound planning reasons for refusal and that it had followed a political agenda.

69. As well as being unduly restrictive, the HRES spatial policies are based on an assumption that the preferred areas contain optimal conditions for major onshore wind development, which is not the case. The "green" areas take no account of whether land owners in these areas are willing to release land for wind farm development. The "yellow" areas are generally low energy yield locations and an energy yield map shows that some turbines on the Achany site would produce 25% more electricity per annum than an identical turbine at Rosehall. Many of the "yellow" areas around Lairg are also flawed in relation to other basic siting criteria, including proximity to residential properties, the Shin Fall Visitor Centre, and steep ground. The scoring system is based on a crude methodology, contains errors in calculation, and the potential for a multiplying effect when more than one related parameter is applied. The much more robust assessment in the ES shows that many of the constraints that the Strategy assumes apply at Achany are not, in fact, applicable.

70. The Strategy indicates that it may be possible for an inappropriate project to be proposed in a preferred development area and, conversely, for an acceptable project to be approved elsewhere. However, despite the Council's claim that the Strategy is a starting point in considering schemes, this is not how it is always applied in practice. The second reason for refusal is based solely on the fact that the appeal site is outwith a preferred area. Ironically, the Council has ambitious targets of its own, which it is currently failing to meet. Moreover, Policies E.5-E.7 adopt a sequential approach that is contrary to paragraph 23 of SPP 6 and compounds the consequences of including land in preferred areas that is unlikely to be developed. These policies do not contain criteria, or refer to policies that do, and it is unreasonable to require a developer promoting a site in a Policy E.7 area to demonstrate that there is no scope for locating a scheme within a preferred or possible area. It is also impractical when several sites are being pursued concurrently. Some of the topic based policies that follow, including Policy U.2, also do not comply with SPP 6 and none mentions the availability of a grid connection. That said, the appeal proposal is designed to be sympathetic to the existing landscape character, in accordance with Policy T.1, and would comply with the objective of Policy S.1 in avoiding direct nuisance and disturbance due to noise. With regard to Policy R.1, there would be no direct impacts on designated nature conservation areas and appropriate mitigation, secured through conditions, would avoid significant adverse effects on designated sites. The proposal would accord with Policy R.2, which seeks to protect the cultural heritage. SSE approached THC regarding a Community Trust Fund, in line with Policy K.1.

Other issues

71. As far as residents' concerns over private water supplies at Durcha are concerned, the appeal site falls largely to the north. Any disruption to the recharge of the subsurface springs that are likely to provide these supplies would be minimal and the effects of surface disturbance would be filtered out by intervening ground. The installation of silt traps and other controls over run-off should prevent contamination of the surface burn that supplies West Durcha. The effect on property values is not, in itself, a relevant material planning consideration.

The case for the Highland Council

The Highland Renewable Energy Strategy and Planning Guidelines

72. Acquatera's Managing Director stated that the HRES was prompted by THC's concern that the lack of national locational guidance for renewable energy developments was leading to widespread and divisive opposition and by its wish to avoid the potential economic benefits from being derailed by local concerns over specific schemes. The 3 zones identified in the Strategy reflect their suitability for wind farm development in terms of technical and planning constraints at a strategic level and are intended to facilitate schemes in appropriate locations.

73. The HRERA model takes account of landscape designations, which give sufficient guidance on landscape value for strategic purposes, selected cost factors (including maintenance costs but excluding the cost of grid connection), planned grid upgrades, and assumed wind speeds (based on a model which, while very crude, was the best source of information available at the time). Areas covered by more than one nature conservation designation were given a score for each. This work indicated that the optimal development areas that were identified are sufficient to allow the targets in Policy A.1, which the Council does not regard as caps, to be met without breaching the 10% threshold in Policy U.2, which reflects concerns that Highland would become "covered with wind farms".

74. While the Strategy's policies are informed by the HRERA model, they are not derived directly from it. The guiding principles adopted by the working group that was established after Aquatera had produced the model and an initial draft Strategy included that onshore wind should not unnecessarily or significantly affect tourism, communities, or the natural heritage; a preference for grouping developments into larger "wind parks" within optimised areas; a desire to avoid a series of small-scale developments; and a recognition of the benefits of locating wind farms in the eastern areas of Highland, near existing infrastructure. A consultation draft Strategy was issued in October 2005. The final Strategy reduced the extent and number of green areas through amalgamation and by subsuming individual yellow squares into adjoining red areas. While it provides a framework that seeks to balance the benefits of clean energy against local community, tourism, landscape and nature conservation interests, the HRERA database is not suitable for determining individual applications and the Strategy is simply a starting point. Policies E.5-E.7 are not intended as a barrier to development and it is open to anyone promoting a transmission level, "export", scheme to demonstrate, using a precautionary approach, that strategic aims and site-specific constraints can be addressed and the presumption against development in a red area set aside. "Re-scoring" a proposal by ignoring constraints because it is considered that these can be addressed by mitigation is based on a misunderstanding of the model, which assumes no mitigation. A realistic comparison would also require equivalent mitigation to be assumed throughout Highland.

75. Clustering turbines into areas of lower sensitivity is intended to result in "islands" of more intense development separated by undeveloped or less developed buffer areas. This can only be achieved if buffer areas retain their undeveloped character and any development that is permitted in these areas is especially sympathetic to the landscape character. As the Council regarded Achany and Invercassley as less sympathetic to the landscape than Rosehall Hill, refusal of these applications was justified. In addition, as development areas are oriented towards the eastern parts of Highland to retain the feeling of remoteness, wilderness and naturalness associated with the western parts, any wind farms west of Lairg should avoid extending visual intrusion westwards. Unlike Achany, which would have additional visual impacts to the north and west around Loch Shin, and Invercassley, which would have additional impacts to the west and south-west and in Glen Cassley, Rosehall Hill's impacts would be to the south-east where the landscape is already affected by energy developments. Rosehall's compact layout is also more energy efficient than Achany or Invercassley, consistent with the Council's wish to maximise the density of energy production. Finally, the commercial forestry on the Rosehall site has a lower conservation value than the undisturbed moorland at Achany and Invercassley.

76. Allowing 3 wind farms around Lairg would effectively result in a "rival" cluster in a new "green" area in a location that contains Annex 1 bird species, and in an extensive visual intrusion westwards that would be visible from main tourist routes. Development would also be visible from a large number of houses, the aim of clustering wind farms in preferred locations would be undermined, and the integrity of the Strategy would be compromised. It adds a strategic dimension to the EIA process, provides clarity and consistency, is exactly what SPP 6 requires, and deserves to be allowed time to deliver. Although paragraph 23 of the SPP advises against a sequential approach, Annex A is sequential in parts.

Roads and transport

77. THC's Principal Roads Engineer confirmed that the Council was satisfied that the roads and transport issues raised by the appeal proposal could be addressed by conditions, including a requirement for a Traffic Management Plan (TMP), and by a legal

agreement requiring a financial guarantee to cover the cost of repairing any damage to public roads due to the construction of the wind farm. It is also satisfied that the mechanism for apportioning financial liability for road repairs and maintenance that it had also agreed with E.ON and Airtricity would adequately address the cumulative impacts if more than one wind farm was to be constructed in the area at the same time.

78. The TMP would require to include an emergency access plan and a contingency plan in the event of vehicle breakdown or road blockage, a pre-commencement survey of the A839 west of the Black Bridge to a specification agreed with the Council; proposals for any pre-commencement road works (including the temporary removal of street furniture and any other works identified from the survey); proposals for new and/or enlarged lay-bys on the road; the commencement date, duration and expected weekly flows of different classes of vehicle; a detailed Road Construction Consent submission; and details of vehicle movements and routeing for each phase of construction. Other conditions would require road condition surveys at agreed intervals during construction of all the roads in Highland used by site construction traffic, together with a final survey 1-3 months from the completion of construction, with any reinstatement works attributable to such traffic undertaken at the developer's expense; reserve details of the site access for the Council's approval, require this to be constructed at the outset of development and vehicle counter tubes installed; an on-site turning facility; a guard rail at the access to Lairg Primary School; temporary advance warning signs; and THC's prior approval for the movement of any abnormal loads during major events in the area or when flooding had closed, or was likely to close, the A837 and/or the C43 at Inveroykel.

79. Questioned, the witness agreed that, while sections of the A839 close to Lairg can operate as a double carriageway, it is largely a single-track road. The Council would expect the TMP to cover the timing of large vehicle movements, for example by avoiding peak times. While the conditions would allow construction of the 3 wind farms around Lairg to coincide or at least overlap, each developer would need to satisfy the Council that the local roads could cope with the traffic generated by its scheme. The Council would not approve a TMP that could result in significant traffic peaks, such as major concrete pours, occurring in the same weeks. A 20-minute gap between large vehicles on the peat-based parts of the A839 applies where very heavy loads are using the very worst roads and could probably be reduced if the road was improved. Specific proposals for road strengthening, lay-bys and any other localised widening could only be drawn up after further investigations had been done. If a road failure did occur, the developers would have to suspend work pending the necessary repairs. However, the TMP was unlikely to address the effects of any increase in traffic on the A837 during the construction period.

80. It is impossible to cover all eventualities. Accidents and/or flooding could occur irrespective of whether the wind farm was built and the TMP is intended to address the additional risks that the development could pose. It is impossible to say how much longer response times would be if a blockage on the A839 required emergency vehicles from Lairg to use the A836 and A837. The police, fire and ambulance services had been consulted on the Achany application, but had not responded. However, the Council would take advice from the emergency services in considering the emergency access plan. SEPA's flood warning system is fairly reliable and the police could set up temporary diversions and/or suspend wind farm deliveries in the event of an accident.

Landscape and visual impacts

81. THC's landscape witness stated that Scottish and development plan policies state that it is important to consider the landscape and visual impacts of wind farms. NPPG 14 states that the scale, siting and design of new development should take full account of the

character of the landscape and the potential impact on the local environment, and advises planning authorities to take particular care that new development in or adjacent to an NSA does not detract from the character or quality of the landscape. SPP 6 also refers to the scale of development and to the need, increasingly, to give careful consideration to cumulative impacts.

82. As far as landscape impacts are concerned, the Caithness and Sutherland LCA stresses the need to consider the effects of introducing new elements into the Moorland Slopes and Hills LCT because it "possesses no obvious hierarchy of characteristics". It is unclear how introducing a new focus at Achany could enhance the character of an LCT that is characterised by minor foci. While the ES agrees that the impacts from Viewpoints 1 and 2 are significant, the wind farm would also introduce a new point of focus in wider views, beyond the 2-3 km limit suggested in the ES, and which also include other LCTs. The effects on the Strath LCT may also be higher than indicated in the ES, which identifies significant effects only for Viewpoint 4 (Achnahanat). The moderate impacts identified for Viewpoint 7 (Doune) and, more particularly, Viewpoint 12 (the Invershin footbridge) are "borderline" significant, with turbines seen on the skyline. Although electricity conductors affect the view northwards from the bridge, they would not reduce the impact of the turbines. The ES judges the impact on the Small Crofts and Farms LCT as significant only from Achinduich, but SSE's landscape witness accepted that the impact from Viewpoint 8 would also be significant.

83. Landscape impacts on the Dornoch Firth NSA, while moderate rather than moderate/minor from Viewpoint 14 (Bonar Bridge) and Viewpoint 18 (the Struie Hill viewpoint), are less than significant. The Council does not challenge the ES assessment of the impact on the Assynt-Coigach NSA, and the Ben Klibreck, Beinn Dearg-Fannichs and Glen Loth-Glen Fleet AGLVs, as moderate/minor, albeit with reservations in respect of Viewpoint 16. However, it considers that the ES does not adequately consider the effects on road users. The wind farm could be seen from many of the roads in the area and the fact that views are gained and lost from time to time would give the impression that wind farms are more extensive than they would actually be. Road users in some areas should be accorded medium/high sensitivity, resulting, on balance, in a significant effect. As most of the turbine sizes quoted in Table 8 of PAN 45 are much smaller than those currently being proposed, the PAN's comment that turbines between 5-15 km away are seen as part of the wider landscape should be treated with caution.

84. Achany's visual impacts are also greater and more extensive than stated in the ES. While this identifies significant effects from Viewpoints 1, 2, 4 and 5, the impact from Doune would be moderate/major and therefore also significant as residents would have regular views from the minor road close to their homes. The visual impact from Viewpoint 8 should also be treated as moderate/major due to its proximity to Lairg and its location on a minor road that is likely to form a circular walking and cycling route. Viewpoint 12 should be accorded the same level of significance as the Invershin footbridge is a key pedestrian route on a main tourist route and views are focussed to the north.

85. While these various impacts, considered individually, are unlikely to make the appeal proposal unacceptable, considered together, they make the proposal incompatible with Policies E2, L4 and T6 of the HSP. On this basis, the recommendation of refusal was correct.

86. As far as cumulative impacts are concerned, the SCI agrees that Rosehall and Achany together would increase the impacts from Viewpoints 7, 8 and 12 to significant. However, it understates the cumulative impact on the framed view from Viewpoint 14 at Bonar Bridge, which would increase from moderate (with Achany alone) to probably

significant with regard to impacts on the NSA. Cumulative impacts from Viewpoints 16 and 18 would remain below the significance threshold, but by a lesser margin than indicated in the ES. The ES assesses the cumulative impact for Achany in association with Beinn Tharsuinn, Cambusmore and Kilbraur from Viewpoint 23 (Struie Summit), and from Viewpoint 22 (Meall Dola, above Lairg) with Gordonbush, as significant. Adding the Rosehall Hill scheme would not affect this assessment.

87. From Doune, the cumulative impacts of Achany, Rosehall and Invercassley together would be medium and, while the contrasts in layout would not be apparent, significant overall. However, Invercassley would increase the impact from Viewpoints 16 (Carn Chuinneag) and 21 (Seana Bhraigh) to significant, and that from Viewpoint 19 (Ben More Assynt) to potentially significant. The ES agrees that the combined impact of Achany and Invercassley from Viewpoints 4 and 6 would be significant. From Viewpoint 23 (Struie Summit) Invercassley's contrasting form would be sufficiently different from that of the Achany/Rosehall array to be adverse. Considering only Invercassley and Achany together, the Invercassley ES considers that there would be significant impacts from Viewpoints 4 and 6 (equivalent to Viewpoints 7 and 4 in the Achany ES) and from Viewpoints 11 (Seanna Bhraigh) and 15 (Conival). In the case of Viewpoints 6, 11 and 15, this significance would be due to the impact of Invercassley alone. Achany plus Rosehall would increase the extent of significant impacts on the Moorland Slopes and Hills LCT. The addition of Invercassley would increase this impact further, with the contrasting layout of Invercassley bringing a different quality to the emerging "Moorland Slopes with Windfarms" type.

88. Questioned, the witness agreed that her precognition did not mention the two main issues that she had raised in her consultation response, or the effect of adding Invercassley to a baseline that included Rosehall, and that the reasons for refusal were not based on the considerations that she had addressed. She had accepted in July 2006 that the landscape benefit of removing the two turbines was insufficient to justify their loss from the scheme. The proposed conditions cover the issue of external transformers. The ES considers effects on landscape character within a 5-7 km radius of the site, not 2-3 km as she had stated. This reduced the degree to which she differed from its conclusions. She was not suggesting that the proposal would have a significant effect on the Moorland Slopes and Hills LCT as a whole. However, cumulative effects can be more than simply the sum of the parts.

Planning assessment

89. In evidence-in-chief, THC's planning witness stated that the appeal proposal did not accord with the development plan and that there were no material considerations that indicated that it should be approved. That said, the Council is satisfied that, in addition to its traffic impacts, Achany's noise impacts and its potential nature conservation impacts could be addressed by conditions and an agreement, although he could not explain why the Council was seeking a lower night-time operational noise limit than recommended in ETSU-R-97. Accordingly, the only outstanding issues as far as the Council is concerned relate to the scheme's landscape and visual effects. It had assessed the proposal against the development plan as a whole, including Policy G2 of the HSP, where the seventh, ninth (in relation to landscape and scenery) and tenth criteria would be contravened. Although landscape character assessment methodologies have evolved, the way landscape is perceived and appreciated is subjective. The fact that the appeal site is not covered by a specific landscape designation does not mean that it is not locally valued or worth protecting, or that it will not be designated in the future. Recommendation L2 of the HSP recommends Government to review NSAs and look to further coverage in Highland while

Proposal L3 commits the Council to reviewing AGLVs. The Planning etc (Scotland) Act 2006 gives Scottish Ministers wider powers to designate and protect NSAs.

90. While the SESLP includes a renewable energy policy, the key development plan policy in this case is Policy E2 of the HSP. The structure plan makes clear that the Council is supportive of renewable energy proposals but is aware of their potential environmental impacts, and that schemes are only likely to be supported where the impacts can be demonstrated not to be significantly detrimental. Against that background, and the provisions of Government energy and planning policy, the Council had taken a positive and responsible approach to wind farms and had approved 15 schemes with a capacity of up to 376 MW where it was satisfied the production of renewable energy was balanced with the protection of the natural and historic environment.

91. The Achany proposal does not accord with SPP 6 because of its significant adverse effects on landscape, visual and general amenity, in particular on the visual amenity of Rosehall village, houses on the south side of the Kyle of Sutherland, on the north-west side of Loch Shin, and above Lairg. It would also have an adverse effect on visual amenity at Durcha. Rosehall Hill, on the other hand, would secure the benefits of energy generation, landscape restoration, and the reinstatement of active blanket bog carbon sink, while minimising adverse impacts. It is thus consistent with the statement in SPP 6 that support for renewable energy development and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals if there is to be an effective response to the challenges of sustainable development and climate change. Its turbines would only be seen above the ridge to the north-east from elevated locations. The permission will require Rosehall Cottage to be removed if the scheme is built.

92. The cumulative impacts if Achany or Invercassley were developed as well as Rosehall Hill would also be unacceptable. The 42 turbines at Achany and Rosehall would be the largest grouping in Highland, and duplicate infrastructure. The scope for sharing an access track, construction compound, borrow pits or concrete batching equipment with Rosehall Hill does not seem to have been explored and SSE representatives refused to adopt THC's suggestions, following the refusal, of a more compact layout that would relate better to Rosehall Hill and the landscape and reduce the extent of the site access tracks. The fact that the 2006 peat stability assessment was undertaken towards the end of the planning assessment process suggests that the turbine layout was not informed by ground conditions and that a different layout might have emerged if a detailed survey had been done at the outset. Allowing both appeals would result in a "wind farm landscape" that would not protect or enhance the area. That said, for a scheme to contribute to the HRES 2010 target, which currently seems unlikely to be met, it would have to be approved in the next 12 months. Although SSE has not provided written confirmation of that it has a grid connection offer, the National Grid, May 2007, GB Seven Years Statement lists it as having Planned Transmission Contracted Generation for 62 MW with a completion date of 31 August 2009. The Council acknowledges that this is an important consideration. As matters stand, Rosehall Hill is unlikely to be able to connect to the grid before 2012, although its position could improve as the 2007 Energy White Paper confirms moves to improve the management of the connection "queue".

93. The fragile nature of the local economy makes any adverse impact on tourism unacceptable in terms of Council policy and your consultant's prediction that the proposal would have little impact is speculation. That said, Policy T6 is concerned with the proposal's effect on views from tourist routes and viewpoints, not its effects on tourism as a business activity. Although the SESLP does not identify specific tourist routes or viewpoints, all the principal roads in the area are tourist routes in practice. The HSP states that tourism in the Highlands is strongly based on the area's high quality scenery, that

developments should seek to avoid being visually intrusive in scenic views, and includes areas close to strategic tourist routes and clearly visible from tourist viewpoints as potentially sensitive. Achany on its own, or in combination with Invercassley, would have serious adverse effects on important scenic views, particularly from the Moray Firth National Tourist Route, the A838, the A836 to Tongue and the A839/A837 Ullapool route.

94. While the appeal site itself does not appear to be used for recreation by significant numbers of people, those who do use it do so for the openness, wildness and solitude that it provides and for its panoramic views. Turbines and formal tracks would destroy that experience, and the experience of walking along the Rosehill Trails. From locations such as the Assynt-Coigach NSA, the Beinn Dearg AGLV, and the SAWLS in the wider area, it would weaken the impression of walking within a vast upland landscape where human influences are very much a secondary element, run counter to the objectives of designation, and prejudice their future extension or reassessment.

95. The HRES, which is the type of interim planning guidance advocated by national policy, gives a spatial dimension to HSP policy, is not a barrier to development and is consistently applied. It is not normal practice to discuss Committee recommendations with applicants before reports are circulated to members. The witness had explained the complex social and economic issues surrounding wind farm applications in Highland to the Achany project manager and commented that he "always hoped for a positive outcome on the ground". However, the latter may not mean the same to a developer as to a planning authority. The Director of Planning and Development took a keen interest in all 3 Lairg applications and it was only near the end of the consideration process that the final recommendation emerged from a team discussion.

96. Questioned, the witness agreed that, as he had never suggested to SSE that its proposal might contravene Policies L4 or T6, or that the Council might consider that it raised cumulative landscape and visual issues, it was understandable if it was surprised by the recommendation. However, in a hierarchical management structure, a senior official can always overrule a junior one. The report on Achany was finalised following discussions with the Director. As originally drafted, it would logically have concluded with a recommendation of approval, but changes were made. The evolution of the Invercassley report followed the same process and what was presented to Committee was the Director's report. Where a scheme is environmentally acceptable and in an appropriate location it should be approved. As far as the witness was concerned, Achany on its own could make a useful renewable energy contribution, on balance, its impacts could be mitigated and it could be approved without giving rise to significant policy implications. However, he remained of the view that the cumulative landscape and visual impacts of Rosehall Hill together with either Achany or Invercassley would be environmentally unacceptable.

97. South-east Sutherland is attracting intense interest from wind farm developers. Achany and Invercassley were recommended for refusal because two wind farms outside a green area could have given the "wrong signal" regarding the application of the HRES. It is accepted that, if the precautionary approach to which Policy E.7 refers is intended to discourage development outside green areas, the Strategy is not a starting point. The reference in Table G4.2.3 to planning assessments being "dictated by" the zoning principles in the Strategy also indicates that it is not a starting point. The final sentence in Policy E.7 represents a sequential approach and it is applied on that basis. Since the Strategy was approved, there have been no applications in green areas, which may not be optimal, at least as far as the availability of sites is concerned. Most applications have been in red areas. Achany would not be any more visible from Rosehall village than any wind farm could be expected to be and its potential effects on tourism do not, in themselves, justify refusing planning permission. As each application has to be determined

on its merits, there is also no justification for imposing a blanket restriction on schemes that would have cumulative effects.

98. It would be inconsistent with SE policy for the HRES to be applied so as to inhibit development unless there were sound reasons for doing so and land use policies should be applied irrespective of the political process. The Director had been closely involved in the formulation of the HRES and was aware of the political considerations that had influenced it. The fact that the Committee report on the overview of the cumulative effects of the 3 applications left it to members to decide whether the possible changes in landscape character were acceptable could reflect this political dimension. If the Director had given more weight to political considerations, this would have been inconsistent with SPP 6.

99. In its closing submission, the Council stated that, as the HRES pre-dated the publication of SPP 6 in its final and (relative to the consultation draft) much altered form, it had to be reviewed to ensure that it is consistent with national policy. The Council would be undertaking such a review. In the meantime, it accepted that greater weight should be given to SPP 6 and that, in the event of any inconsistency between the two documents, SPP 6 should be preferred. As the Council planning witness had agreed that Achany on its own could provide a useful renewable energy contribution and that, on balance, its impacts could be mitigated, the Council no longer had any basis to argue that Achany, on its own, should be refused. Although the witness had maintained that cumulative impacts with Rosehall Hill made Achany environmentally unacceptable, there was insufficient evidence to support a finding that these two schemes together would give rise to adverse effects of such significance as to merit refusal. While local concerns should not be underestimated, these are outweighed by the importance that national policy places on renewable energy development. Accordingly, it was not considered appropriate to submit that there was any basis in law to dismiss the Achany appeal. As far as the Council was concerned, permission could be granted, subject to the agreement and conditions tabled at the inquiry.

The case for Scottish Natural Heritage regarding peat stability and ornithological issues

100. In support of its view on the approach that ought to be taken when considering a plan or project that could affect a Natura site, it was submitted for SNH that Article 6.2 of the Habitats Directive lays down the general obligations on which Article 6.3 and 6.4 are founded and set the relevant targets. Article 6.3 considers how the target will be met and prevents the decision maker (subject to the issue of overriding public interest) from agreeing to a plan or project unless it can be determined that the integrity of a Natura site would not be adversely affected. This decision is to be made in the light of the conclusions of an appropriate assessment of the implications for this integrity, undertaken in view of the site's conservation objectives. Article 6.3 inherently recognises that an appropriate assessment need not be undertaken for a plan or project that it can more easily be concluded does not present a danger, either because it is necessary for the management of the site, or is unlikely, for other reasons, to have a significant effect. SSE did not lead any evidence on the Habitats Regulations or on the Waddenzee judgement and its witnesses had confused the 3 steps in Regulation 48.

101. The European Community document Managing Natura 2000 Sites contains advice on the interpretation of the "significance test" for a plan or project not connected with site management. The Waddenzee judgement, which stated that there should be an appropriate assessment "if it cannot be excluded, on the basis of objective information", that a plan or project (individually or in combination with others) would have a significant effect on a Natura site and is likely to undermine the site's conservation objectives, provides further clarification. It also alters the degree of proof required, namely the need to

be certain that the integrity of a site would not be adversely affected. Accordingly, where it can be concluded at an early stage that a plan or project has no connectivity with, or likelihood of impact on, a Natura site, or is obviously not going to adversely affect its integrity, further consideration is not required. However, the existence of unknowns that need further surveys or consideration indicates that a significant effect is likely and that an appropriate assessment is required. While SNH would welcome an update of the 2000 Revised Guidance to reflect this position, this is a matter for the SE. Where EIA development is concerned, if the likelihood of a significant effect is unclear, the most efficient approach is to undertake an EIA and a appropriate assessment in parallel. Managing Natura 2000 Sites draws a link between these two processes.

102. In the absence of a definition of "integrity" or "conservation objectives" in the Directives, SNH adopts the approach in Managing Natura 2000 Sites. In that context, SNH considers "conservation objectives" under two headings, based on the aims of the Directives and the definition of "favourable conservation status" (FCS) for species and habitats in the Habitats Directive. The SE endorsed this approach in 2004. In the case of qualifying habitats in SACs, the headings are: (a) to avoid the deterioration of these habitats, thus ensuring that the site's integrity is maintained and it makes an appropriate contribution to achieving FCS for each qualifying interest; and (b) to ensure that the extent, distribution, structure, function and supporting processes of each qualifying habitat, and the distribution, viability and avoidance of disturbance to their typical species, are maintained in the long term. In common with the conservation objectives for qualifying species in SACs and for SPAs, which are expressed in similar terms, (a) reflects the requirements of Article 6(2) and (b) focuses on the component parts of the integrity of the site that are considered when looking at the steps in Article 6.3. Unless it can be ascertained that a proposal will not prejudice the achievement of a site's conservation objectives, it will fail the integrity test and can only be allowed, under Regulation 49, if there are no alternative solutions and there are imperative reasons of overriding public interest.

103. SNH's "conditioned objections" in relation to otter and to the River Oykel SAC reflect its view that the mitigation described would avoid adverse effects on integrity. SNH was also satisfied that concerns regarding the potential loss of blanket bog on the site could be addressed by mitigation and a habitat management plan (HMP). However, it considered that the 2006 peat stability assessment did not contain enough information to determine whether the proposal was likely to have a significant effect on the CSPSAC due to the risk of peat slide at the northern end of appeal site. A slide initiated near turbine 1, flowing parallel to the SAC boundary, extending into the SAC, and incorporating peat from it, would reduce the extent, structure and function of blanket bog, contrary to the conservation objectives for the SAC. A slide initiated near turbines 1 or 2 could come to rest at the bottom of the slope, entering and blocking the outlet from Loch na Fuaralaich and raising its level, with the same adverse effects. The Regulations place an onus on an applicant to provide sufficient evidence to allow the competent authority (in this case Scottish Ministers) to decide whether a plan or project would adversely affect the integrity of a Natura site.

104. The 2007 peat stability assessment indicates that turbines 1 and 2 would be located in shallow peat of fairly uniform structure, containing much fibrous material and no obvious potential failure planes or water layers, thus reducing the likelihood of peat slide. Moreover, the directions of slope at this location mean that any slides that did occur would be more likely to flow north-east, rather than towards the SAC. Although the watercourse most likely to be affected, to the east of turbine 2, flows into the Grudie Burn, which drains Loch na Fuaralaich, its final length has a very shallow gradient. This makes it unlikely that any slide would reach the confluence with the burn, raise the level of the loch and flood SAC qualifying features. On this basis, provided that turbine 1 is no closer to the SAC than shown in the ES and no plant or machinery involved in constructing the wind farm enters

the SAC, its habitat qualifying interest is unlikely to be significantly affected and an appropriate assessment is not required.

105. However, in May 2007, SNH staff concluded, in the light of the Waddenzee judgement and Natura casework guidance, that Achany was likely to have a significant effect on 4 qualifying species of the SPA – hen harrier, red throated diver, golden plover, and greenshank – and that an appropriate assessment for each was required. A pair of hen harrier nesting in woodland next to the site, within a 2 km foraging range of the SPA, could be disturbed and/or displaced and possibly risk collision with turbines. Red-throated divers nesting on the SPA could choose to make feeding flights to the Dornoch Firth rather than to Loch Shin as they prefer a marine environment, also incurring a risk of collision that would have a likely significant effect. Any golden plover nesting in the SPA that make foraging flights to in-bye fields along Strath Oykel over the ridge between Loch na Fuaralaich and Meall a Ghruididh could also be exposed to collision risk. Greenshank nesting on the Achany site just outside the SPA boundary could sometimes guide their brood to foraging habitat within the SPA, thus linking them with it, and could be displaced. The further survey of golden plover foraging flights and a reappraisal of existing data on greenshank was sought because the ES does not contain enough information on these matters for the purposes of an appropriate assessment. The limited information available on the effects of wind farms on bird populations justifies a cautious approach.

106. As far as SPA conservation objectives in relation to hen harrier are concerned, the appeal proposal would not give rise to habitat loss within the SPA or materially affect supporting habitat, which focuses on plantation forestry. As the nest that could be connected with the SPA would not be displaced or disturbed, the distribution of the species within the SPA would be maintained in the long term. The nest is also at the outer limit of the maximum recommended 500-750 m buffer distance from a turbine and out of sight of potential disturbance activities. Harriers are rarely victims of collision, the predicted overall mortality in this case amounting to one bird every 32 years. Although the 14 pairs of hen harrier recorded in the SPA between 1993 and 1997 represented 2.8% of the British population, subsequent surveys indicate that proven pairs of harrier in the Natural Heritage Zone (NHZ) that includes Achany increased by 334% between 1998 and 2004, with probable and possible pairs increasing by 500% and 300% respectively. Collision loss is therefore unlikely to prejudice the FCS of this species in the SPA.

107. Any red throated divers that breed in the Grudie Peatlands SSSI are likely to favour Loch Shin for feeding excursions. The flight paths of any that choose to fly to the Dornoch Firth are unlikely to cross the ridge on the appeal site. Divers tend to choose routes that minimise the need to gain height, by following valleys and gaps in hills to cross high ground. As all the lochans likely to be used by breeding divers are outwith the maximum likely disturbance buffer of 750 m, the distribution of nesting sites and of diver within the SPA would be maintained in the long-term. The distribution, extent, structure, function and supporting processes of habitats would also be maintained.

108. SNH agrees that the golden plover recorded in the 2007 surveys were not connected to the SPA and were unlikely to have crossed the ridge. As far as disturbance is concerned, experience indicates that the majority of displacement occurs within 200 m of a turbine. As the only pair of nesting birds connected with the SPA that has a breeding territory within that distance equates to 0.1% of the SPA population, the population would be maintained at a viable level. Its distribution would also be maintained. While about 2.5 ha of the SPA could be made unsuitable for nesting waders, the ES did not record any waders nesting in these areas. As there is suitable habitat nearby, the distribution and extent of supporting habitat, and its structure, function and supporting processes, would be maintained. The pair of breeding greenshank linked to the SPA that could be displaced

equates to 0.2% of the SPA population and a viable population would also be maintained. The distribution of greenshank would also not be affected as the SPA nest nearest to a turbine would not be displaced. The distribution and extent of supporting habitat, and its structure, function and supporting processes, would be maintained in the long-term.

109. As the none of the conservation objectives for these 4 species would be compromised, the overarching objective, to avoid deterioration of, or significant disturbance to, qualifying species, thus ensuring that the integrity of the site is maintained, would not be compromised. Accordingly, while SNH disagrees with SSE regarding the correct approach to applying the 1994 Regulations, it is satisfied that, subject to appropriate conditions being imposed, the appeal can be allowed, and invites it to be determined accordingly.

Evidence for Airtricity Developments (UK) Ltd

110. In addition to confirming that the Invercassley scheme depends on the construction of the Beauly Denny transmission line for a grid connection, and that its likely connection date is currently 2017, Airtricity commented on Achany's landscape and visual impacts. In that regard, it was explained that the Cumulative LVIA (CVLIA) in the Invercassley ES considered Invercassley in association with Beinn Tharsuinn, Novar, Novar Extension, Cambusmore, Kilbraur, Gordonbush and Achany. An updated CVLIA produced for the inquiry considered the cumulative impacts of Invercassley with Rosehall and Achany as the cumulative issues raised by consultees relate largely to the interaction between the 3 schemes. In summary, this confirms that the predicted cumulative impacts when Rosehall is included in the assessment are limited and acceptable. If Achany was also approved, the additional impact of adding Invercassley from locations where the 3 sites would be visible would be reduced, as the Rosehall Hill + Achany group of turbines would be larger than Rosehall alone. Policy U.1 of the HRES states that the Council has taken the view that cumulative visibility of larger scale developments is preferable to development being scattered across the area. Some cumulative impacts are inevitable if onshore wind farms is to meet renewable energy targets and if clustering is preferred to a spread throughout Highland. THC's landscape witness did not consider the effect of adding Invercassley to a baseline that included Rosehall. SNH's view that Achany + Rosehall Hill would be complementary and acceptable is based on factual inaccuracies as the two schemes are not on the same south-west facing slopes and they do not have a similar layout design. The Achany turbines are more irregularly and widely spaced than those Rosehall, which has a more compact, almost grid-like design. They are therefore unlikely to read as one wind farm.

The case for Ardgay and District and Creich Community Councils

111. The Community Councils consider that 3 wind farms around Rosehall – Rosehall Hill, Achany and Invercassley - and a fourth – Ben Tharsuinn - in the wider Kyle of Sutherland area are too many in one place and that the Achany and Invercassley appeals should be dismissed. If both schemes were allowed, there would be one turbine for every 2 houses in the Rosehall area, turbines on the hills all the way from Struie to Oykel Bridge and a huge strain would be placed on local roads, tourism, wildlife, drainage and scenery. Responses to surveys undertaken before the applications were lodged revealed concerns regarding traffic and visual impacts and all those who voted at a public meeting opposed both appeal proposals. Conditions would not provide adequate protection against the associated risks. Community Councils in Highland accepted the HRES, which does not envisage any large wind farms in red areas, after lengthy consultation.

112. Tourism, which is a mainstay of the local economy, would be adversely affected, with a consequent loss of jobs and income in a fragile area that a 2007 report by EKOS

found has economic problems. Visitor figures to the local Tourist Information Centre show a long-term decline. The ES states that Achany, which would be visible from the Moray Firth National Tourist Route and would multiply the effect of Rosehall Hill, would have a substantial visual impact on visitor resources close to the site. Pollution of watercourses could damage fishing, and freshwater pearl mussel in the Oykel. Local initiatives such as the Rosehall Trails and cycle tracks in Balblair and Carbisdale build on the area's scenery and unspoiled environment on which the local tourism industry depends. In the long-term, business would be lost and disruption during construction would deter visitors from staying. Any economic benefits would be short-term and a Community Trust Fund would simply be an attempt to compensate for the damage that residents would rather avoid in the first place. About 95% of respondents in the VisitScotland report regarded the chance to experience unspoiled nature as very important or quite important. Only 9% thought that wind farms would be an added attraction in tourist areas, 15% said that they would steer clear of an area with wind farms, and 10% said that they would be less likely to come back. No respondents said they would be more likely to return and there was a consensus that wind farms should be set away from popular tourist areas where possible. While no tourist businesses opposed the appeal proposal at the inquiry, none supported it.

113. The single-track roads leading to the site, on which the local community relies, are already in poor condition. The A839 is built on peat, the A837 is liable to flooding and has a weight restriction, and bridges act as "choke points". Each wind farm would require over 300 low loader trips for the turbines alone and is liable to cause a year's disruption. Breakdowns, accidents and other unforeseen events could cause serious problems, even with conditions and road bonds in place.

The case for the Rosehall Wind Farms Group

114. The Group regards the Rosehall Hill wind farm as more than a fair share of development for a small community like Rosehall. Most local residents have consistently opposed both appeal proposals, and the number of wind farms proposed in the area. SSE's failure to hold a public exhibition and consultations in Rosehall and Ardgay goes against the principle that local communities should be consulted. As the northern Highlands is already self-sufficient in energy for most of the year, energy from Achany will inevitably be exported south, incurring loss in transmission. Failure to make best use of resources is a further sound reason for dismissing the appeal, locating wind farms closer to where power is needed, and avoiding ruining Rosehall.

115. The mitigation proposed to control the scheme's hydrological and run-off impacts may look satisfactory in theory, but is unlikely to be adequate for an area with high rainfall and increasingly frequent flash flooding and there is no cast iron guarantee that the precautions proposed at Achany would prevent the salmon hatchery and smolts on the River Grudie being affected by sediment if flash flooding occurred during construction. A low to medium risk of peat slide is too high. Noise impacts at Durcha and Rosehall Cottage remain unresolved and highly unsatisfactory. It is not good enough to rely on the operator to take steps to reduce noise if it is already known that this will exceed the prescribed limits.

116. The work done by the Rosehall and District Action Group (RADAG) in developing the Rosehall Trails to bring visitors to the area and help address its economic decline would be undermined. Rosehall is dependent on visitors, with a niche market focussing on recreational pursuits, including walking and salmon fishing. These depend on unspoiled landscape and scenery. Achany and Rosehall Hill would form a very large wind farm, but without a coherent design. SPP 15: Rural Development recognises that tourism is vital to the economic, social and cultural well-being of rural Scotland. SSE's economic witness ignored local circumstances and misjudged any local economic benefits. Allowing the 3

wind farms would mean that, between Strathkyle and Brae, over 60 turbines would be visible within a 5-mile radius, on elevated ground, turning a rural area into an industrial site, and destroying its natural beauty. All 3 sites would also be seen, at much closer quarters, from Altass, and from several Munros. Even if THC's decision on Achany is found to be inconsistent with that on Rosehall, the appeal should not be sustained unless there is a convincing case that both schemes should have been allowed.

117. Having agreed to allow Rosehall Hill, THC is taking a huge gamble in not rejecting additional wind farms on traffic grounds and failed to undertake a proper risk assessment regarding emergency cover in the event of combined flooding on the A837 and the C43 at Inveroykel, accidents on the A837, and the collapse of parts of the un-engineered A839. If an accident on the A839 near the village coincided with flooding on the A837 and the C43, emergency services could not reach Rosehall. The THC traffic witness was unconvincing, ignored the 20-minute guideline for HGVs that the Council applies to timber lorries on the A839, and did not appreciate the dangers that could arise. No TMP is foolproof and the other conditions do not adequately address potential problems. Some of the traffic figures in the ES are out-of-date and do not take account of increased flows over the past 5 years, particularly in summer. A computer generated test proves only that a low loader could get from A to B and does not show what can happen in reality. SSE's traffic representative agreed that the A839 could be closed when low loader deliveries were underway.

The case for residents at Durcha

118. Ms Mouat and Mr Mouat, who spoke on behalf of other residents at Durcha, shared the local concerns summarised above and regard THC's apparent willingness to allow 3 wind farms to be built concurrently and using a single-track, un-engineered road for very heavy loads without knowing how this road is constructed as a recipe for disaster. Residents would be unable to realise the value of their homes or enjoy a satisfactory quality of life, potentially for 3 years. At the very least, the community should be involved in the development of the TMP to ensure that it fully addresses emergency cover and economic impacts. The ES acknowledges that Achany would have a significant landscape impact on houses at Durcha and a high impact on residential amenity. SSE's responses to requests for information were not always helpful, despite SE advice that it is good practice for developers to inform local residents about their proposals.

119. Residents are also not satisfied that cumulative noise issues have been satisfactorily addressed. The Achany ES states that noise sensitive residential properties did not constrain the scheme design and it does not take account of noise from Rosehall Hill. The noise levels at West Durcha predicted by Hayes McKenzie from Achany alone, which are higher than those in the ES, are stated to be "above the daytime noise limits for wind speeds between 6.5-9.5 m/sec". Hayes McKenzie also predicts that the daytime limits would be exceeded when both wind farms were operating. While reduced property values, *per se*, may not be regarded as a material planning consideration, the 25% reduction in values at Durcha estimated by a Chartered Surveyor provides a proxy quantitative illustration of the loss of amenity due to noise in what is currently a quiet rural area in the event that an "acceptable" noise level of 35 dB_{LA90} was exceeded. The fact that Rosehall is closer to West Durcha than Achany is unlikely to account for all of the difference in predicted construction noise levels from the two sites. Noise and vibration from blasting are also concerns, including on account of their impacts on livestock. While SSE's noise witness provided a reasonable explanation for the differences between his revised predictions and the levels predicted by Hayes McKenzie, it is difficult to know which figures are the more accurate and residents are not persuaded that noise problems will not arise. Although SSE now accepts that it would be obliged to take remedial action if the limits were

exceeded, this could take time. Residents would have to suffer noise until the situation was resolved.

120. Finally, water for stock and croft land at Durcha comes from burns and could be affected by this development. Two houses also rely on a private water supply. The risk of peat slippage should be carefully considered.

CONSULTATION RESPONSES, REPRESENTATIONS AND OTHER WRITTEN SUBMISSIONS

121. Consultation responses from parties that did not give evidence at the inquiry can be summarised as follows:

- **Lairg Community Council**, in whose area the appeal site is located, supported the application, but asked that reservations that the proposal did not conform to the HRES, transport impacts on Lairg, impacts on tourism and related businesses, and visual impacts, should be considered.
- **The SE Rural Group Wildlife & Habitats Division** referred to the protection afforded to European and certain other animal and bird species and to SAC and SPA qualifying interests, and stated that SNH's recommendations and a pre-construction walkover survey of the site for protected species should be the subject of conditions.
- **The SE Air, Climate and Engineering Division** had no comments.
- **The SE Trunk Road Network Management Division** (SE-TRNMD) noted that the proposal would increase traffic movements on the local road network but regarded the environmental impact on the trunk road network as likely to be minimal. Liaison with TRNMD staff regarding the feasibility and administration of transporting large loads was recommended.
- **The Civil Aviation Authority** advised that aviation obstruction lighting might be required and that any turbines more than 300 feet (sic) high would have to be charted on aviation maps. **Defence Estates** stated that it had no concerns but asked to be informed of construction dates and the height of some structures if the development went ahead. **NATS (En Route) Ltd**, which is concerned with Air Navigation and Safeguarding, and **Highlands and Islands Airports Ltd,** had no objections.
- **Ofcom** stated that none of the civil microwave fixed links that it managed would be affected by the proposal. **The Joint Radio Company**, on behalf of the UK Fuel and Power Industry, did not expect interference problems with communications systems operated by utility companies.
- **SEPA's** recommendations included that a CMS should include procedures for cable water crossings and in the event of bursts (if oil cooling was employed), a surface water management plan for the concrete batching plant, details of proposals for waste management; planning conditions prohibiting the culverting of watercourses on the site, a minimum buffer of 50 m around surface waters, watercourse monitoring; and sufficient ground investigations to ensure that any planning permission reflected the likely borrow pit requirement.
- **Historic Scotland** stated that the proposal was unlikely to adversely impact on the heritage resource of the area to a degree that would merit objection. However, the cumulative impact of multiple wind farms in the vicinity was likely to compound adverse impacts on the setting of monuments. Future proposals for other wind farms in the area would be of concern.
- **THC Environmental Health** officials, who had no objection, recommended that standard conditions on noise should be imposed if permission was granted. It also commented that cumulative noise issues might arise if Rosehall Hill and Achany were both built, although no significant noise issues should arise with Achany alone.

- **THC's Geotechnical Section** stated, following receipt of the 2006 peat stability assessment, that adherence to an approved CMS and a restoration method statement would minimise any risk to water quality.
- **THC's Archaeology Unit** stated that the proposal did not have any direct impacts on recorded archaeological remains; that, while the potential for discovering unrecorded buried remains during construction was low, this could not be discounted as the site is close to a rich archaeological landscape; and that a sample length of the access track should be observed during initial excavations in order to record any remains that came to light.
- **THC's Access Officer** stated that any permission granted should take account of SSE's obligations under the Scottish Outdoor Access Code.

122. In addition to its objection on peat stability and conditioned objections on otter, Atlantic Salmon and freshwater pearl mussel, **SNH** advised in April 2006 that arrangements for post-construction bird monitoring should be agreed, mitigation measures for wildcat identified and implemented, together with the mitigation measures for water vole identified in the ES, with a 10 m buffer along watercourses, except where a track crossed a watercourse; a detailed CMS and an HMP; and that arrangements for access to the site should comply with the Land Reform (Scotland) Act 2003. It also stated that the cumulative landscape impacts of Achany and Rosehall were acceptable, but the cumulative impacts of Achany and Invercassley were unacceptable. Expanding on landscape impacts, it stated that while Achany would have some negative impacts on the landscape quality of the hills on which it would be located and appear on the skyline from other locations, including the Dornoch Firth NSA and SAWLs to the south, at a broad scale, it would relate to the landscape character of the area and its significant impacts were acceptable. The cumulative impacts of Achany and Rosehall were acceptable because they would not be substantially higher than for each scheme on its own. The unacceptable cumulative impacts of Achany and Invercassley was due to the likely adverse impacts of Invercassley. SNH also referred to its comments prior to the submission of the SCI that the cumulative landscape impacts of Achany and Rosehall could be considered complementary, due to their location alongside each other on the same south-west facing slopes and similar layout design, and that from many viewpoints they would appear as one wind farm.

123. The Council received **34 objections** to the Achany application, including a letter signed by 29 residents of Strathkyle and Ardgay. Some objectors wrote to confirm their objections following notice of the appeal. The main concerns raised are that the proposal would not accord with the development plan or with the HRES, would have adverse effects on visual and residential amenity, tourism, the River Oykel SAC and other watercourses, the Rosehall Trails, and on the local road network during construction, and that there would be adverse cumulative impacts if more than one wind farm was developed in the area. Adverse effects on birds and on property values, noise, shadow flicker and ice throw problems are mentioned, and the prospect of local economic benefits is disputed.

124. **RSPB Scotland,** which objected that Achany could have an adverse effect on the integrity of the CSPSPA, specifically in relation to golden plover and greenshank, submitted a further written submission to the inquiry. This confirmed the RSPB's view that an appropriate assessment was required to determine the significance of the impact on the SPA, that the ES did not contain enough information for this purpose and under-estimated the potential for increased mortality due to collision risk and/or indirect habitat loss. To address these issues, a survey of potential golden plover feeding areas to the south of the site and further information on greenshank were sought or, alternatively, relocation of the turbines at the northern end of the site. As matters stood, the RSPB regarded the proposal as contrary to Policies ENV 1 and ENV 3 of the SESLP, to Policies E2 and N1 of the HSP, to NPPG 14, SPP 6 and PAN 45, to Policy E.7 and guidance in the HRES, and to the

objectives of the Sutherland Local Biodiversity Action Plan (LBAP) regarding habitat management. However, the RSPB stated that it would be prepared to reconsider its objection if an appropriate assessment for golden plover and greenshank had a favourable outcome or (in the case of greenshank) the turbines nearest the SPA were relocated; and if a Habitat Management Plan (HMP), monitoring proposals, and a Construction Method Statement (CMS) were required to be approved before work began on the site.

125. **Highland Renewable Energy Group (HiREG)**, which supported all 3 Lairg applications, stated that the HRES regards local content as a valid consideration and that the applicants had spoken about placing significant work with HiREG members. Renewable energy was a major opportunity to reinforce the Highland economy and gain export business. Over 600 jobs in Highland depended on the renewable energy sector, in which onshore wind would continue to be the main driver. Companies interested in manufacturing turbines and towers in Highland wanted to see wind farm consents coming on-stream.

126. In June 2007, **E.ON** wrote to request that, if the appeal was allowed, SSE should be made responsible for addressing any cumulative noise issues that arose if Achany and Rosehall Hill were both built.

CONDITIONS AND LEGAL AGREEMENT

127. The conditions tabled by the Council, which include the noise and roads and transport issues discussed at the inquiry, also cover a range of other matters, including a micrositing tolerance of 10 m for the tracks and turbines (other than turbine 1); approval of a CMS; the appointment of an Ecological Clerk of Works (ECoW, condition 9); details of controls and other mitigation in relation to peat stability; safeguarding and mitigation measures for birds (including, in condition (12), a requirement for the wind farm to be constructed outwith the main bird breeding season) "where necessary" to avoid disturbance to nesting locations of Annex 1 and Schedule 1 species; mitigation measures for otter, water vole, and (if found to be required) wildcat; an HMP; controls over the working of the borrow pits, including blasting; and site restoration and reinstatement. Taking account of adjustments agreed at the inquiry, the main differences between the main parties are that SNH wishes condition (9) to define the scope of the role of the ECoW, rather than reserving this for the planning authority's approval and the deletion of "where necessary" from condition (12). It also wishes the planning authority to be required to consult SNH before conditions relating to the natural heritage are purified and would prefer references to the "company" and "developer" to be defined to include any successors and assignees.

128. The legal agreement would provide for financial bonds (or other financial guarantees) to cover the cost of restoring the site, the cost of road reinstatement/repairs attributable to the construction of the wind farm, and the remediation of any interference to radio or television reception. The Council and SNH consider that an agreement is preferable to conditions covering these matters as it ensures that adequate financial provision is in place before permission is granted. SSE is content with the terms of the agreement, which it regards as consistent with THC's approach to other wind farm proposals in the area, and advised that the owner of the site is willing to be a party to an agreement along the lines proposed.

CONCLUSIONS

129. Notwithstanding the submission by the planning authority reported at paragraph 99, I require to determine the appeal on its merits, in terms of section 25 of the Act, and thus in accordance with the provisions of the development plan unless material considerations

indicate otherwise. I therefore consider, on the basis of all the relevant evidence at the inquiry, my site inspections, and the written submissions, that the determining issues are whether the proposal is consistent with the provisions of the development plan; and, if not, whether there are material considerations that justify making an exception to these provisions. My conclusions on these issues take into consideration all the environmental information that has been provided on the proposal.

130. The statutory development plan covering the appeal site, except for a small area of land just inside the south-western boundary, comprises the Golspie and Lairg Local Plan, which was adopted by the former Highland Regional Council in 1983, and the Highland Structure Plan, which Scottish Ministers approved in March 2001. For the south-westernmost area, the South & East Sutherland Local Plan, which the present Council adopted in 2000, and the HSP, make up the development plan.

131. Dealing with these plans in chronological order, given its age, it is not surprising that the innovative rural land uses that the 1983 plan mentions in the context of Policy 30 do not include renewable energy developments. The appeal proposal does not set out to provide for increased public access, or an additional visitor activity or facility, and thus does not draw positive encouragement from Policies 31 or 46. However, the local plan has largely been overtaken by events and it refers to nature conservation and landscape policies in a structure plan that was approved in 1980 and is long superseded. It is therefore fortunate that there are more recent development plan policies that address the issues raised by the appeal, including its potential to affect the activities that are encouraged by Policies 31 and 46.

132. In that regard, Policy ENV 3 of the SESLP, read in terms, imposes a general presumption against development in the small part of the site to which it applies. However, Strategic Policy 16 supports renewable energy development in the plan area where this accords with the structure plan and the national planning guidance that were in force when the plan was adopted. While it requires schemes to be assessed against the provisions of Strategic Policy 17, the part of the site covered by the SESLP contains only 3 turbines and associated lengths of track, whereas the impacts of the proposal can only be properly assessed in the context of the scheme as a whole. Given also that the current structure plan and current national policies and guidance address the issues listed in Strategic Policy 17 that are relevant to the appeal, I conclude that the scheme ought to be assessed in the context of this current material. SPP 1 states that, while there is an expectation that development proposals that accord with the development plan will be granted permission, other considerations such as more recent expressions of policy and planning guidance may outweigh the policies of the plan, either in favour of, or against, the development, and that similar circumstances may apply where plans are out of date and less relevant to changed circumstances. The potential for the scheme to undermine the achievement of the aspirations for Rosehall described in Strategic Policies 3 and 4, and the roads intentions described in Strategic Policies 10 and 11, can also only be properly assessed in the context of the entire scheme. As there are HSP and national policies that address these issues, they ought to be considered in that context.

133. The sustainability objectives from which the structure plan's strategic themes are developed and from which its General Strategic policies emerge cover a wide range of social, economic and environmental goals, some of which are likely to give rise to conflict in practice. Determining where the balance of advantage lies where specific proposals are concerned will therefore require a balance to be struck in order to reconcile potentially conflicting objectives. This balance is thus an integral part of achieving conformity with the strategy, with Policy G1, and with the other General Strategic policies against which the

plan requires all developments to be assessed. Paragraph 2.1.1 of the plan makes clear that this assessment should precede consideration against other relevant policies.

134. The criteria in Policy G2 are also wide-ranging and not all are likely to be relevant to all developments. The first, eleventh and twelfth criteria appear to be directed primarily at conventional built schemes. Accessibility by means other than car (the second criterion) and the use of brownfield land, existing buildings and recycled materials (the sixth criterion) are unlikely to be practical propositions for a wind farm, which generally requires a rural location, a sizeable area of land, and a degree of separation from dwellings. The fourth criterion appears to apply to existing hazards that pose a significant risk, whereas the evidence indicates that the risk of peat becoming unstable while the site remains undeveloped is low. Implications for adjoining sites designated for their nature conservation interest in the event that the development was implemented and the risk was increased are considered below, in the context of Policy N1. The site is not affected by a safeguarding zone associated with an industrial installation, with which the fifth criterion is concerned.

135. While the third criterion's aim of maximising energy efficiency may sometimes require to be tempered in practice by environmental considerations, it would be surprising if a prospective wind farm developer was to pursue a site with a poor wind resource. In this case, the energy yield map produced for the site, which is based on records over a 4-year period, indicates that Achany's wind resource is suitable for the purpose proposed, which is to utilise a source of renewable energy.

136. The seventh criterion is concerned with effects on residential amenity. In that regard, in the absence of any technical evidence that the turbines, which would be 1.7 km from the nearest house, are likely to give rise to significant ice throw or shadow flicker problems, the relevant issues to consider are the scheme's visual effects and, as far as Rosehall Cottage and houses at Durcha are concerned, noise and vibration from blasting.

137. Dealing with these in turn, the introduction of tall, industrial type structures such as wind turbines has the potential to affect residential amenity in all except very remote and unsettled locations. However, only a few blade tips would be seen from the main parts of Lairg. Any views from houses at Bonar Bridge, 15 km to the south-east, and from around Rogart, east of Lairg, would be substantially mitigated by distance. The turbines would not be seen from houses in Glen Cassley and intervening woodland would limit views from locations to the south such as Rosehall and Auchintoul, and from houses around Invercassley Bridge, most of which face south-east. Some residential properties at Doune would see a significant proportion of the turbines on the skyline, but about 7 km away and in the context of a wide view. Views from Auchnairn, 9 km to the north, on the far side of Loch Shin, would also be mitigated by distance.

138. Many of the properties that extend along the minor road south-east of Altass face south across the Kyle of Sutherland. However, the ES refers (notwithstanding the evidence of the SSE landscape witness reported at paragraph 51) to the likelihood of a significant effect from Altass itself, from Achnahanat on the south side of the Kyle and, at close range, from Durcha and Netherton. In the latter two cases, it also acknowledges that the effect on residents would be major. Deciding whether these effects are significantly detrimental is a matter of judgement and individual attitudes will be influenced by a wide range of factors. However, the turbines would be 5.5 km from Achnahanat from where they would be part of a very wide view, and would be over 3 km from Altass beyond woodland. Netherton, and Durcha in particular, from where up to 14 turbine hubs would be seen, are significantly closer and the intervening forestry cannot relied upon to remain in perpetuity. However, the turbines would be far enough away from houses not to be overbearing or dominant. As they would be located beyond a break of slope, they would also be less obvious from

properties at Durcha than from Viewpoint 2, which is at the roadside. The other elements of the development would not be visible, and the houses have views in other directions that would not be affected. Rosehall Cottage is set in woodland downhill from the site and has its main aspect in the opposite direction.

139. The wind farm would also produce noise during construction and in its operational stage. The maximum predicted construction noise level of 37 $dBL_{Aeq\ 12\ hour}$, at West Durcha, while probably audible, is well below the target level of 55 $dBL_{Aeq\ 12\ hour}$ that PAN 50 identifies as the normal daytime limit for mineral workings. I find this unlikely to be significantly detrimental to residential amenity during what is likely to be a relatively short construction period, particularly if working hours and noise levels were limited as proposed. As the access track to the Rosehall Hill wind farm is much closer to Durcha than the track to Achany, it is reasonable to expect construction noise levels at Durcha from that scheme to be significantly higher. No party argues that Rosehall Cottage, which is 2 km from the nearest borrow pit on the appeal site, would be seriously affected by construction noise.

140. The ETSU-R-97 methodology, which PAN 45 describes as presenting a series of recommendations that can be regarded as relevant guidance on good practice, seeks to provide indicative noise levels thought to offer a reasonable degree of protection to wind farm neighbours, without placing unreasonable restrictions on wind farm development. It therefore aims, in common with Circular 10/1999 and PAN 56, to strike a balance between potentially conflicting interests in relation to noise and provides a suitable basis for assessing whether the test of significant detriment is met. ETSU recommends the use of the $LA_{90,\ 10min}$ index for wind farms, a daytime noise limit of 5dB(A) above background, except in "low noise environments", where an absolute limit of 35-40dB(A) (based on the number of dwellings in the neighbourhood, the effect of noise limits on power generation, and the duration and level of exposure) should be imposed, and a fixed night-time limit of 43dB(A). It also recommends that, where an occupier has a financial interest in a wind farm, the daytime and night-time fixed limits can be increased to 45dB(A) and that, in those circumstances, consideration should be given to increasing the permissible margin above background.

141. The maximum noise level predicted by SSE at Rosehall Cottage from Achany alone meets the fixed night-time limit of 43dB(A) recommended in ETSU-R-97 but exceeds, at wind speeds above 5 m/sec, the 35-40dB(A) daytime range that ETSU-R-97 recommends for low noise environments. However, based on background readings at Walkerdale, which are unlikely to be lower than those at the cottage, where the assessment notes that wind through the trees will generate noise at high wind speeds, it is within the 5dB(A) above background derived limit that would also satisfy the Council. As the owner of the cottage appears to have an interest in the Rosehall Hill wind farm, a limit of 45dB(A) in the event that both schemes were developed would be permissible in terms of ETSU-R-97. Cumulative noise levels are unlikely to be an issue in any event as the permission for Rosehall Hill would require the cottage to be removed if the E.ON wind farm was built.

142. I have no technical basis for imposing a more stringent night-time noise limit than recommended in ETSU-R-97, although this is unlikely to be reached in practice. Adherence to the proposed day-time limits, which are generally consistent with the ETSU-R-97 recommendations, should ensure that noise did not have a significantly detrimental impact on residential amenity at Durcha at that time. SSE accepts that it should be responsible for addressing any cumulative noise problems that arose. However, it would be undesirable to impose conditions that are likely to be impractical to achieve. In that regard, all the predictions for West Durcha are within the Council's proposed limits, based on measured background levels at Walkerdale, which the ES states THC agreed was representative of properties at Durcha. Hayes McKenzie's comment that the limits would

sometimes be exceeded appears to be based on a limit of 35dB(A). That said, the Hayes McKenzie predictions are significantly higher than SSE's, particularly in circumstances where both Achany and Rosehall Hill were operating. Given these differences, local concerns regarding the reliability of some of the predictions are understandable.

143. However, as the Hayes McKenzie predictions appear to be based on sound power levels for the V66 candidate turbine higher than the warranted level, a lower level of barrier attenuation than assumed in the ISO-9613-2 noise propagation model that forms part of the ETSU-R-97 methodology and, unrealistically, intervening hard ground, they seem likely to be an overstatement. On the evidence, I find the limits proposed by the Council, which would apply irrespective of the turbine model used, likely to be achievable without recourse to further mitigation, although it would be prudent to assign at the outset responsibility for remedial action should this turn out to be required. The 25% reduction in property values that residents obtained as a "proxy" indication of loss of residential amenity is also based on 35dB(A) as the acceptable level, whereas ETSU-R-97 recommends a range of 35-40dB(A) or 5dB(A) above background, depending on local circumstances. As blasting at the borrow pits is unlikely to be frequent and the vibration limits that are proposed are consistent with recognised guidance, there is also no reason to expect vibration to be significantly detrimental to residential amenity, particularly if prior notice was to be given.

144. On the basis of my conclusions at paragraphs 136-143, I agree that the appeal proposal would have a significant effect on some views from some properties. However, significant effects are not necessarily unacceptable and I conclude that its effects on residential amenity overall would not be significantly detrimental.

145. The resources that require to be considered for the purposes of the ninth criterion are habitats, species, landscape and scenery, the freshwater systems draining to the Grudie Burn and the River Oykel, and the cultural heritage. The SNH Strategic Locational Guidance makes clear that the inclusion of an area in Zone 1 does not imply absence of natural heritage interest.

146. Dealing with these resources in turn, the ES confirms that the footprint of the development would result in the loss of 20 ha of wet modified bog, a type of blanket bog. Active blanket bog is an Annex 1 priority habitat in terms of the Habitats Directive and a UK BAP and a LBAP priority habitat. The 2 ha or so of wet heath that would also be lost is also in Annex 1 and is an Action Plan UK BAP and LBAP habitat. Article 2 of the Directive obliges Member States to maintain or restore Annex 1 habitats at favourable conservation status. However, the bog habitat at Achany has been degraded by grazing and drainage and does not appear to be a good example of this habitat type. The ES indicates that the wet heath on the site is also degraded and that disturbed areas are likely to be capable of relatively speedy regeneration. The areas of other habitats that would be lost – conifer plantation alongside the existing access track and acid flush - are small, particularly in relation to their representation in the area, and of lesser conservation value. As 20 ha is less than 2% of the wet modified bog recorded in the study area, and there is 1.06 m ha of blanket bog vegetation in Scotland, there is no reason to expect the obligation under Article 2 not to be fulfilled. Although some additional habitat would be disturbed if peatslide occurred, circumstances in the areas most vulnerable to instability are likely to limit the extent of the effect. The inclusion of a habitat restoration obligation in the CMS and an HMP should provide further reassurance.

147. I am also satisfied that the mitigation proposed in the ES, which could be secured by conditions, would avoid adverse impacts on otter, which is a European protected species, and on water vole. Effects on salmon and freshwater pearl mussel, which are qualifying interests of the River Oykel SAC, would depend on the maintenance of suitable water

quality in their freshwater habitat, in respect of which my conclusions at paragraph 155 are pertinent. The survey work undertaken to date has not revealed signs of wildcat.

148. Wind farms can have detrimental impacts on birds due to collision risk, loss of habitat and disturbance. The appeal site supports breeding populations of upland waders, notably golden plover and greenshank, which are listed respectively in Annex 1 of the Birds Directive and in Schedule 1 of the Wildlife and Countryside Act. It also provides foraging habitat for hen harrier, which is also listed in Annex 1. Other, non-breeding, species in one or other of these categories and species of lesser, but still noteworthy, nature conservation importance have also been recorded on the site and in its vicinity. I therefore agree with SNH that the limited information available on the effects of wind farms on bird populations justifies a cautious approach.

149. In that regard, the evidence, including information on nesting locations, flight paths, the potential for habituation in some cases, and the 2007 surveys relating to golden plover, indicates that the incidence of bird mortality as a result of collisions is likely to be moderate at most. The types of foraging habitat that would be lost are widely represented in the surrounding area and the areas affected would be relatively small. However, golden plover and greenshank are both highly sensitive to disturbance. Circumstances at Achany can be distinguished from those at Ovenden Moor, where no evidence of disturbance to golden plover was found, and there is no dispute that some breeding pairs could be displaced. The ES acknowledges that the local golden plover population would be moderately affected, and that the effect on the local greenshank population would be high during construction and moderate during the operational period. While any adverse effects would be regrettable, the fact that wind farms generally require upland rural locations in order to operate effectively requires a balance to be struck. I find this proposal unlikely to have a significantly detrimental effect on the distribution and the viability of the wider populations of both species, provided that mechanisms to minimise disturbance during the breeding season are imposed. The potential for effects on habitats and species associated with sites designated for their nature conservation interests are considered in the context of Policy N1.

150. As far as effects on landscape and scenery are concerned, the ZVI maps demonstrate that turbines could be visible more than 30 km from the site. PAN 45 recognises that there are no landscapes into which a wind farm will not introduce a new and distinctive feature and that it will normally be unrealistic to try to conceal turbines. It also recognises that visual effects will depend on the distance over which the wind farm is visible, whether the turbines can be viewed adjacent to other features, weather conditions, the character of the development and the landscape and nature of the visibility.

151. The appeal site is located in an area in which open rolling moorland and extensive commercial forestry predominate. The convex profiles of most of the hills in the area tend to limit visibility from a distance and views of hill tops from their bases. The SNH Landscape Strategy and Assessment Guidance for Wind Energy Development within Caithness and Sutherland considers that wind farm development in the Moorland Slopes and Hills LCT will probably have a high extent of visibility, but is unlikely to intimidate its surroundings due to the landscape's spatial exposure, will only occupy a small amount of visible skyline, and may seem to disappear into the background when viewed from a distance. While it makes clear that it does not attempt to define the best type of wind farm design or location, but simply to highlight the main issues that should be addressed in assessing proposals, the characteristics described above mean that the area is likely to have the capacity to accommodate some wind farm development in landscape and scenic terms. Whether a particular scheme is acceptable will depend its location, its layout and design, and other site specific considerations.

152. In that regard, I agree that the viewpoints in the ES, which were selected in consultation with the planning authority and SNH, are sufficiently representative to allow the scheme's impacts to be adequately assessed. The significance of these impacts, and whether they are acceptable, are matters of judgement. From the more distant viewpoints, 20 km or more from the site, such as Carn Chuinneag, Ben More Assynt and Ben Klibreck, and from Viewpoint 15 south of Crask, over 18 km away, the turbines would be minor elements in a very wide scene. Construction effects would be temporary and the other completed elements of the scheme would be less apparent than the turbines. I find that the effects on the landscape and scenery from these locations would not be significant. PAN 45, having identified 100 m high turbines as an example of turbine size, refers to a wind farm 15-30 km away as only seen in very clear visibility and generally perceived as a minor element in an open landscape.

153. The effects from Viewpoints 11-14, which are representative of medium range views, within 10-15 km from the site, would be greater as the development would be more obvious. However, distance would moderate these effects. From Strath Oykel, the landform would have a partial screening effect and the turbines that would be visible would tend to be off-set from the main direction of view, which is eastwards down the Strath. Views from the north-eastern side of Loch Shin, to the north of the site, would tend to be drawn south-eastwards down the line of the loch. Although most of the turbines would be seen on the skyline, between framing hills, in what is likely to be the main direction of view from the Bonar Bridge crossing of the Kyle, they would be over 15 km away and seen in the context of what is still a wide and varied landscape. The wind farm would also coincide with the main view from the Invershin footbridge, at closer hand, but its turbines would be seen in a similar landscape scale and in the context of existing electrical conductors and pylons.

154. The turbines would be most prominent in closer range views, from within 10 km of the site, as they would appear larger and more obviously moving. However, the skyline effects from the A839 to the south would be localised. Only 4 blade tips would be seen from Ord Hill and the turbines that would extend along the skyline in views from the south side of the Kyle of Sutherland, from around Doune, and from above Lairg, would be seen in the context of a long horizon above a varied and settled landscape. From the lay-by on the A839 south of Lairg they would sit in a saddle between two peaks. While the effects on the landscape and scenery from some of these locations would be significant, it does not follow that they would be significantly detrimental. Having also had regard to the fact that the turbines would not appear out of scale with the landscape and that their height would respond to the landform, I conclude, as far as this criterion is concerned, that the policy test would not be infringed. The landscape and visual effects would be greater if Rosehall Hill was also built, in that more turbines would be visible, principally from the north, north-east and south, and there would be a significantly more extensive array from the south and south-east. However, from most of the locations from which both schemes would be visible, they would be seen simultaneously. Due largely to their proximity to each other, and notwithstanding differences between their layouts, slope aspects and height, they would be perceived as one wind farm. Accordingly, in this scenario, Achany would have a lesser effect that it would on its own.

155. While it is impossible to predict all eventualities, on the basis of my conclusions at paragraphs 134 and 146 in relation to peat stability, and the consultation responses from SNH and SEPA, implementation of a robust CMS that incorporated the mitigation measures identified in the ES, and provided for monitoring, should avoid significantly detrimental impacts on freshwater systems, including the River Oykel SAC. With these in place, there is also no reason to expect adverse effects on freshwater fisheries, which Policy FA4 seeks to promote and enhance, or on private water supplies at Durcha.

156. Historic Scotland does not regard the likely impacts on the cultural heritage as meriting objection. I agree with this conclusion. There are no recorded archaeological remains on the site and the potential for discovering unrecorded buried remains seems low. The proposed conditions, which accord with Policy BC1, cover the possibility that unrecorded remains could be discovered. The scheduled monuments and other cultural heritage sites within 5 km of the site, including around Durcha, in the valley of the Grudie Burn, east of Braemore, and around Rosehall and Altass, are on much lower ground, within or enclosed by woodland, and far enough from the site for their settings not to be detrimentally affected. I reach the same conclusion regarding the 4 blade tips that be visible from the scheduled cairns and archaeological trail at Ord Hill. The wind farm would not be visible from the only HGDL within 30 km, at Skibo Castle, a designation that Policy BC4 seeks to preserve.

157. As far as criterion 10 is concerned, I have already noted that the turbines would vary in height in response to the landform. From most directions, they would appear as a generally ordered rather than a random grouping. The first part of the access would use an existing track, while the new tracks would run initially in a shallow saddle and then generally along the contours. The on-site cabling would be underground. The control building to which this would connect would sit between Sron nan Iarnachan and Cnoc na Cloich-bhuaile and would not be conspicuous from outwith the site. I am also satisfied that any views of the borrow pits from outwith the site would be significantly mitigated by woodland and/or topography. I find that the scheme's siting and design take sufficient account of the local character and environment to avoid significantly detrimental effects. The materials proposed are appropriate for a wind farm.

158. Turning to the final criterion, the wind farm would provide job opportunities at the constructional and operational stage and could benefit local accommodation providers and equipment suppliers in Highland. However, these contributions have to be weighed against the potential for adverse effects on the tourist industry that is very important to this part of Sutherland. Although the wind farm would not be visible from the Shin Falls Visitor Centre, which is the most popular tourist destination in the area, from the Countryside Centre in Lairg, or from the village centre, where most local facilities are located, the Rosehall area is likely to attract those who enjoy outdoor pursuits such as walking and angling and who are likely to be sensitive to changes in the rural environment. Many of the tourists who come to the area are also likely to be attracted by its high quality scenery. Visitors would see the turbines from a variety of roads as they travelled around the area, including the Moray Firth National Tourist Route. As your consultant did not identify the tourist-related businesses that he contacted, their precise location and nature are unclear. Moreover, as responses to wind farms will be influenced by a wide range of factors, including individual attitudes and sensitivities, his quantitative analysis seems unrealistically precise.

159. That said, views of the wind farm from roads would be intermittent in the context of a journey and, if the Rosehall Hill scheme was built, the turbines on both sites would sometimes appear as part of a larger group. From the Struie Hill Viewpoint 22 km from the site, the two schemes, on their own or together, would be distant features. The appeal site itself is not frequently used for recreation and the proposal would not physically affect the Rosehall Trails in the woodland to the south-west, which are included in THC's Consultative Draft Core Paths Plan. While visitors using some of the trails could be aware of some of the turbines, the intervening woodland would mitigate any adverse effects, the turbines nearest to the track leading to the viewpoint near Dior a' Chatha, and the viewpoint itself, are 500-600 m away and would be behind the viewer. Even if some potential users were to be deterred, the trails are unlikely in themselves to cause tourists to visit the area, but rather to serve as an incidental destination for those who are already there. The Rosehall

Hill scheme, if built, would have direct and much more significant effects on the trails. About 70% of respondents to the VisitScotland survey, which objectors cite as demonstrating the adverse effects of wind farms on tourism, indicated that the development of wind farms would not affect the likelihood that they would return to an area. It also reflects intentions rather than outcomes in practice and the "after the event" surveys that have been done present a generally encouraging picture. Accordingly, while it is possible that local tourist businesses could suffer adverse effects, I am not persuaded that the effects on the area would be significantly detrimental, or that the aspirations for Rosehall expressed in Strategic Policies 3 and 4 of the SESLP would be undermined.

160. On the basis of my conclusions at paragraphs 134-159, I conclude that the proposal would not be significantly detrimental in terms of the relevant criteria of Policy G2 and that it would accord with the policy.

161. The submission of the ES and other assessments satisfy the first part of Policy G3. This accepts that the development would have some significant effects that might be adverse and SSE does not argue, in the context of seeking to develop a portfolio of sites, that no reasonable alternatives exist. It also does not argue, at least in terms of this policy, that the scheme would have an over-riding strategic benefit. However, I am satisfied, in relation to the effects I have considered this far, that satisfactory mitigation measures could be incorporated in the scheme.

162. Turning to Policy G4, my conclusion at paragraph 158 indicates that construction of the wind farm could benefit the local community in some respects and HiReg and the HRES refer to the economic development opportunities for Highland that could arise from renewable energy development. In any event, this sentence is qualified by reference to wider national interests, which would in principle be served by the development of renewable energy. If the appeal was allowed, it would be appropriate for an agreement to provide for site restoration and road improvements, maintenance and repair, as well as for remedying any TV and radio interference problems. SPP 6 makes clear that, while Community Trust Funds can support a variety of local projects, they can only be offered at a developer's discretion.

163. The best construction I can place on Policy G5 is that it is directed at heritage initiatives, which are not proposed here. Accordingly, in common with Policy G7, which relates to the administration of community planning, it is not relevant to the appeal.

164. The high quality landscapes that stand to be considered for the purposes of Policy G6 are the Dornoch Firth NSA, the Assynt-Coigach NSA, the existing or proposed AGLVs in the Ben Klibreck, Ben Dearg-Fannichs and Glen Loth-Glen Fleet areas, and the Skibo Castle HGDL. Dealing with these in turn, given their distances from the site, and having had regard to my conclusions this far, I agree with the SSE and THC landscape witnesses that the proposal would not have significant adverse effects on the NSAs or AGLVs concerned. SNH does not argue that the appeal should be dismissed on account of its impacts on any of these areas and there is no reason to expect the proposal to prejudice Recommendations L1-L3, which relate to future landscape designations, or an NSA review. As the wind farm would not be seen from the Skibo Castle HGDL, the landscape element of Policy G6 would not be infringed. No party argues that the proposal would affect an area identified for its high quality archaeological or built environment interest. The intention expressed in the policy regarding the conservation and promotion of areas identified as being of high quality on account of their nature conservation interest is reflected in Policy N1, which I consider at paragraphs 166-171. Policy G6 can therefore be regarded as being satisfied in this respect if Policy N1 is also satisfied.

165. As there is sufficient information to allow the scheme's potential impacts to be assessed, the precautionary principle to which Policy G8 refers need not be invoked. The policy recognises that such situations will be relatively rare.

166. While there are no sites of local nature conservation importance that it is argued would be adversely affected by the proposal, its nature, its proximity to the CSPSAC and CSPSPA and the Grudie Peatlands SSSI in particular, and the presence of the River Oykel SAC and the Lairg and Strath Brora SPA, mean that the first two parts of Policy N1 are engaged. These reflect the thrust of the statutory provisions that apply to sites designated for their international or national nature conservation importance.

167. As far as the first of these categories is concerned, it is not disputed that the appeal proposal is a plan or project in terms of Regulation 48(1) of the 1994 Regulations and that it is not directly connected with, or necessary to, the management of any of the Natura sites in this part of Sutherland. Regulation 48(1), read in terms, therefore requires me to consider whether the proposal is likely to have a significant effect on any of these sites. This is a matter of fact and degree and ultimately judgement.

168. Against this background, I have already concluded that, subject to the mitigation measures proposed, the proposal is unlikely to significantly affect the River Oykel SAC, or otter, which is a qualifying interest of the CSPSAC. However, I have also concluded that it would have some effects on some habitats and species in general. It is possible, notwithstanding my conclusion at paragraph 149 in that particular respect, that there could be a significant effect on the CSPSAC, the CSPSPA or the coincident Ramsar site, or on the Lairg and Strath Brora Lochs SPA.

169. As far as bog habitat is concerned, given the composition of the peat deposits adjacent to the SAC and the nature of the local topography, I agree with SNH that, provided that the recommended construction methods are followed, no machinery connected with the construction of the wind farm enters the SAC, turbine 1 is not afforded a micrositing tolerance, and conditions to that end are imposed, the proposal is unlikely to have an adverse effect on the bog habitat of the CSPSAC. This is because, with these measures in place, the risk of peat slide should be low and because, due to the local topography, any slide that did occur should not affect the SAC.

170. Turning to the likelihood for effects on the ornithological qualifying interests of the designated sites, of the 4 bird species – hen harrier, red-throated diver, greenshank and golden plover – that SNH identified as requiring further consideration, no hen harrier nests would be disturbed, foraging habitat would not be significantly reduced, and research indicates that collisions rarely occur. Divers are more ungainly, but tend to choose the lowest routes between nesting and feeding grounds, which are unlikely to take them through turbines on the ridge. The evidence, including the 2007 surveys of golden plover, which address an issue raised by the RSPB, indicate that of the golden plover and greenshank that could be displaced, only one pair of each species is likely to be connected to the *SPA* or the Ramsar site.

171. In the light of the above, I conclude that the proposal would not have an adverse effect on the interests for which the Natura sites in this area have been designated, or compromise the integrity of the SSSI, which is also designated for its blanket bog habitat and associated vegetation and upland birds. I am also satisfied that the populations of protected species should be maintained at a favourable conservation status in their natural range, consistent with the duty imposed by Regulation 3(4). Accordingly, Policy N1 would not be contravened and, at least as far as the Regulations are concerned, planning

permission could be granted. In considering habitats and species, I have had regard to the LBAPs drawn to my attention and to Policy G6, as required by Policy N4.

172. While I note SNH's submission regarding Article 6 of the Habitats Directive, the 1994 Regulations make provision of the purpose of implementing, for Great Britain, the Habitats Directives. The 2000 Updated Guidance is not statutory, but it is the terms of the Regulations, which have not been amended following the Waddenzee judgement, that I have to apply. Regulation 48(1) makes clear that the trigger for an appropriate assessment, and consideration of a site's integrity in that context, is the likelihood of a significant effect. This turns on the balance of probabilities. Accordingly, while scientific information will be required to reach a view on whether such an effect is likely in order that a determination under the Regulations is adequately informed, this relates to the stage in the decision-making process that precedes an appropriate assessment.

173. As SNH was satisfied that blanket bog habitat was unlikely to be significantly affected only after further information had been provided, it is difficult to reconcile its view that there was no need for an appropriate assessment in that respect with its insistence that an appropriate assessment was required in order to determine whether there was likely to be a significant effect on ornithological interests. In any event, as SNH concluded that, subject to appropriate conditions being imposed, SPA conservation objectives would not be compromised, deterioration of, or significant disturbance to, qualifying species would be avoided, and the integrity of the CSPSPA would not be compromised, the difference in view between it and SSE on this procedural aspect is academic.

174. As far as landscape character is concerned, Policy L4 is set in the context of the LCAs that have been produced for Highland. The Caithness and Sutherland LCA shows the site at the south-eastern end of a much larger swathe of the Moorland Slopes and Hills LCT, which displays the characteristics described at paragraph 151. The LCA states that a wind farm will relate to the exposed and wind dominated character of the landscape and may appear as a positive, futuristic–looking and sculptural addition. However, it also points out that it may conflict with the sense of remoteness and "wild land" character, particularly if access tracks and substations are required, and that the variable nature of the sloping landform will make it difficult to locate numerous wind turbines without creating a confusing visual image. Wild land characteristics are not strongly expressed at the Achany site. I have also concluded in relation to Policy G2 that the scheme's siting and design take sufficient account of the landscape and environment to avoid significantly detrimental effects. Significant effects would be temporary and/or confined in extent and the proposal would maintain the overall character of the LCT, which is widespread in this area. I reach the same conclusion in respect of the Sweeping Moorland LCT and the Strath LCT, in respect of which the effect would be less. While I am not persuaded that the proposal would enhance landscape character, the policy does not treat this an essential test, but rather as a factor to which it is desirable to have regard. Paragraph 2.14.8 of the plan refers simply to a commitment to assess proposals for their compatibility with present landscape character.

175. As Policy T6 is not confined to protecting views from tourist routes and viewpoints identified in local plans, it is immaterial that neither of the local plans covering this site identifies such features. However, while all of the public roads around Lairg are likely to have some tourist use, the policy is concerned only with important scenic views. I find that the views from the Struie Hill Viewpoint, Bonar Bridge, and the A839 south of Lairg come into this category. In that regard, I am satisfied, having taken my conclusions at paragraphs 152-154 into account, that the objectives of the policy would not be undermined.

176. Policy E1 supports the use of Highland's renewable energy resource in principle, confirming the need for assessment against the plan's General Strategic policies, and the expectation that any permissions granted will normally be for a temporary period and that restoration and reinstatement will be required. Policy E2 further qualifies this support where wind energy developments are concerned in terms of the 6 factors listed, some of which overlap with General Strategic policies. It is a key policy for the appeal and I have come to address it only at this stage because the structure plan requires proposals to be assessed in the first instance against the General Strategic policies and because some of the issues raised by these policies are relevant to subsequent policies in the plan and it is more logical to address them in that order.

177. Against this background, I have considered the proposal's visual and noise impacts under Policy G2 and concluded that these would not be significantly detrimental. There is no technical evidence that the scheme would cause electro-magnetic interference and no party with responsibilities for civil or military aviation suggests that it would affect their interests. As far as roads, bridges and traffic are concerned, the SE-TRNMD, while recommending liaison regarding the transport of large loads, considered the proposal likely to have a minimal environmental impact on the trunk road network. The public roads east of Lairg are of a generally good standard. However, those to the west are essentially single track with passing places, some narrow bridges, limited forward visibility at some parts, and are not well-suited in their current state to significantly increased use by very large construction vehicles. The fact that part of the A839 in this area is built on peat and its structure has not been fully investigated represent further complications. It is therefore important that the scheme's transport impacts and the scope for adequate mitigation are carefully assessed.

178. In that regard, the arrangements that SSE has agreed with the Council are comprehensive. While traffic flows are likely to have increased in recent years, the main issue relates to the physical and operational effects of large, slow-moving vehicles rather than quantitative road capacity. Whether the 20-minute gap between very large or heavy loads that THC regards as a guideline can be reduced will depend on the outcome of an initial structural survey and may make convoys impractical. However, these are optional rather than essential for the construction of the scheme. You agree that the wind farm developer should be responsible for any pre-construction road strengthening, localised improvements and safety measures found to be required and for road maintenance or repairs necessitated by the development. The TMP would allow the planning authority to insist that abnormal loads avoided local peak and school travel times and important local events, and to involve the emergency services in drawing up emergency and contingency arrangements. While coincidental accidents and/or flooding on the A839, the A837 and/or the C43 could prevent access to some areas for a temporary period, it is impossible to foresee all eventualities and any large civil engineering project is likely to cause some local disruption and inconvenience. Having also had regard to the fact that the construction period would be of relatively short duration, I am not persuaded that its effects, or those during decommissioning, would be significantly detrimental in transport terms. The development would generate very little traffic at the operational stage. It would also not prejudice the future road improvements to which the SESLP refers and construction traffic would pass through Lairg for only a limited time.

179. Traffic effects would be greater if more than one wind farm was to be constructed in the area at one time. However, this is unlikely to happen as the other two schemes in this area have grid connection dates that are several years apart and are well beyond the likely lifetime of any permission granted for Achany in the context of this appeal. In any event, as the Rosehall Hill permission is to be subject to the same conditions and agreement as

those proposed for Achany and Invercassley, the Council would be in a position to prevent the more traffic-intensive phases of construction from coinciding.

180. The only other potential cumulative effects, other than noise, which I have considered at paragraphs 140-144, relate to landscape and visual impacts. In that regard, PAN 45 states that it would be unreasonable to expect consideration of cumulative effects to extend beyond schemes in the vicinity of a site that have been built, have permission or are the subject of undetermined applications.

181. Of the two existing wind farm locations within a 60 km radius of Achany, Novar is over 30 km south of the appeal site and would only be visible in association with the Achany turbines from limited areas of higher ground to the east of the A836 south of Lairg and from a wide arc of high ground over 20 km to the south-west, south and south-east of the site, including Viewpoints 16 and 21. The cumulative effects with Ben Tharsuinn would be more widespread and would extend to the west and north of Achany as well as to the south and south-east, including Bonar Bridge and Invershin. However, it is 23.5 km south-east of Achany and, like Novar, would often occupy a different part of the view. The sections of roads from which there would be combined visibility of Achany with one or other of both of these schemes would be relatively short. The locations from which Achany would be seen in association with Kilbraur, 25 km to the east, and the only other approved scheme in the study area other than Rosehall Hill, are not extensive and would also be mitigated by distance. The sites of the undetermined applications at Gordonbush, Loch Luichart and Fairburn, at 33 km, 40 km and 51 km respectively from the appeal site, are sufficiently far from it to make significant cumulative impacts unlikely. Cambusmore, 12 km to the east of Achany, is significantly closer. However, its separation distance and orientation would combine to avoid significantly detrimental cumulative effects. The 3 turbines proposed at Lairg are unlikely to be a significant feature in the wider landscape.

182. A wind farm at the Rosehall Hill and/or Invercassley sites would result in greater cumulative effects in association with Achany than the schemes considered above, largely because these two sites are much closer to it. However, while Achany would significantly increase the lateral spread of turbines in the vicinity of Rosehall Hill in views from the south and south-east and make wind farm development visible further to the north-east and east, the two schemes would generally be perceived as one wind farm. I conclude that the combined effect would not be significantly detrimental. Invercassley on the other hand, is far enough away from Achany to be perceived as a separate wind farm, but close enough to be seen simultaneously in some views and sequentially in others, at a similar distance from the viewer. Simultaneous views would be most obvious from locations to the south-east, such as Achnahanat, from where the contrast in Invercassley's layout would be very apparent, both in relation to Rosehall Hill on its own and to Rosehall Hill and Achany together. On the basis that Rosehall stands to be considered as part of the baseline landscape, these effects would be largely due to Invercassley. Taking my conclusions at paragraphs 177-181 also into account, I find that the Achany would not have significantly detrimental impacts in the respects listed in Policy E2.

183. Drawing together my conclusions this far, given the balance that is integral to achieving accordance with the HSP strategy, and to the contribution of this renewable energy scheme in enhancing the well-being of the people of Highland without significantly detrimental adverse effects, I conclude that it accords with the relevant provisions of the approved structure plan. I am also satisfied that it would be consistent with the purpose and thrust of the local plan provisions covering the appeal site, to the extent that these remain relevant. However, this does not mean that planning permission must be granted, and section 25 of the Act requires me to decide whether there are material considerations that indicate that the Achany wind farm should nevertheless be refused.

184. In that regard, SPP 1 states that the range of considerations that might be considered material in planning terms is, in practice, very wide and falls to be determined in the context of each case. In this case, having had regard to the examples of possible material considerations listed in the SPP, I find the main material considerations to be:

- UK Government and SE energy policy on reserved and devolved matters respectively;
- the planning policy guidelines and planning policies contained in the NPF, NPPGs, SPPs and Circulars and the best practice advice issued in PANs;
- relevant European policy;
- the HRES; and
- the effect on the qualities of wild land, which the HSP regards as a material consideration in evaluating development proposals.

These are considered below, to the extent that they have not been addressed in the context of the development plan. My conclusions this far encompass other matters that SPP 1 also identifies as possible material considerations, namely environmental and design issues, the relationship of the development to its surroundings, access, the views of statutory and other consultees, the public concern and support that have been expressed on relevant planning matters and, in relation to nature conservation issues, European policy. The consultation document, Sutherland Futures, which represents an early stage in a local plan review, does not raise any significant new issues.

185. The UK Government has overall responsibility for energy policy in the UK. The 2007 White Paper on Energy confirms the 4 energy policy goals of its predecessor, which include cutting the UK's emissions of carbon dioxide by 60% by 2050, with real progress by 2020. These targets reflect a recognition worldwide, including by the European Community, which has identified targets for Member States, of the need to counter global warming. It also makes clear that renewable energy development will play a vital part in achieving these objectives and confirms the UK Government's intention that 10% of electricity should come from renewables by 2010, with an aspiration for 20% by 2020. To that end, the White Paper envisages a more diverse energy system by 2020, which would include hydro, wave, tidal, offshore and onshore wind and biomass as well as more traditional sources. While promoting an RO banding system that would help bring forward emerging renewable technologies, the White Paper does not set targets for the share of the total supply to be met by different fuels and acknowledges onshore wind as a key element of the supply from renewables in this period. These principles are consistent with other UK Government statements on energy policy.

186. The Scottish Government, to which some energy powers have been devolved, has proportionately higher targets than apply to the UK as a whole, whereby 17%-18% of electricity generation would come from renewables by 2010, rising to 40% by 2020. SPP 6 confirms that the 2010 target has been met. However, the purpose of the SPP is to facilitate successful achievement of the 2020 target, which has been quantified as 6 GW of installed capacity. The SPP also makes clear that this figure should not be regarded as a cap, that sufficient developments are expected to be consented, at a minimum, to enable achievement of the target several years ahead of schedule, and that hydro and onshore wind are expected to continue to make the most significant contribution, albeit increasingly as part of a renewables mix. The NPF confirms support for renewable energy development and the expectation that wind power's contribution will increase substantially over the next 10 years.

187. However, this support is not unconditional and the SPP makes clear that support for renewable energy development and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals if an effective response is to be made to the challenges of sustainable development and climate change. In that context, it sees the planning system as playing a significant role in resolving conflicts so that progress towards the 2020 target continues to be made in a way that affords appropriate protection to the natural and historic environment without unreasonably restricting the potential for renewable energy development. In common with the development plan, achieving this objective requires a balance to be struck. To that end, while recognising that the growing number of wind farms will make cumulative impact increasingly important, and the importance of fully engaging local communities and other stakeholders at all stages in the planning process and maximising environmental, economic and social benefits, SPP 6 makes clear that planning policy should be based on the principle that renewable energy development, including onshore wind, should be accommodated throughout Scotland where the technology can operate efficiently and environmental effects can be addressed satisfactorily.

188. Against that background, I have addressed the relevant technical and practical issues covered by PAN 45, including construction traffic, water quality, noise, landscape and visual impacts, and cumulative impacts. While the fact that the site and its surroundings are not covered by a landscape designation does not mean that they are not locally valued, PAN 45 states that, given Scottish Ministers' commitment to addressing climate change and the contribution expected from renewable energy developments, particularly wind farms, it is important for society to accept them as a feature of many areas of Scotland for the foreseeable future. I have also addressed the issues included in NPPG 14, NPPG 18 and NPPG 5 that are relevant to the development and to which SPP 6 refers under the heading of the Natural and Historic Environment. In those respects, while a site further away from Natura sites might have been preferable, I am satisfied that the integrity and conservation objectives of these areas would not be compromised, provided that suitable conditions are imposed. NPPG 14 treats conditions as an acceptable means of avoiding adverse nature conservation impacts. I am also satisfied that the wind farm would not adversely affect tourism, which SPP 15 recognises is of vital importance to the social, economic, environmental and cultural well-being of rural Scotland, while helping to realise Scottish Ministers' belief, expressed in SPP 6, that a thriving renewables industry in Scotland has the potential to develop new indigenous industries, particularly in rural areas.

189. SPP 6 considers that its expectations of the planning system should be realised, where appropriate, through spatial policies supported by broad criteria identifying the issues that must be satisfactorily addressed to enable development to take place. It advises planning authorities to update their development plans accordingly, including by identifying broad areas of search and areas that will be given significant protection because of national, international or green belt designations, or potential cumulative effects. However, the SPP also makes clear that, while areas of search should provide a steer to developers, these should not be used to rule out development elsewhere that can be accommodated in a manner consistent with the approach in the SPP. It also sees a role for supplementary planning guidance in providing an interim basis for efficient and consistent decision-making, prior to incorporation in development plans in due course. To be consistent with national policy, any such guidance has to reflect these principles.

190. Given the time that has elapsed since the HSP was drafted, it is understandable that the Council should have reconsidered the statement at paragraph 2.12.3 of the plan that it did not intend to identify preferred search areas. That said, the HSP cites the difficulty of assessing potential constraints, other than on a site-specific basis, as the reason for not identifying preferred search areas and the Council agrees that, irrespective of how the

HRES may be applied in practice, the HRERA database is not suitable for determining individual applications. Significantly, the HRES also pre-dates SPP 6 and THC accepts that it needs to be revised. It is feasible that a reappraisal would retain some of the Strategy's topic based policies and, while SPP 6 is silent on regional targets, these are not necessarily at odds with national policy, provided they are not treated as a cap. THC could also decide, for planning reasons, to retain a preference for clustering wind farms in certain areas that excluded the area around Lairg, and Policy U.2. However, the spatial framework that Policies E.5-E.7 provide amounts to the type of sequential approach that the SPP specifically advises against. Furthermore, while the Strategy makes clear that a project could be approved outwith a preferred area, and the Council agreed at the inquiry that it is open to a developer promoting an "export" scheme to demonstrate that strategic aims and site specific constraints can be addressed and the presumption against development in a red area set aside, the Strategy does not identify the criteria on which national policy expects any such demonstration to be based.

191. Neither the Council nor SNH argues that the Achany proposal would have adverse effects on wild land. I concur with this assessment. Its ZVI extends mainly to the north-east, east and south-east, whereas the Ben More Assynt, Beinn Dearg, and Ben Hee-Foinavon SAWLs lie to the north, west and south-west. The turbines would be seen from only limited areas within these SAWLs, and from the Ben Armine-Ben Klibreck SAWL to the north-east at significant distances.

192. Drawing these matters together, I am satisfied that there are no material considerations that justify refusing planning permission for a development that accords with the relevant provisions of the development plan. Having taken account of all the matters raised, I have therefore decided to allow the appeal, subject to the completion and registration of a legal agreement and to the conditions listed in the schedule annexed to this letter. While it is possible that a scheme that shared some infrastructure with the Rosehall Hill development or provided a better layout in other respects could be devised, the appeal stands to be determined on the basis of whether it is acceptable as it stands. Sharing may well not be a practical proposition in any event as Rosehall Hill's current grid connection date may cause its implementation to be delayed. I would have reached the same conclusion on the appeal, irrespective of SSE's obligations under the RO, or the destination of the energy generated by the scheme. The former would not have justified an unacceptable development. The destination of energy is not a matter that lends itself to planning control and Scottish Government support for the development of renewable energy applies throughout Scotland. While the availability of a grid connection for Achany is a material consideration, this also would not have justified an unsuitable scheme. However, it makes it well-placed to make a prompt contribution to Scottish targets, as well as to the HRES targets which, as matters stand, seem unlikely to be met.

193. While it might have been possible to have covered some of the matters included in the legal agreement tabled at the inquiry by conditions, I accept that an agreement has the advantage of providing reassurance that adequate financial provision for site restoration, road reinstatement and repair, and any TV/radio reception effects, is in place before permission is granted. On that basis, it would be more appropriate for obligations to undertake road condition surveys and install vehicle counters, which relate to these provisions, also to be included in an agreement. Having had regard to the terms of SODD Circulars 4/1998 and 12/1996, the establishment of a liaison group ought also to be included in an agreement, albeit at parties' discretion. As SSE and the Council have already agreed all these matters, including them in an agreement is unlikely to delay its execution.

194. The conditions in the schedule cover the matters addressed in the conditions that were tabled at the inquiry, most of which were also agreed. Where there are differences, I consider that conditions 8 and 9 provide sufficient specification of the remit for an ECoW and sufficient protection for Annex 1 and Schedule 1 breeding birds. Condition 15 requires background noise levels at Rosehall Cottage and West Durcha to be confirmed before the wind farm is commissioned in order to provide readily verifiable baseline readings for monitoring purposes. As planning permission would run with the land, there is no need for the conditions to refer to successors or assignees. It is the responsibility of the planning authority to determine whether conditions have been purified

195. A period of 3 months will be allowed in the first instance for the agreement described above to be drawn up, agreed with the Council, and registered. If I do not hear by then that these procedures have been completed, consideration will be given to otherwise determining the appeal.

196. A copy of this letter has been sent to the Highland Council and, for information, to Airtricity Developments (UK) Ltd and to the other parties who took part in the inquiry. Others who wrote regarding the proposal have been advised of my intention.

Yours faithfully

MISS J M McNAIR
Reporter

ANNEX TO INTENTIONS LETTER

WIND FARM COMPRISING 23 WIND TURBINES, A CONTROL BUILDING, ACCESS TRACKS, 3 ANEMOMETER MASTS, TEMPORARY BORROW PITS AND ON-SITE UNDERGROUND CABLING AT ACHANY ESTATE, LAIRG (DPEA ref PPA/270/238)

SCHEDULE OF PROPOSED CONDITIONS AND MATTERS TO BE INCLUDED IN AN INFORMATIVE NOTE

General

1. The development shall begin within 5 years of (the date of the letter granting planning permission). The permission shall enure for a period of 25 years from the date that the development first supplies electricity to the national grid, such date to be notified in writing to the planning authority within 3 months of that date. At the end of this period, unless with the express written approval of the planning authority, all wind turbines, buildings and ancillary equipment shall be dismantled and removed from the site. This requirement shall not include underground cables, access roads and foundations except that any part of any turbine foundation which is exposed at the surface shall be broken out to a depth of 1 m below the surface, the resultant void re-soiled and reseeded, and the ground fully reinstated to the satisfaction of the planning authority in accordance with the works approved under condition 21.

Reason: To accord with the provisions of section 58 of the Town and Country Planning (Scotland) Act 1997, to allow the planning authority to review the circumstances of the permission, which is temporary, and in the interests of the amenity of the area in the longer term, beyond the 25 year period covered by the permission.

2. Except as otherwise provided for, and amended by, the terms of this permission, the location and siting of the wind farm shall accord with the provisions of the application, the Environmental Statement submitted in October 2005, as revised by the Supplementary Environmental Information and the plans submitted therewith. The permission shall be for a maximum of 23 wind turbines, 3 anemometer masts and 3 borrow pits. Save for the ability to vary the indicated position of any turbine (other than turbine 1) or any track by up to 10 m, these shall be located as shown on the site layout drawing, Figure 4.1 in Volume 3 of the Environmental Statement. The prior written approval of the planning authority, in consultation with the Scottish Environment Protection Agency and Scottish Natural Heritage as appropriate, shall be required for any variation in the siting of turbine 1 and for any variation of any of the other turbines or any of the tracks by more than 10 m from the locations shown on Figure 4.1. Any request for such variation shall include a revised site layout showing the location of all the turbines and access roads.

Reason: To safeguard areas of nature conservation value and to ensure that the development is carried out in a satisfactory manner.

3. In the event that any wind turbine fails to supply electricity to the grid for a continuous period of 12 months, other than because it is under repair or replacement,

then, unless otherwise agreed in writing by the planning authority, the turbine and its ancillary equipment shall be dismantled and removed from the site within the following 6 months and the ground fully reinstated to the specification and satisfaction of the planning authority.

Reason: In the interests of visual amenity and to ensure that redundant equipment is removed from the site.

Provision of further details

4. No development shall begin until details of the following matters have been submitted to the planning authority for written approval, and that approval, in consultation where appropriate with Scottish Natural Heritage and the Scottish Environment Protection Agency, has been issued:

(a) a specification of the wind turbines to be used, including their make, model and design, the location and design of any transformers proposed outwith a turbine tower, and rating and sound power levels. The revised noise assessment produced at the inquiry shall be updated as necessary to reflect the specification of the turbine that is finally selected for the scheme. No turbine shall exceed 70 m in hub height and 105 m in overall height above the existing ground level at the base of the turbine concerned. In the event that any transformer outwith a turbine tower is proposed, this shall be accompanied by a statement explaining the technical reasons for the proposal.

(b) details of the means of access to the site from the A839, the location and design of a turning area within the site, the design, materials, colours and external finishes of all ancillary elements to the development, including (except so far as these are specified in the Environmental Statement) the control building, fencing and the access track surface colour.

(c) a Construction Method Statement (CMS) detailing contractor arrangements for the following matters:

i) the excavation and make-up of internal access tracks and hardstandings, including measures to prevent silt-laden run-off from temporary and permanent access tracks, soil storage and other engineering operations. For the avoidance of doubt, the preference shall be for bridging solutions at watercourse crossings;
ii) the source of all fill and bulk materials;
iii) identification of waste streams arising from the works, such as peat, spoil and other excavated material, and the means of dealing with these;
iv) construction arrangements for turbine foundations including concrete batching and dewatering arrangements to treat potentially sediment-laden water;
v) cable laying within the site;
vi) construction management operations including site lighting, temporary servicing for workers, and arrangements for the storage of vehicles and other equipment;
vii) proposals for the phasing of operations, including information on the proposed construction timetable, which shall take into account the implications of times of the year when high rainfall is more likely;

viii) the construction works compound, including proposals for its eventual removal and the satisfactory reinstatement of the compound site;
ix) the reinstatement of ground post-construction, including the borrow pits, blanket bog (where applicable) and re-vegetation of access track edges and hardstanding areas, together with measures to monitor the success of the reinstatement and proposals for remedying any reinstatement works that are unsuccessful in the first instance;
x) arrangements for fuel storage and fuelling, the storage and handling of oils and lubricants, and the handling of cement materials, together with contingency plans to deal with any spillage;
xi) surface water drainage arrangements, which shall comply with "Sustainable Drainage Systems" (SUDS) principles and shall be designed to prevent erosion, sedimentation or discolouration of water, together with proposals for monitoring the effectiveness of these arrangements and contingency plans in the event of any malfunction;
xii) measures to address silt-laden run-off from access tracks and other engineering operations, including the use of silt traps or similar methods, which shall be designed to ensure that sediment entering the Grudie Burn and the River Oykel does not exceed 25mg/litre suspended solids;
xiii) the provision of staff facilities on the site during construction and the means of disposal of sewage effluent therefrom;
xiv) measures to protect private water supplies;
xv) the design and locations of equipment for monitoring surface water drainage and run-off from the site, and for monitoring water quality on the Allt Sron na Lernachan and Allt a Choirre and other streams in the catchments of the Grudie Burn and River Oykel, together with a specification of the parameters to be recorded, details of an emergency pollution prevention plan to be implemented in the event of spillage or other incident, and arrangements for submitting the results of monitoring, which shall be undertaken daily;
xvi) mechanisms to inform sub-contractors and all other parties on the site of issues and provisions relating to pollution, including emergency procedures;
(xvii) arrangements to prevent mud and debris from being deposited on the public road by construction vehicles; and
xviii) a rapid reaction strategy for dealing with the consequences of any peat slide that occurs on the site.

Notwithstanding the generality of items (i)-(xviii) above:

(1) the mitigation measures designed to protect water quality, which shall be consistent with those described in Section 13 of the Environmental Statement, shall be put in place ahead of track construction and any forestry operations. Silt traps shall be portable plate silt traps ("Silt Buster" or similar) in addition to mats and straw bales.

(2) No development or storage of materials shall take place within 20 metres of all surface water features on the site shown on the 1:25,000 OS map.

(d) details of the control and mitigation measures identified in Sections 5 and 6 of the Peat Stability Assessment prepared by URS Corporation Ltd dated September 2006, including a revised site layout plan to illustrate any micro-siting amendments to

the location of wind turbines (other than turbine 1, to which the provisions of condition 2 shall apply) and access tracks, details of engineered slope stabilisation techniques and effective plate silt traps, and proposals for the safe temporary storage of peat until such time as it is used for the restoration of the shoulders of access roads, around wind turbine bases, and for other post-construction restoration.

(e) details of arrangements for fencing the borrow pits and for the storage of explosives for blasting.

(f) a Transport Management Plan (TMP) to cover vehicle movements to and from the wind farm site. The TMP shall include:

i) in consultation with the emergency services, a health and safety access plan for emergency services and a contingency plan in the event of a vehicle break down or road blockage;
ii) the results of site investigation works by the developer into the depth and stability of the peat under the "floating" road sections of the A839 west of the Black Bridge at Lairg, in accordance with a remit and scope that have first been agreed in writing by the planning authority;
iii) schedules for road works to be undertaken by the developer prior to, or during the construction of, the wind farm, including any temporary removal of street furniture that may be necessary during the period of turbine component delivery;
iv) a schedule of new lay-by construction and/or extension of existing lay-bys on the A839 west of the Black Bridge at Lairg. This shall be designed to reduce any waiting time experienced by road users (other than wind farm construction traffic) to a maximum of 10 minutes and to give intervisibility between lay-bys, which shall be suitable for use by Large Goods Vehicles (LGVs).
v) the date of commencement and duration of road haulage operations and anticipated weekly flows of different classes of vehicle.
vi) details of vehicle movements and routeing for the construction phases;
vii) details of arrangements for the movement of abnormal loads related to the construction or operation of the wind farm on the local road network during times of major traffic activity in the area, which shall include Lairg Sheep Sales, Invercharron Highland Games, Invergordon Highland Games, the Black Isle Show, Alness Vintage, Historic and Classic Car Rally and such other times as may be notified in writing to the developer by the planning authority, at least 4 weeks in advance, or when flooding closes or is likely to close (in the reasonable opinion of the planning authority in consultation with the Scottish Environment Protection Agency) the A837 Rosehall to Invershin road and/or the C43 Ardgay to A837; and
viii) arrangements for monitoring and review of the plan.

(g) the results of a further survey for otter activity on the site together with mitigation measures for the protection of otters and their resting places from disturbance during the construction, operational and decommissioning phases of the development. These measures shall include those described in section 9.1.15(b) of the Environmental Statement and, except where a water crossing is required, shall include a buffer zone of 10 m along watercourses.

(h) details of mitigation measures for water vole during the construction, operational and decommissioning phases of the development. These measures

shall include those described in sections 9.1.15(b) and 9.1.17(b) of the Environmental Statement and shall be incorporated in the design of the proposed site access roads and water-crossings.

(i) the results of a further survey for signs of wild cat activity and, in the event that such signs are found, details of mitigation measures for this species.

(j) a Habitat or Conservation Management Plan (CMP), drawn up in consultation with Scottish Natural Heritage, and detailing measures to offset the potentially adverse effects of the proposed development on the natural heritage, particularly on peatland habitat interests and on birds, including further details of the method of any tree felling and mulching or removal.

(k) a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation and details of fencing to be erected to form 20 m buffer zones around the archaeological sites identified in a specification obtained from the Highland Council Archaeology Unit. The fencing shall be erected before any work begins on the site and no works shall take place within the areas protected by the fencing without the prior approval in writing of the planning authority.

Thereafter, the wind farm shall be constructed and the TMP and CMP shall be implemented in accordance with the details approved under conditions 4(a)-(k). Unless otherwise agreed in writing by the planning authority in consultation with the Scottish Environment Protection Agency and Scottish Natural Heritage as appropriate, the access to the site and the turning area approved under condition 4(g) shall be formed before any other part of the development is commenced.

Reason (a) and (b): In the interests of road safety, amenity, and visual amenity.

Reason (c) and (d): In the interests of amenity and to prevent pollution of watercourses.

Reason (e): In the interests of safety.

Reason (f): In the interests of road safety and to minimise inconvenience to other road users.

Reason (g)-(j): To protect natural heritage interests.

Reason (k): To ensure that archaeological interests are adequately protected and recorded.

5. No plant or machinery connected with the construction or operation of the wind farm shall enter the Caithness and Sutherland Peatlands Special Area of Conservation.

Reason: To protect natural heritage interests.

6. The wind turbine blades shall all rotate in the same direction (i.e. clockwise or anti-clockwise). The turbines shall be finished in a non-reflective semi-matt pale grey colour, samples of the colour having previously been submitted to, and approved in writing by, the planning authority prior to the commencement of development. No symbols, signs, logos or other lettering by way of advertisement shall be displayed on any part of the turbines without the prior written approval of the planning authority.

7. Unless with the prior written approval of the planning authority, any lighting on the site shall be limited to that which is legally required.

Reason for 6 and 7: In the interests of visual amenity.

Other nature conservation matters

8. Prior to the commencement of development, the developer shall appoint a suitably qualified Ecological Clerk of Works ("ECoW"). The appointment, the scope and role of the ECoW, and the duration of the appointment, which shall last from at least the date of commencement of construction until the restoration of the site has been competed, shall be approved in writing by the planning authority in consultation with Scottish Natural Heritage in advance of the appointment.

Reason: To protect the nature conservation interest of the site and area.

9. To avoid disturbance to locations of nesting Annex 1 and Schedule 1 bird species that have been identified through independent monitoring carried out at the developer's expense, unless otherwise agreed in writing by the planning authority in consultation with Scottish Natural Heritage, the development shall be constructed outwith the main bird breeding season being April to July inclusive (with searches for early breeding raptors during March).

Reason: To protect breeding Annex 1 *and Schedule 1 bird species.*

10. Prior to the wind farm becoming operational, detailed proposals for ornithological monitoring, including arrangements for submitting the results of monitoring, shall be submitted to and require the approval in writing of the planning authority in consultation with Scottish Natural Heritage. Ornithological surveys at the wind farm site and at nearby control sites shall be carried out for the breeding bird seasons in years - 1, 2, 3, 5, 10 and 15 following completion of the wind farm to a methodology agreed in writing by the planning authority in consultation with Scottish Natural Heritage. Results of the monitoring shall be made publicly available except for those relating to the location of nesting bird species, which shall remain confidential.

Reason: To protect the natural heritage and protected species on the site and to gather information on the impact of the wind farm on breeding birds.

Other traffic and transport matters

11. No stone, fill material or ready-mix concrete, other than aggregates required for concrete batching, shall be imported to the site from other sources without the prior approval in writing of the planning authority.

12. No development shall begin until safety barriers to a specification agreed in writing with the planning authority have been erected on Lairg Main Street at the access to Lairg Primary School.

Reason 11 and 12: In the interests of road safety

Noise

13. The Wind Farm Operator shall log wind speed and wind direction data continually and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour and in 10 minute increments thereafter. The wind speed data shall be made available to the planning authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format. In the case where the wind speed is measured at a height other than 10 metres, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10 metre height. Details of the wind shear calculation shall be provided.

14. At Wind Speeds not exceeding 12 metres/second, as measured or calculated at a height of 10 metres above ground level at the Wind Farm, at a grid reference or grid references to be approved by the planning authority, the Wind Turbine Noise Level at any dwelling or other noise sensitive premises existing at the date of this permission shall not exceed:

(a) during Night Hours, 43dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), whichever is the greater;

(b) at all other times, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), whichever is the greater

15. Before any of the turbines are commissioned, background noise levels at Rosehall Cottage and West Durcha shall be measured in accordance with the procedures set out in The Assessment and Rating of Noise from Wind Farms", September 1996, ESTU report number ETSU-R-97. At the request of the planning authority, following a complaint to it relating to noise emissions from the wind turbines, the Wind Farm Operator shall measure, at its own expense, the level of noise emissions from the wind turbines. The measurement and calculation of noise levels shall be undertaken in accordance with "The Assessment and Rating of Noise from Wind Farms", September 1996, ESTU report number ETSU-R-97 having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109. In comparing measured Wind Turbine Noise Levels with Background Noise Levels, regard shall be had to the prevailing Background Noise Levels as measured at

specified properties and shown by the best fit curves in the Environmental Statement submitted with this planning application. In the event of a complaint from a property other than one of the specified properties in the Environmental Statement, the measured Wind Turbine Noise Levels at that other property shall be compared to the prevailing Background Noise Levels at the specified property which is most likely to have similar background noise levels.

The following definitions shall apply in the interpretation of conditions 13-15:

"Wind Turbine Noise Level" means the rated noise level due to the combined effect of all the Wind Turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU–R –97, pages 99 – 109. "Background Noise Level" means the ambient noise level already present within the environment (in the absence of noise generated by the development) as measured and correlated with Wind Speeds.
"Wind Speeds" means wind speeds measured or calculated at a height of 10 metres above ground level on the site at a specified Ordnance Survey grid reference agreed with the planning authority.
"Night hours" means 23:00 – 07:00 hours on all days.
"At all other times" means the period outwith "Night Hours".
"Noise Sensitive Premises" means existing premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.
Should the noise levels be exceeded, the Wind Farm Operator shall take immediate steps to ensure that noise emissions from the Wind Farm are reduced to the aforementioned noise levels or less, to the written satisfaction of the planning authority.

16. Prior to the commencement of the operation of the Achany wind farm, details of a scheme for mitigating noise in the event that the noise levels referred to in condition 19 are exceeded or are predicted to be exceeded due to the operation of the Achany wind farm, on its own, or in combination with the wind farm at Rosehall Hill shall be submitted for the written approval of the planning authority. The scheme shall include mechanisms for shutting down turbine(s) on the Achany site in the event that wind conditions make it likely that these levels are likely to be exceeded. The wind farm shall not begin to operate until a scheme has received the written approval of the planning authority. The approved scheme shall be implemented in the event that the noise circumstances described above occur.

Transport and working hours

17. Access to the site by LGVs shall be restricted to 0700 to 1800 hours on Mondays to Fridays and from 0700 to 1200 on Saturdays with no such access on Sundays. Any work on site outwith these times shall only take place with the prior written approval of the planning authority. Except in the case of an emergency, written notification shall be submitted prior to such works commencing. The appointed contractor shall adopt "Best Practical Means" in controlling noise levels

and shall follow guidance contained within BS5228 Part 1 –1997 – Noise and Vibration Control on Construction and Open Sites.

Reason 13-17: To safeguard the amenity of noise sensitive premises.

Working of borrow pits

18. The borrow pits shall be developed in accordance with the details shown in the Environmental Statement, unless otherwise agreed in writing by the planning authority. The material extracted from the borrow pits shall be used solely in the construction of the wind farm that is the subject of this permission. The extraction of this material shall have ceased and the borrow pits shall be restored:

(a) within 24 months from the commencement of extraction of material from the site, or
(b) within 12 months of the date on which the development first supplies electricity to the grid, whichever is the sooner.

Reason: To ensure the prompt and satisfactory restoration of the borrow pits.

19. Unless otherwise agreed by the planning authority, in consultation with Scottish Natural Heritage, no work shall be carried out on the borrow pits within the bird breeding season being April to July inclusive (with searches for early breeding raptors during March). In addition, no work at the borrow pits shall be undertaken outwith the periods 07:00 - 19:00 hours Monday to Friday, and 07:00 - 12:00 hours on Saturdays and not at all on Sundays and Bank Holidays. In addition:

(a) noise from the excavation and construction workings shall not exceed 48dB LAeq(1hour) at any Noise Sensitive Premises.

(b) prior to the development of the borrow pits starting a scheme for noise monitoring, in accordance with PAN 50, Annex A shall be submitted to the planning authority for written approval. Thereafter the approved scheme shall be fully implemented.

(c) no blasting shall be carried out except between the following times 10.00 - 12.00 hours and 14:00 - 18:00 hours on Mondays to Fridays and 10:00 - 12:00 hours on Saturdays and not at all on Sundays and Bank Holidays. Where blasting is intended, the occupiers of residential properties within 2 km of the site shall be given at least 24 hours written notice.

(d) ground vibration due to blasting shall not exceed a peak particle velocity of 10 mm s^{-1} in 95% of all blasts measured over the period of the development and no individual blast shall exceed a peak particle velocity of 12 mm s^{-1} as measured at vibration sensitive buildings. The measurement to be the maximum of 3 mutually perpendicular directions taken at the ground surface at any vibration sensitive building.

(e) prior to the commencement of any blasting operations a scheme for the monitoring of blasting including the location of monitoring points and equipment to be

used shall be submitted to the planning authority for written approval. Thereafter the approved scheme shall be fully implemented.

(f) trial blasts shall take place in accordance with arrangements agreed with the planning authority prior to starting normal blasting operations in order to monitor noise and vibration levels.

(g) blasting operations shall be carried out in accordance with good practice as defined in PAN 50 Annex D.

(h) all noise and vibration monitoring results shall be made available to the planning authority on request.

Reason: To protect natural heritage interests and to safeguard local amenity.

Restoration and decommissioning

20. All portacabins, containers, machinery and equipment associated with construction, temporary areas of hardstanding, geogrids, and other lay-down materials, shall be removed from the site within 3 months of the wind farm becoming fully commissioned, and the ground reinstated to the satisfaction of the planning authority, all in accordance with the CMS approved under condition 4(c).

21. Within 12 months of the date of electricity first being exported to the grid network, an indicative scheme and method statement for the decommissioning and ultimate reinstatement of the site, comprising the removal of all above-ground structures and ground reinstatement, shall be submitted to and require the approval in writing of the planning authority in consultation with the Scottish Environment Protection Agency and Scottish Natural Heritage as appropriate. The scheme shall be reviewed and amended as necessary, taking into account the operation of the scheme and monitoring, at least 12 months prior to actual decommissioning and reinstatement works, whereupon it shall be submitted to the planning authority for further written approval.

Reason 20 and 21: To ensure that the site is satisfactorily restored in the interests of amenity.

Public access

22. Subject to the contractual obligations of the applicant to the owner of the site and prior to the commissioning of the wind farm, a Public Access Plan shall be submitted to and agreed in writing by the planning authority. The plan shall detail existing and proposed access routes and tracks, proposals for maintaining and encouraging public access and details of signage and shall be implemented within 6 months of the date of commissioning.

Reason: In the interests of amenity and to facilitate and encourage responsible public access to the countryside.

Informative Note

• Prior to the commencement of development, the applicant should provide the Ministry of Defence (Defence Estates - Safeguarding) with the following information, a copy of which shall be submitted to the planning authority:

• proposed date of commencement of the construction
• estimated date of completion of the construction
• height above ground level of the tallest structure
• maximum extension height of any construction equipment
• position of the turbines in latitude and longitude plus eastings and northings
• confirmation that the site will not be lit during operation

• Under the UK Air Navigation Order 2000 there may be a need to install aviation lighting to some or all of the wind turbines and there is also a requirement in the UK for all structures over 300 feet high to be charted on aviation maps. To achieve the charting required details of the proposal should be sent to :- Defence Geographic Centre, AIS Information Centre, Jervis Building, Elmwood Avenue, Feltham, Middlesex, TW13 7AH.

• All works on site should be undertaken in accordance with Pollution Prevention Guidelines numbers 1, 2 ,3 ,4, 5, 6, 8 and 21 available on SEPA's website www.sepa.org.uk/guidance/ppg/ppghome.htm or free of charge from any SEPA office. shall undertake all works within the terms of "Guidelines for Preventing Pollution from Civil Engineering Contracts" published by the Scottish Environment Protection Agency and

• If mobile crushing plant is to be used on site authorisation will be required from SEPA under the provisions of the Environmental Protection Act 1990. Any proposed concrete batching plant may require a prior Part B authorisation and any water abstraction may require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR). SEPA should be contacted to discuss requirements at Graesser House, Fodderty Way, Dingwall Business Park, Dingwall IV15 9XB tel 01349 862021.

• An Abnormal Loads Consent shall be required under the Roads (Scotland) Act 1984 and The Road Vehicles (Authorisation of Special Types) (General) Order 2003, Statutory Instrument 2003 No. 1998. Advice and information can be obtained from Shane Manning, Traffic Support Officer, Highland Council TECS, Glenurquhart Road, Inverness tel 01463 702470.

• Any modifications or additions to the public road, for example to form a new access, widen or extend, reconstruct, strengthen or repair laybys shall require Road Construction Consent and the Sutherland Area Roads and Community Works Manager, Area Office, Victoria road, Brora, Sutherland tel 01408 623402 should be contacted to discuss requirements.

• The developer is reminded that it is an offence to recklessly disturb otters and their resting places.

- Where access may be restricted, any signage, guidance or alternative routing should be compliant with the Land Reform (Scotland) Act 2003 and the guidance set out in the Scottish Outdoor Access code.