Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR

Scottish Government
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# Report of Inquiry into application under section 36 of the Electricity Act 1989 and deemed application for planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended)

**The construction and operation of the proposed Kirkan windfarm on land 5.8 kilometres north west of Garve**

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| • Case reference | WIN-270-14 |
| • Case type | Application for consent (S36 Electricity Act 1989) and deemed planning permission (S57 Town and Country Planning (Scotland) Act 1997) |
| • Reporter as appointed by Scottish Ministers | Robert Seaton |
| • Applicant | Kirkan Windfarm Limited |
| • Planning authority | The Highland Council |
| • Other Inquiry parties | Dr Merylyn Hedger |
| • Written Submission Process | Written submissions accepted from Mountaineering Scotland |
| • Date of application | 29 March 2019 |
| • Date case received by DPEA | 06 April 2021 |
| • Method(s) of consideration and date(s) | Public inquiry 21 to 22 March 2022 |
| • Date(s) of site visit(s) | 14 to 17 October 2021, 5, 6, 14, 16, 17 and 18 March 2022 and 21 and 22 June 2022 |
| • Date of report | 9 August 2022 |
| • Reporters' recommendation | Grant section 36 consent and deemed planning permission |

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## Summary of Report

### Background

The application site is rolling moorland south of the A835 Ullapool to Tore road, east of the existing Lochluichart and Corriemoillie windfarms, and 5.8 kilometres north west of Garve in the Highland Council area. The application was submitted on 29 March 2019 and was supported by an Environmental Impact Assessment Report (EIAR). The Highland Council objected to the application and it was therefore the subject of this inquiry. The development proposed is a wind-power generating station comprising 17 turbines of up to 175 metres to blade tip, an energy-storage facility and associated infrastructure laid out as shown on figure 1.1 of the Additional Information ("2021 AI").

### The applicant's case[1]

The proposed development is to be treated as being located in a group 3 area in terms of the spatial framework set in Scottish Planning Policy (SPP). It is likely to be acceptable subject to detailed consideration. The only significant effects identified in the EIAR were landscape and visual effects. The parties are agreed on the seriousness of the need to mitigate climate change and to achieve the statutory targets for emissions reduction. Since the development plan is out of date, SPP's sustainability presumption is engaged and there is a tilted balance in the proposed development's favour. The council's case against the proposed development is narrowly focused on visual (not landscape) effects on a small section of the A835 and on views from some more distant hill summits. Such a narrow focus would have to disclose something intense about the visual effects if they are to justify a refusal. The visual effects are not of such an intensity. With the exception of a single viewpoint, the proposed development would be seen in the immediate context of existing and permitted wind turbines. The council's case applies a refined palate to aspects of design and perceived scale disparities, though such disparities will become inevitable as emissions-reduction targets for 2030 and 2045 approach. The development's benefits significantly and demonstrably outweigh its adverse effects. Consent should be granted.

### The council's case

Two key receptors would be particularly adversely affected by the proposed development: road users (including tourists) on the A835 and recreational users of the outdoors (primarily hill walkers). The impact on road users would be for most of the 20 kilometres from Loch Droma to Inchbae. Turbines would impact on important framed views of Little Wyvis for eastbound travellers. There would be significant visual effects not only at six viewpoints acknowledged by the applicant (including viewpoints on the A835 and three hill summits), but also at five other hill-summit viewpoints and on a viewpoint in the Fairburn designed landscape. The applicant's assessment understates the magnitude of impact at most of these locations. Many of the adverse effects have their root in the siting, design and scale of the proposed development and the failure to assimilate it adequately with the existing Corriemoillie/Lochluichart cluster. It would erode the design rationale of the cluster by siting turbines outside the landscape bowl it is located in, by failure to limit effects on the A835, and by failure to have turbines of comparable height. The contrast in turbine size and rotation speed would be noticeable at many viewpoints.

Policy already strongly favours renewable development and has done for some time. Ministers' duty to achieve the statutory emissions-reduction targets does not result in any new balance, more favourable to renewable development than before. The targets are high-level and are not meant to apply directly to particular development-control decisions.

[1] Hyperlinks are to parties' own summaries of their cases. The applicant's summary is contained in its closing submission.

There is no indication in any policy that less importance (and so less weight) is to be placed on protection of the environment in the balance. There is no spatial element in energy or climate-change policies that would displace the need for a balancing exercise to determine whether a location is suitable for development. In this case the balancing exercise, notwithstanding the substantial weight Ministers are required to give to renewable energy, does not favour the proposed development. The application should be refused.

**Dr Merylyn Hedger's case**

Dr Hedger lives in the Dundonnell area. She travels the A835 frequently. The additional tall windfarm proposed in this sensitive corridor location would fundamentally alter the character of the location. Wester Ross is recognised for its outstanding natural beauty. Although the council's guidance suggests the site has potential, a site so close to designated areas should not be considered. Many north-west communities are dependent on tourism. The A835 is a key route for tourists. Tourists on the North Coast 500 route (NC500) will often use the road. Loch Glascarnoch and its dam are listed as attractions in respect of that route. The proposal would be an unwelcome entry sign to the north west and impact on the NC500. The additional aviation lights would have a disconcerting effect for drivers.

There is not un-nuanced support for low-carbon development in planning policy. Other considerations, including the requirement to create liveable, healthier and sustainable places must be taken into account. There are a range of policies to address the climate emergency - they are not focused solely on renewable energy. Policy on onshore wind focuses on reducing determination timescales, while offshore wind benefits from a range of measures to promote its growth.

**Other representations**

NatureScot, although it did not object to the application, advised that there would be significant adverse effects on wild land areas (WLAs) 28 and 29. Mountaineering Scotland objected to the proposed development on grounds of visual impact. It considers the applicant's assessment understates visual effects on surrounding hills and walking routes. John Muir Trust objected in respect of landscape and visual impacts including the combined impact with existing turbine development, and impact on wild land and on peat. Other objections raised landscape and visual effects, effects on wild land, on public access on the Fish Road (a right of way), on tourism, and on wildlife including eagles, and the unreliability of renewable energy. There were also representations in support referring to the need to address climate change and the economic benefits of the development and making the case that the location was appropriate and landscape and visual effects would be limited.

**Reporter's Conclusions:**

The proposed development would not have a significant adverse effect on any national scenic area. I did not find any significant effect on any special landscape area identified in the development plan, taking account of the reasons for which those areas were designated. Significant effects are acknowledged by the applicant on the three landscape character types in immediate proximity of the proposed development.

As regards WLA 29, the proposed development would in many places be seen with the existing cluster. It would bring development closer to the WLA. The proximity and contrast with the existing turbines would make it more prominent in the WLA than the existing cluster. It would introduce new views of man-made structures into the area of Strath Vaich. The areas in which the proposed development would be seen are closer to the WLA's edge,

where wild-land characteristics tend not to be as pronounced. I find that the proposed development would have a significant effect on the WLA, though only at a threshold level. As regards WLA 28, the proposed development would be seen only over a limited area largely in views in which the existing turbines appear. I do not find the effect on its wild-land qualities would be significant.

The proposed development would have a significant effect on users of the A835 in the section between Loch Droma and Inchbae. It would have an adverse effect on the sense of transition between the settled landscapes of the east and the wilder landscapes of the west and, for eastbound travellers, on framed views of Little Wyvis. Tourists do frequently use the road, though it does not form part of the north coast 500 route (NC500). Despite its prominence, the proposed development would not dominate the road.

The applicant has somewhat understated the degree of the proposed development's visual effect at two viewpoints (Ben Wyvis and An Coileachan). These effects would be significant. There would also be a significant effect on the paths on Ben Wyvis, particularly the path descending from An Cabar to the Black Water car park. I have not found effects understated elsewhere. Recreational users of the outdoors, including walkers on the popular Munros and Corbett summits, would experience some significant adverse effects on visual amenity up to about 14 kilometres from the proposed development.

The adverse effects arise partly from the proposed development's design. The contrast of turbine size and rotation speed would at a number of viewpoints cause a visual dissonance that would make the cluster more prominent. The northern extent of the proposed development contributes to the adverse effect on the A835. The proposed development would be perceived in some views (particularly the view from Ben Wyvis) to fit well with the existing cluster. Elsewhere, such as Little Wyvis, it would not be perceived to fit well. From the relatively distant viewpoints at which an overview can be obtained of the proposed development with the existing development, the perception of the proposed development extending beyond the bowl containing the existing development would only be a minor factor in the adverse effect. The reduced scheme for aviation lighting would not result in significant effects on visual amenity.

Both the UK and Scottish governments have declared a climate emergency. They have both adopted statutory targets for emissions reduction with the aim of reaching net zero emissions for the UK and Scotland by 2050 and 2045 respectively. Achieving the targets will require an energy transition that will involve decarbonising power generation and expanding it to meet the requirement to decarbonise other sectors such as transport and industry. The evidence indicates that an expansion of onshore wind will be required as well as of other forms of renewable generation. It also indicates that there is urgency in taking the necessary actions if the targets are to be met.

Planning policy is favourable to renewable-energy development generally. The aim, nonetheless, as stated in paragraph 28 of Scottish Planning Policy (SPP), is to achieve the right development in the right place, not to allow development at any cost. The spatial framework for windfarm development provided in Scottish Planning Policy divides land into three groups in respect of sensitivity to development. The proposed development is to be treated as being in group 3 – an area in which windfarms are likely to be acceptable subject to detailed consideration. The statutory requirement to meet the targets and the evidence of what needs to be done to meet them is a factor to be taken into account in making the judgements required by planning policy. Such judgements include what the "right development" and "right place" is and (in terms of SPP paragraph 203) what environmental effects are "acceptable". It should also be taken into account in making the determination

required in the lead development plan policy (Highland-wide Local Development Plan policy 67) as to whether the proposed development is significantly detrimental overall.

The proposed development's only significant adverse effects are landscape and visual effects and the effect on WLA 29. Notwithstanding that criticisms might properly be made of the windfarm's design and resulting effects, taking into account the benefits of the proposed development, I consider that the degree of its adverse effects is acceptable. Consequently that the proposed development is the right development in the right place. It would not be significantly detrimental overall.

**Recommendations:**

I recommend that section 36 consent be granted and that planning permission be deemed to be granted for the development as described in this report's appendix 1, subject to conditions listed in this report's appendix 2.

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File reference: WIN-270-14
The Scottish Ministers
Edinburgh

Ministers

I conducted a public inquiry in accordance with my minute of appointment dated 17 June 2021. The application by Kirkan Wind Farm Limited for consent under section 36 of the Electricity Act 1989 and direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 is for the development of a windfarm comprising 17 turbines with a hub height of up to 104 metres and a maximum height to blade tip of not more than 175 metres with anticipated installed capacity of 81.6 MW and associated infrastructure approximately 5.8 kilometres north west of Garve.

The Highland Council has lodged an objection to the proposal which has not been withdrawn. It was consequently a legal requirement that an inquiry should be held.

Following receipt of the case by the Scottish Government's Planning and Environmental Appeals Division (DPEA) for the arrangement of an inquiry, DPEA sent a letter to all parties who had previously commented on the application. This explained that the case had been transferred to the DPEA and invited parties to confirm if they wished to have any further involvement in the public-inquiry process.

I held a pre-inquiry meeting by video conference on 8 October 2021. At that meeting I made arrangements to hold an inquiry commencing on 10 January 2022. I issued a note of the meeting setting out inquiry procedure. I held a second case conference on 1 December 2021 and issued a note of that meeting too, adjusting procedure to take account of the refinement of parties' cases and including an inquiry programme.

Mountaineering Scotland indicated at the second case conference that it would prefer to make a written submission rather than give oral evidence at the inquiry. I accepted this proposal (to which the applicant made no objection) on the basis that the applicant could respond in its oral evidence to the inquiry to Mountaineering Scotland's written submission. It was also agreed that the applicant could make a written submission in response to the objection by the John Muir Trust (who had not sought to take part in the inquiry) in respect of the proposed development's effect on wild land.

It was agreed at the case conference that the topics to be dealt with at the inquiry (in summary) and the procedure by which they would be dealt with would be as follows:

- Landscape and visual effects of the proposed development, to be dealt with by inquiry procedure in which cross-examination of witnesses was permitted;
- National and local policy applicable to the proposed development, to be considered in a round-table discussion, led by the reporter
- Conditions to be applied to consent if it should be granted, to be considered in a round-table discussion, led by the reporter.

Although my initial view was that the inquiry could be held in person in accordance with the restrictions on public meetings during the covid-19 pandemic, following the worsening of the situation in late autumn 2021, I decided that the inquiry should be held by video conference. I considered that it was sufficient that the public would be able to watch a webcast of the inquiry live and also to obtain a recording of the inquiry. In the advertisement of the inquiry, I also invited written comment on the matters that were for discussion in the inquiry.

Before the inquiry's commencement the applicant and council provided in evidence a statement of agreement (CD15.1).

Unfortunately I had to postpone the commencement of the inquiry because of my own illness to 21 March 2022. This new date was re-advertised. The inquiry took place by video conference on 21 and 22 March.

I also record that the applicant indicated before the commencement of the inquiry on 21 March that it would prefer that the inquiry should be held in person rather than by video conference. I decided that it should be held by video conference on account of the ongoing covid-19 pandemic, the limited involvement of members of the public who might have had technical difficulties with a video conference or might have found it more convenient to have an inquiry locally, and the representation of the council and applicant by professionals for whom the video conference would not present a technical challenge.

Following the inquiry, I sought written submissions from parties on:

- The British Energy Security Strategy and
- The International Panel on Climate Change's Sixth Assessment Report

both of which appeared following the inquiry. I also allowed opposing parties an opportunity to comment on the applicant's correction to EIAR table 4.8.1. The list of core documents before the inquiry is provided in this report's appendix 3. The appearances at the inquiry and links to a record of the webcast are set out in this report's appendix 4.

I also carried out unaccompanied inspections of the site and of viewpoints and other visual receptors surrounding the site on 14 to 17 October 2021, 5, 6, 14, 16, 17 and 18 March 2022 and 21 and 22 June 2022.

My report, which is arranged on a topic basis, takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the discussion at the inquiry and hearing sessions. It also takes account of the environmental-impact assessment report (EIAR), the supplementary environmental information submitted in 2019 (the 2019 SEI), the additional information submitted in October 2021 (2021 AI) and the written representations made in connection with the proposal and the EIAR, 2019 SEI and 2021 AI.

## CHAPTER 1: BACKGROUND, CONSULTATION AND REPRESENTATION

Site location and description

**Application plans:**

**EIAR Figure 1.1 Site Location Plan**

**2021 AI figure 1.1 Site Layout**

1.1 The application-site location is shown in figure 1.1 of the Environmental Impact Assessment Report (EIAR).

1.2 The main body of the application site lies in rolling moorland between the low hills of Sìthean nan Cearc and Beinn nan Cabag in the west and the Allt Bad an t-Seabhaig in the east. Càrn na Dubh Choille, another low hill, rises from the eastern bank of the burn. An area of the site intended for the access track extends to the A835 road in the north, encompassing a public right of way, the Fish Road, which further south forms the north-eastern boundary of the site. There is a plantation forming part of the Corriemollie Forest in the eastern part of the site.

1.3 The existing Corriemoillie, Lochluichart and Lochluichart Extension windfarms lie immediately west of Beinn nan Cabag, to the west of the site. The turbines in these developments are 125 metres in height to blade tip. A second Lochluichart Extension has been granted consent to the north of the existing turbines, but is not yet constructed. The consent is granted for turbines of 133 metres to tip. For the location of the existing Lochluichart and Lochluichart Extension turbines and the consented Lochluichart Extension 2 turbines see figure 5.3 of the October 2019 Supplementary Environmental Information (the 2019 SEI). For the location of the existing Corriemoillie turbines, see EIAR figure 4.6. An application has been made for a revised proposal for Lochluichart Extension 2 with turbines 149.9 metres to tip in height instead of 133 metres (which is what has been consented). There are a number of other windfarm developments, existing, consented and proposed, within the study area. The latest list is in table 4.1 of the 2021 Additional Information (the 2021 AI).

1.4 The wider landscape around the application site is characterised by rolling moorland with blocks of forestry plantations while the higher massifs of the Fannichs, Beinn Dearg and Ben Wyvis rise beyond to the west, north west and east respectively. The Ben Wyvis special landscape area (SLA) is about five kilometres from the site boundary. The Fannichs, Beinn Dearg and Glencalvie SLA is about 6 kilometres to the west and north. The Strathconon, Monar and Mullardoch SLA is about 13 kilometres to the south west. The Wester Ross National Scenic Area (including the mountain An Teallach near Dundonnell) is about 25.7 kilometres to the west. The Fairburn Estate Designed Landscape is located about 15.3 kilometres to the south east of the proposed development. The Rhiddoroch, Beinn Dearg and Ben Wyvis Wild Land Area (WLA 29) lies north and east of the application site, around 3.9 kilometres at its closest point. The Fisherfield, Letterewe and Fannichs WLA (WLA 28) lies about 3.6 kilometres to the west. The Central Highlands WLA is about 11.3 kilometres to the south. The SLA and NSA designations and the WLAs are shown in context with the proposed on EIAR figure 4.3a.

1.5 The application site is described further at section 2.3 of the Environmental Impact Assessment Report ("the EIAR").

1.6 The proposed development comprises the erection and operation of a wind farm of up to 17 wind turbines and associated development on the application site. The layout as now proposed is shown in the 2021 AI figure 1.1. The installed capacity of turbines would be up to 4.8 MW each (a total installed capacity of up to 81.6 MW). They would have a maximum height to blade tip of 175 metres. Associated infrastructure would include hardstandings at each turbine base, up to two meteorological masts, access tracks including a new access from the A835, an operations control building, substation, telecommunications equipment (including masts), up to three temporary construction compounds, up to two borrow pits, and underground cabling. An energy-storage facility is also proposed. It is proposed that tolerance of 50 metres from the marked location on the layout plan should be permitted to allow micro-siting of turbines and other infrastructure.

1.7 Descriptions of the proposed development for the purposes of section 36 consent and deemed planning permission are provided in this report's appendix 1.

Environmental Impact Assessment Report

1.8 The proposed development is initially described in chapter 2.6 of the EIAR.

1.9 The description was updated in the 2019 SEI in respect of changes to track design to limit impact on peat. The 2019 SEI made an assessment of the proposed development's impact on peat in the light of the changes to the track design. It also assessed the effects of the then-proposed aviation-lighting scheme and cumulative effects with the now-consented proposal for the Lochluichart Extension 2 windfarm.

1.10 The description of the proposed development was further updated in the 2021 AI with amendments to the location of turbines 5 and 7 and their associated infrastructure and to the proposed scheme for aviation lighting on the turbines. It assessed the significant landscape and visual effects taking account of these changes. It indicated that the reduced aviation-lighting scheme had been approved by the Civil Aviation Authority (CAA). It also assessed the effects of transponder-activated aviation lighting, though no CAA approval had at that time been obtained. It made an assessment of cumulative landscape and visual effects and effects of noise on an updated baseline, taking account of the revised proposal for Lochluichart Extension 2. It made a further assessment of the proposed development's effects on peat as a consequence of the proposed changes and the proposal of a revised peat-management plan. It also assessed the effect of a temporary diversion of the Fish Road and its effect on the use of that public right of way.

1.11 The applicant made a correction following the inquiry to EIAR table 4.8.1 (regarding the analysis of the proposed development's visibility and that of other cumulative windfarm development along the A835 road). The correction added information on the extent of visibility of the Lochluichart Extension 2 (both the consented scheme and the redesign).

Consultation

1.12 The EIAR accompanying the application was publicised on 5 and 12 April 2019. The 2019 SEI was publicised on 1 November 2019. The 2021 AI was publicised on 8 October 2021.

1.13 The Scottish Government's Energy Consents Unit (ECU) received responses from a number of consultees to the application and EIAR and further responses to the 2019 SEI. I also received a number of responses from consultees to the 2021 AI. I summarise below the position of consultees after the submission of the 2021 AI:

1.14 The British Horse Society did not object but requested that public access, including equestrian access, be considered during the project.

1.15 BT did not consider that the proposed development would interfere with any point-to-point microwave link and did not object.

1.16 Crown Estate Scotland did not object.

1.17 Defence Infrastructure Organisation did not object, subject to conditions securing the fitting of aviation-safety lighting to the proposed turbines in accordance with Civil Aviation Authority Air Navigation Order 2016 and requiring notification to it of the proposed development's start and end of construction, maximum height of construction equipment and the latitude and longitude of each turbine.

1.18 Garve & District Community Council did not object.

1.19 Highlands & Islands Airports Limited did not object, subject to conditions securing the fitting of visible aviation lighting on the proposed turbines.

1.20 Historic Environment Scotland did not object, though noted slight negative effects on the setting of the Fairburn Estate Designed Landscape and on the view from the driveway exemplified by viewpoint 7.

1.21 John Muir Trust **objected** to the proposed development on the basis of

- the adverse effects of the proposed development on the Rhiddoroch, Beinn Dearg and Ben Wyvis WLA (WLA 29) arising from the placing of very tall turbines in the foreground of views from Ben Wyvis, Beinn Dearg, Meall a' Ghrianain and Meall Mòr,
- the adverse cumulative effect, particularly in combination with Lochluichart Extension 2 (as consented), and the failure to consider Lochluichart Extension 2 in the assessment of the proposed development,
- the adverse effect on the Fisherfield, Letterewe and Fannichs WLA (WLA 28).
- the adverse effect on the A835,
- the combined visibility with turbines of Corriemoillie, Lochluichart, Lochluichart Extension, and Lochluichart Extension 2,
- the adverse socio-economic effect arising from the adverse effect on visitors of views of turbines, and
- the adverse effect on peat of the proposed development and lack of detail provided in the EIAR of impacts on peat.

1.22 The John Muir Trust also objected to the proposed micro-siting tolerance, which it considered amounted to an application for permission somewhere in the general area, rather than at a specific location.

1.23 The Joint Radio Company did not object.

1.24 Kyle of Sutherland District Salmon Fishery Board did not object.

1.25 Marine Scotland did not object but advised the developer to consult its fish-population-monitoring guidelines and made recommendations in respect of site characterisation to assess presence and abundance of fish, preventing water pollution during tree-felling and construction, including the maintenance of a stand-off distance from watercourses, consideration of fish-movement requirements in the design of watercourse

crossings, use of drainage in accordance with the sustainable-urban-drainage-system standard and regular visual inspection of watercourses.

1.26 Mountaineering Scotland **objected** to the proposed development in respect of its adverse landscape and visual effects and particularly its effects on views from surrounding mountains.

1.27 NATS Safeguarding did not object.

1.28 NatureScot (formerly known as Scottish Natural Heritage) initially objected on the basis that there was insufficient information to determine the magnitude of effect of aviation lighting on WLA 28 and WLA 29. It withdrew its objection following assessment of the revised aviation-lighting scheme proposed in the 2021 AI. It encouraged the use of a transponder-activated lighting scheme if that could be achieved, so as to reduce further the adverse effect of the aviation lighting.

1.29 RSPB Scotland did not object. It expressed concerns though that:

- The survey method resulted in an underestimate of impact on bird species
- The cumulative impact with Lochluichart Extension 2 on golden eagle, red-throated diver and black grouse should have been considered.
- Positive habitat management for golden eagle should be included as mitigation of effects on that species.
- Monitoring data on red-throated diver should have been presented in the EIAR
- The potential impact on black grouse, and that habitat enhancement should be required to mitigate potential impacts.
- Turbines and associated infrastructure should not be located on peat depths of greater than 0.5 metres to minimise greenhouse-gas emissions from disruption to peatland.

1.30 Scottish Forestry did not object subject to provision of compensatory planting of 16.6 hectares, with a plan for such planting to be approved before any tree-felling is carried out.

1.31 Scottish Water did not object.

1.32 Scotways **objected** to the application on the basis that the applicant had not fully considered public access, since it considered the recreational baseline established in EIAR figure 4.4 was incomplete and that there was a proposal to block public access along the Fish Road public right of way during construction.

1.33 The Scottish Environment Protection Agency (SEPA) initially objected to the proposed development on the basis of its impact on peat, the details of the proposed peat-management plan, the design of its access track, the lack of bunding included in the design of the proposed battery store, and the failure to provide a restoration profile for the proposed borrow pits. It subsequently withdrew its objection on the access track in its letter dated 31 July 2019. In the same letter it accepted that details of the peat-management plan in respect of which it had objected could be dealt with when the final plan was approved under a condition of consent. It also accepted that details of bunding and the assessment of environmental risks of the proposed battery store could be dealt with under a condition of consent. It maintained its objection in respect of the adverse impacts of the proposed design on peat particularly in respect of proposed turbines 5, 7 and 16. Although it welcomed plans for borrow-pit restoration, it objected to use of corrugated sheet plastic in cell walls during borrow-pit restoration.

1.34 In response to the peat information in the 2019 SEI, SEPA accepted there was a reduction of impact on peat in respect of turbine 16 and turbine 5 (though it considered the impact could be reduced still further in respect of the latter), but still objected in respect of the location of turbine 7. SEPA also accepted that details of borrow-pit restoration could be dealt with under a condition of consent.

1.35 Proposed turbines 5 and 7 were relocated into locations with shallower peat in the revised layout proposed in the 2021 AI. As a consequence of this revision, SEPA withdrew its remaining objection to the proposed development.

1.36 Strathpeffer Community Council did not object to the proposed development subject to due care being given to addressing local concerns regarding appearance and impact on local wildlife and the environment of the area. It referred to its expectation that the Kirkan windfarm should provide a community-benefit fund.

1.37 Transport Scotland did not object to the proposed development subject to imposition of conditions in respect of approval of the route on truck roads for abnormal loads, the provision of necessary signage and traffic-control measures by the applicant, the provision of wheel-washing facilities adjacent to the A835 access, the approval of the design of the trunk-road access, the securing of the visibility splay at the access onto the road and approval and implementation of a construction-traffic-management plan.

1.38 VisitScotland did not object to the proposed development but urged that effects of the proposed development on tourism should be taken into account.

Highland Council's position

1.39 Highland Council **objected** to the proposed development.

1.40 The council's case officer determined the council's position on the application under delegated powers, setting out his reasoning in a report of handling dated 15 June 2020. The council gave the following reasons for objecting to the proposed development:

- The application is contrary to Policy 67 (Renewable Energy) and Policy 28 (Sustainable Design) of the Highland wide Local Development Plan and the Onshore Wind Energy Supplementary Guidance as the development would have a significantly detrimental visual impact particularly as viewed from travellers, including tourists, and recreational users of the outdoors in the wider vicinity of the site but particularly to the north west, north, north east, east and south west of the proposed development due to the design, scale and location of the proposed development.
- The application is contrary to Policy 67 (Renewable Energy) and Policy 57 (Natural, Built and Cultural Heritage) of the Highland-wide Local Development Plan and Scottish Planning Policy 2014 as the impacts of the development would be detrimental to Wild Land Area 28 (Fisherfield – Letterewe – Fannichs) and Wild Land Area 29 (Rhiddoroch – Beinn Dearg – Ben Wyvis) and are not able to be satisfactorily mitigated by siting or design.
- The proposal would not preserve the natural beauty of the area surrounding the application site as required under Schedule 9(3)(2) of the 1989 Act.

1.41 The council's case officer consulted the two community councils locally (Garve and District Community Council and Strathpeffer Community Council) and the environmental health officer, the flood-risk-management team, the forestry officer, the historic-environment team and the transport-planning team within the council. Their responses to consultation

are summarised at paragraphs 7.3 to 7.7 of his report. None objected to the proposed development. The environmental-health officer raised two issues in respect of:

- the assessment of the proposed development's cumulative noise effect with the revised proposal for Lochluichart Extension 2 and
- management of cumulative noise

The flood-risk-management team sought imposition of conditions in respect of the design of watercourse crossings, the siting of tracks such that they were at least 50 metres from watercourses or waterbodies, and the attenuation of surface-water run-off. The forestry officer sought compensatory planting of 15.5 hectares on the Strathvaich estate. The transport-planning team sought a condition requiring a construction-traffic-management plan and an abnormal-load route assessment. It also sought an agreement under section 96 of the Roads (Scotland) Act 1984 (on extraordinary expenses in repairing roads damaged by heavy vehicles etc.).

Other representations

1.42 Four objections from the public and 440 intimations of support for the application were received in response to the EIAR. No additional objections were received in response to either the 2019 SEI or the 2021 AI, though one existing objector confirmed his position. Matters raised in objections included:

- The vagueness of the application, including the turbine numbers.
- The appropriateness of siting such large turbines onshore and the precedent set by permitting such a development, particularly for the repowering of neighbouring windfarms.
- The adverse landscape and visual effects of the proposed development, including effects arising from:
    - The sensitivity of the approach to Loch Broom, Beinn Dearg and the Fannichs in landscape and visual terms,
    - The prominence of the proposed location
    - The proximity to the A835 road and the sensitivity arising from its association with the North Coast 500 tourist route (NC500).
    - The contrast of the turbines to their moorland backcloth in many views
    - Cumulative effects with the existing cluster of turbines and with the consented Lochluichart Extension 2 and failure properly to consider cumulative effects with the latter.
    - The impact of turbine lighting
    - The impact on views from Beinn Dearg, the Fannichs, Ben Wyvis and Little Wyvis.
- The adverse effects on WLAs 28 and 29
- The adverse effects on tourism, including on the NC500, and consequent adverse economic effects.
- The adverse effects on wildlife, including sea eagles, golden eagles and other species.
- The unreliability and intermittency of renewable energy.

1.43 Matters raised in intimations of support (many of which followed a standard form) included:

- Benefits to the community and region from funding, investment and employment.
- Economic diversification from tourism.
- Indirect benefit to supply chain of goods and services for the proposed development.
- Benefit of power generation for 50,000 homes annually.
- Low cost of renewable energy as compared to other forms of generation.
- Wind power - a form of generation that will not run out.
- No pollution such as acid-rain gases, carbon dioxide or particulates

- Saving 101,000 tonnes of carbon-dioxide emissions a year.
- The need to build renewable-generation capacity to mitigate climate change and meet treaty commitments and the urgency of doing so.
- The need for community energy self-sufficiency.
- Improvement of the UK's energy security
- Reduced need for expensive new nuclear-power stations and their consequent generation of radioactive waste.
- Public support for wind power.
- Overemphasis on aesthetic emptiness of landscape.
- Appropriateness of proposed setting – little detriment arising from the proposed development to the surrounding area.
- Aesthetic appeal of wind turbines.

Engagement of the public concerned

1.44 Ministers will be aware of the advertisement of the application, the EIAR and the 2019 SEI as required by law, which took place before my appointment to hold the inquiry. The responses to that consultation are summarised above in this report.

1.45 The applicant has also provided in evidence a statement of community consultation that took place before the application was made. This indicates that, before the application was made, the applicant carried out community consultation by holding two public exhibitions on 12 and 13 June 2018 in Garve and Achnasheen. The report states that these were advertised in advance with an information leaflet and that advertisements were placed in the Press & Journal and Ross-Shire Journal. The statement indicates that 15 people attended these exhibitions. It provides a record of the consultation responses provided by those who attended. These are reported to have raised the visual impact of the proposed development, the requirement for community consultation, the impact on the drove road (the Fish Road) through the site, the refusal of the proposed Carn Gorm windfarm, and the proposed development's benefits in terms of contributing to meeting targets for renewable energy and reduction in greenhouse-gas emissions. Samples of the information leaflet, the adverts and of materials shown in the exhibition are provided in the statement.

1.46 After my appointment to hold the inquiry, the applicant submitted the 2021 AI and advertised and consulted upon it. I also ensured that those who had objected to the application had notice by correspondence of the 2021 AI and therefore had the opportunity to comment upon it.

1.47 One of the objectors had suggested that the application had not been advertised sufficiently in the Ullapool area. I therefore arranged for the inquiry (and the opportunity for comment on matters to be heard at the inquiry) to be advertised not only in the Ross-Shire Journal (as the EIAR and 2019 SI had been) but also in the Ullapool News and Gairloch Times. Members of the public in the area of Ullapool as well as elsewhere therefore had an opportunity to comment on the proposed development before the end of the inquiry. In the event, though, I received no written submissions in respect of the application from people other than those who had commented on the original application.

1.48 The webcast of the inquiry is available under the reference WIN-270-14 on the DPEA webcasting site.

## CHAPTER 2: LEGISLATIVE AND POLICY CONTEXT

Agreed matters

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| Statement of agreed matters between the council and applicant (CD15.1) section 8 |

2.1 The matters relating to policy and law agreed between the applicant and the council are summarised in the following paragraphs.

2.2 Section 36 of the Electricity Act 1989 ("the 1989 Act") provides that the construction or operation of a generating station whose capacity exceeds 50 MW may only be undertaken in accordance with a consent granted by the Scottish Ministers. As regards the statutory framework for Ministers' decision on the application, the applicant and council agreed that:

- for applications under section 36, section 25 of the Town and Country Planning (Scotland) Act is not engaged, and that this means the development plan has no primacy, though it is a relevant consideration for Ministers. This is supported by the court's findings in *William Grant and Sons petitioners* [2012] CSOH 98.
- The only statutory provision which addresses the determination of section-36 applications is schedule 9 to the 1989 Act. Paragraph 3(2)[2] of schedule 9 requires the Scottish Ministers, when considering such applications, to have regard to "the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest". A holder of a generation licence under section 6 of the 1989 Act or a person who enjoys an exemption from the requirement for a licence also has those duties, but in this case the applicant is not a licence holder, so does not have such a duty. In the circumstances, the council's reason for objection 3 is inappropriately worded.
- Paragraph 3(3)[3] of the same Schedule 9 requires the Scottish Ministers to avoid injury to fisheries or to the stock of fish in any waters.
- The Applicant has had regard to the desirability of preserving the natural beauty of the countryside, conserving flora and so on as set out in the Act. However, having regard to and doing what they reasonably can to mitigate the impacts are separate matters for which parties will present evidence.

2.3 As regards law and policy on climate change and energy, the applicant and the council agreed that:

- The Climate Change Act 2008 ("the 2008 Act") establishes a duty on the UK Government to ensure that the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline.
- The Carbon Budget Order 2021 sets a target of reducing UK carbon emissions by 78% by 2035 as compared with the 1990 baseline.
- The Climate Change (Scotland) Act 2009 ("the 2009 Act") established a statutory target for reduction of Scotland's net greenhouse-gas emissions from a 1990 baseline. Following its amendment by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 ("the 2019 Act"), there was a target for reduction of emissions 100% by 2045 (net zero). There are interim targets of 75% by 2030 and

[2] Parties referred to paragraph 1(2) of schedule 9, though I understand them to have meant paragraph 3(2) as the part of the schedule referring to Scotland.
[3] As above, the parties actually referred to paragraph 1(3).

90% by 2040 and interim annual targets. The interim annual targets for 2018 and 2019 of 54% and 55% reductions have been missed.

- The trajectory in terms of scale and pace of action to reduce emissions has become steeper following the introduction of the new higher targets by the 2019 Act.
- The Scottish Energy Strategy (SES) (2017) sets a target for the equivalent of 60% of energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources by 2030. Electricity demand is expected to increase as heat and transport are decarbonised.
- The SES and Onshore Wind Policy Statement (OWPS) (2017) set out that onshore wind is to play a vital role in Scotland's future, helping to decarbonise electricity supplies, and playing a material role in growing the economy.
- The Scottish Government's targets are not a cap on renewable energy.
- Significant further deployment of renewable-energy generation will be required throughout the 2020s to meet these targets. Onshore wind will have a continuing and important role to play. Larger, more optimal turbines than historically deployed in Scotland are to be anticipated.
- The Scottish Government and the Green Party agreed a specific target for onshore wind for Scotland to be attained by 2030 of between 8 and 12 GW of additional installed capacity.
- The Scottish Government declared a climate emergency on 14 May 2019. This is a reflection both of the seriousness of climate change and the need for urgent action to cut emissions. The declaration is a material consideration.
- A number of international, UK and Scottish Government energy-policy documents listed in paragraph 8.17 of the statement are material considerations.

2.4 The applicant and council agreed further that these documents communicated the seriousness of

- the climate emergency,
- the need to cut emissions,
- the Scottish Government's intentions regarding deployment of renewable energy and
- the need for the urgent action to meet the legal commitment to net zero emissions.

Current renewable-energy policy is to be afforded significant weight.

2.5 They also agreed on the national planning policy that they considered relevant. In respect of SPP, the parties agreed that paragraphs 13, 28 (and its heading), 29, 32, 33, 152 to 155, 161 to 166, 169 and 170 were most relevant.

2.6 They agreed that the draft NPF4 is a consideration in the decision setting out the draft policy (and not simply an indication of the direction of travel). They agreed that policy 2 entitled "climate emergency" and policy 19 "green energy" were relevant. They recognised that the proposed policies could change following consultation and the parliamentary process for NPF4.

2.7 They agreed that the development plan comprises

- The Highland-wide Local Development Plan ("HWLDP") (adopted 2012)
- The West Highlands and Islands Local Development Plan ("WestPlan") (adopted 2019)
- Relevant supplementary guidance, particularly the Onshore Wind Energy SG (2016) ("OWESG")

Furthermore, they agreed that HWLDP policies relevant to the application's determination were set out in the council's report of handling (CD3.3) and that the policies of most relevance were policy 55 (peat and soils), 57 (natural, built and cultural heritage), 58 (protected

species), 59 (other important species), 60 (other important habitats), 61 (landscape) and 67 (renewable energy developments).

2.8 Subject to the points I have footnoted, I do not disagree in any respect with these matters agreed by the council and applicant.

Summary of the applicant's case on policy

Planning statement (CD1.09)
Planning statement update (CD1.12)
Hearing statement on policy (CD11.4)
Closing submissions
Written submissions on UK Energy Security Strategy and IPCC report

2.9 The national planning policy framework for this application is agreed as between the applicant and council. The same applies to the identification of relevant local policies.

2.10 Differences between the applicant and council in approaching the planning balance arise in terms of the need case as contained in legislation and emerging policy relating to the Climate Emergency and Net Zero.

2.11 The latest report of the Intergovernmental Panel on Climate Change (IPCC) on mitigation confirms the harmful and permanent consequences of failure to limit the rise of global temperatures and has the urgent message that reducing emissions is a crucial near-term necessity. It emphasises the role wind and solar energy play in the energy transition.

2.12 The requirement under the 2009 Act for Ministers to do what is best calculated to achieve the emissions-reduction targets does not amount to a requirement to consent any proposed renewable-development generation capacity. It has to be understood in the context, though, of the duty on Ministers to ensure the emissions-reduction targets are met. The legal requirements relating to the Climate Emergency and Net Zero, and emerging policy such as NPF4, dictate that SPP and indeed LDP policy 67 should be given reduced weight insofar as they advise an approach to the planning balance which is so clearly overtaken by events. The growth in nuclear power proposed in the recent British Energy Security Strategy is likely to relate only to England and Wales, given the Scottish Government's position. A restrictive approach in respect of onshore wind will continue to apply in England. Onshore wind will continue to come forward in Scotland as well as offshore wind.

2.13 The basis of the council's objections to Kirkan as represented at the inquiry was extraordinarily narrow. It explicitly relies only on visual (not landscape effects) on a small section of the A835 and on views from some more distant summits. There are no other material issues. In the absence of real matters which could objectively be said to be of concern, the council resorted to the only (poor and unjustified) weapon left: an attack using a very refined palate on aspects of design and upon perceived scale disparities which are and will become increasingly be inevitable as 2030 and 2045 approach.

2.14 In a SPP Group 3 area such a narrow focus would have to disclose something quite out of the ordinary and intense about these visual effects if it is to justify a refusal, even if net zero and the SPP tilted balance were not engaged. The presumption for development that contributes to sustainable development is engaged, and the SPP tilted balance applies.

2.15 The council's case rests partly on the size disparities between the proposed turbines and the existing turbines. There is a trend to larger turbines, which is recognised in the OWPS. It is inevitable that turbines will be proposed of such heights for Kirkan. The only way to avoid scale disparities is to insist that new turbine development should be sited well away from existing turbines (notwithstanding that SPP paragraph 174 favours repowering onshore windfarms because they are already in suitable sites where environmental and other impacts have been shown capable of mitigation – a principle that applies to extensions). Scale disparities will inevitably arise until older schemes are repaired or renewed – this should not count against new development such as Kirkan. New proposals for turbines are made on the basis of what turbine models will be available at the time the development comes to be built. Proposals for higher turbines reflect doubts developers have about the availability of turbines at tip heights of 125 metres or even 140 metres.

2.16 The need for this proposed development, and its other benefits including economic benefits, significantly and demonstrably outweigh the local adverse impacts. The proposed development would satisfy the requirements of the lead LDP policy 67, and so be consistent with the development plan. Planning permission should be granted.

Summary of the council's case on policy

Report of handling and reasons for objection (CD3.3)
Policy hearing statement (CD12.3)
Closing submissions
Written submission on UK Energy Security Strategy and IPCC report

2.17 There is a substantial level of agreement on the legal and policy framework between the council and the applicant. The council's case focuses on matters in dispute.

*The Climate Change (Scotland) Act 2009 (as amended)*

2.18 Ministers' duties under section 44(1) of the 2009 Act are consistent with the current guidance on land-use planning, such as in NPF3, SPP, OWPS and the Land Use Strategy. These all put sustainability at the heart of decision-making and provide significant policy support for renewable energy. They are high-level duties, which will be more than adequately fulfilled by applying current guidance. Applied in that way there should be no apparent or real conflict within the limbs of section 44(1) – particularly given the general nature of the duties.

2.19 As to the targets in that Act (and the Climate Change (Emission Reduction Targets) (Scotland) Act 2019), these are high-level targets that a number of programmes, including onshore wind, will contribute to meeting. They are not meant to be directly applied to particular development-control decisions. It is well-established that, in any event, targets are not caps and that there has been no lessening of weight in support of renewable energy when, in the past, it might have appeared earlier targets were (arguably) on course to be met. Onshore wind has in the past played a vital role and will continue to do so in meeting targets.

2.20 Climate-change policies are not just directed at onshore-wind decision-making. They are directed at all aspects of government and indeed the wider community, where until recently scant or insufficient regard has been placed on these matters. By contrast, the policy support for onshore wind has been very strong for some considerable time. The

council have recognised that to be the position in its reports and decision-making processes, and indeed policy 67 of the HWLDP.

*Whether recent legal and policy developments have affected the balance to be struck*

2.21 As to whether there is a new balance to be struck as a result of a number of new policy statements and greater recognition of extent of legal duties, the council's submissions are:

> (a) In essence, no. Notwithstanding the express recognition of the importance of onshore wind in meeting legal and policy goals, there is no suggestion that that decision-making process should change or that previous decision-making ascribed too much weight, *inter alia*, to the protection of the natural environment. There has always been a balance to be struck, and will continue to be so and there is no indication in any of the documents, including the very recent Land Use Strategy that there is any less importance (and hence weight) to be placed on protection of the natural environment.
>
> (b) That would be easy to make clear, but it has not been. Attempts to imply such a change by developers are long standing and suit their purposes, but it is too important a point to be left to mere implication.
>
> (c) Further there is no suggestion of any change in this regard in any of the important draft documents now in course of production.
>
> (d) The reasoning in both Strathy Wood (CD10.54) and Glenshero (CD10.56) both still refer to the concept, derived from SPP, of the right development in the right place and not development at any cost.
>
> (e) Finally, it should be borne in mind that energy and climate-change policies do not include any spatial dimension which directs where developments should be permitted. The question of whether a location is suitable is addressed by the balancing exercise which is to be conducted when giving detailed consideration to a proposal, as made clear in the Third Land Use Strategy (CD 5.20). Indeed, the draft OWPS (CD 7.35) reproduces a passage to that end at paragraph 4.2.1 which reinforces that point.

2.22 The British Energy Security Strategy acknowledges the need to reduce the UK's exposure to volatility in the fossil-fuel markets by deployment of alternative energy sources and by supporting UK oil and gas sectors. The approach involves investment in nuclear energy, hydrogen production and renewable energy. The latter is strongly focused on offshore wind rather than onshore wind. It also states that there is a strong pipeline of projects already in Scotland. There does not appear to be a departure from the current position on onshore wind, and the requirement to strike a balance between benefits and adverse effects.

2.23 The recent IPCC report on mitigation of climate change confirms the need to act now to reduce risks. The need for energy transition is recognised among measures in a wide range of sectors. It does not change the council's position that a balance requires to be struck between the benefits of the proposed development for climate-change mitigation and its significant adverse impacts.

2.24 It is not possible to reconcile each and every aspect of reasoning of reporters in all recent decisions, but regard has to be paid to context and the wording of related decision letters. In that regard, the council contends there is still a constancy of approach. As to the

two most recent reports, the reporters are at one in recognising no lesser protection to the environment, see CD10.55 at 11.51 in Strathy Wood. See also 11.52 and 11.53. They are consistent with the reporter at 7.36 and 7.37 in the Glenshero Report (CD10.57).

2.25 This is not a suggestion that there is "business as usual". It has not been business as usual for some time – onshore wind has and will continue to garner substantial weight in any balancing exercise. The council's own record of approvals/non-objection (and Corriemoillie and Lochluichart and extensions provide clear examples of that) demonstrates this is not just a submission. Weight can be given to how the council has considered the balance.

*How adverse effects of extensions are to be treated*

2.26 All decisions have to be considered on their own merits. In this case, the adverse impacts outweigh the benefits. There is no basis or case for saying that jarring effects arising from badly-designed extensions should be ignored or given lesser weight in terms of their impact on the natural environment. The applicants may wish that were the policy position (although they appear to overlook that, by stressing that point, there is a clear implicit admission that there is a real design issue and without a change of approach rejection may be more likely), but it is not. They have sought to set up a contrast between greenfield sites and extensions.

2.27 The answer to that is "better an appropriate greenfield site than an inappropriate extension". There is no evidence base for the suggestion that we are running out of sites.

*The tilted balance*

2.28 Finally, as to application of the tilted balance, the council's position is threefold:-

(a) In a section-36 case, the development plan has no primacy and the use of the tilted balance is a mechanism which is designed to operate within a decision-making framework where such primacy exists.
(b) In any event, given the very strong support for renewables, the balance is effectively already tilted.
(c) Finally, it is difficult to ascribe an angle of tilt, particularly in the absence of specific targets.

2.29 This is not a case where it is open to the reporter or Ministers to give such weight as they think fit to any aspect of the case. On the contrary, they are in effect required to give substantial weight to the benefits of renewable energy – for well-rehearsed reasons. However, this is a case where the impacts are such, as has been found in other cases on visual impact grounds only, that the application should be refused.

Summary of Mountaineering Scotland's case on policy

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| Updated Mountaineering Scotland objection (CD13.1) |

2.30 Mountaineering Scotland does not oppose onshore wind development in principle, but only where it has unacceptable effects. No individual renewable development is essential to meet statutory targets. Each should be judged on its merits. There are many potential suitable locations for renewable development. The adverse effects of

development are site-specific (as compared with the wider benefits) and so should weigh more heavily in the balance.

2.31 As regards recent policy developments, recent decisions of Scottish Ministers have indicated that draft policy, such as the draft NPF4 and draft OWPS, is not to be given substantial weight. Even so, the draft NPF4 indicates continuity with existing national policy in SPP.

Summary of Dr Hedger's case on policy

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| Objection (CD2.25)<br>Extended precognition, sections 2 and 3 (CD14.1)<br>Closing submissions<br>Written submission on British Energy Security Strategy and IPCC report |

2.32 The recent IPCC report on mitigation of climate change stresses the need to tackle the crisis in a multi-pronged way. This is to be done particularly by ending the age of fossil fuel quickly but the role of carbon-dioxide removal is also recognised. The climate-change action proposed is not an end in itself but is to enable continuance of life and livelihoods, as well as quality of life.

2.33 Scottish national planning policy has supported the transformational change to a low-carbon economy for some time. But there has not been an un-nuanced support for low-carbon development at all costs.

2.34 Scotland's draft NPF4 recognises that success is not to be judged on economic performance or GDP but on a wider range of measures. The Introduction talks of the Place Principle to create liveable, healthier and sustainable places that improve lives.

2.35 SPP states that planning must facilitate the transition to a low-carbon economy and sites must be acceptable subject to detailed consideration against identified policy criteria. However, it also states that the development of a diverse range of electricity generation should be supported. It also states that considerations should also (*inter alia*) relate to the scale of the proposal, cumulative impacts, landscape and visual impacts, impacts on carbon rich soils, impacts on tourism and recreation, impact on adjacent trunk roads (SPP paragraph 169).

2.36 The Scottish Government's Update to the Climate Change Plan (2018) stresses the need to learn by doing and to work iteratively and that no one has all the answers on how we deliver the transition over the next 25 years of how emerging technologies can be deployed. There is a wealth of policies under active consideration in Scotland on the climate emergency. Scotland's natural capital is seen to be "one of our natural assets and central to our future net zero economic, developing thriving rural economies, based around woodland creation, peatland restoration and biodiversity as well as suitable tourism, food drink and energy" (Executive Summary, page 8). By 2030 the major transformation of the energy system is expected to be in full swing. This does envisage a substantial increase in renewable energy transformation particularly through new offshore and onshore wind capacity, but hydrogen features large as well, together with big movements on reducing energy demand in transport, homes and industry and financial support for wave and tidal technology and Pumped Storage Hydro with a Bioenergy action plan. Support for onshore wind is focused on reducing determination timescales, whilst offshore wind is to benefit from

a range of actions for supply chain, planning innovations and skills to develop between 8-11GW of offshore wind capacity by 2030.

2.37 In the draft NPF4, the Sustainable Places (Universal Policies) does state that, "to achieve a net-zero nature-positive Scotland we must rebalance our planning system so that climate change and nature recovery are the primary guiding principles for all our plans and decisions" (page 68). Several of the policies bring this guiding principle into a broader context, such as the long-term public interest (Policy 1). It is intended that the NPF "will contribute by including policies that recognise that the natural environment is fundamental to our health and wellbeing from food growing, clean air and water, to the health and wellbeing benefits we get from being in nature". Stress is also laid on biodiversity enhancement, that developments should be designed to a high quality and designed for lifelong health and well-being. There are several proposed protective policies affecting natural assets, landscapes and species. It also states that planning authorities should apply the precautionary principle where the impacts of a proposed developments on nationally or internationally significant landscape or natural heritage assets are uncertain but there is sound evidence that damage could occur (page 108).

2.38 The British Energy Security Strategy need not figure large in the Scottish Government's decision-making. Two comments are of relevance: first, that there is a strong pipeline of projects in Scotland for onshore wind; second, that the UK Government will work with the Scottish Government to ensure landscape issues are recognised. Landscape and visual effects of the proposed development are such that it should be refused.

Reporter's reasoning

*The legislative framework:*

*Electricity Act*

2.39 The matters agreed between the council and applicant cover the status of the development plan and the statutory material considerations set out in the Electricity Act's schedule 9. I have agreed on these points too.

*Environmental impact assessment*

2.40 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 require that a decision notice of Scottish Ministers on such an application should provide, amongst other things, a reasoned conclusion on the significant effects of the development on the environment. If consent is to be granted, the decision should also state that the reasoned conclusion on significant effects is up to date. As part of my conclusions to this report, I have sought to provide a reasoned conclusion to support my recommendation.

*The Climate Change Acts*

2.41 The duty of the UK Government, introduced under the Climate Change Act 2008, to ensure that the UK achieves net-zero carbon-dioxide emissions by 2050 is among the matters acknowledged in the council and applicant's statement of agreed matters. UK policy on energy and climate change is to be understood in the light of this requirement.

2.42 The Climate Change (Scotland) Act 2009, in addition to the 2045 net-zero target and interim targets for 2030 of 75 percent reduction and 2040 of 90 percent reduction, sets a

series of interim annual targets set by the 2009 Act. Scottish Ministers are under a duty to ensure all these targets are met.

2.43 Scottish Ministers also have a duty under section 44 of the 2009 Act to act, in the exercise of their functions, in the way best calculated to contribute to the delivery of the statutory targets, act in the way best calculated to help deliver the programme for adaptation to climate change laid before Parliament, and act in the way that they consider most sustainable. I find the first and third of these duties are of particular relevance to the determination of the application. I will consider the interaction of these duties with policy below, in discussing the balance to be struck in respect of the proposed development.

*Statutory planning outcomes*

2.44 Section 3A of the Town and Country Planning (Scotland) Act 1997 requires the national planning framework to contain a statement on how the Scottish Ministers consider that development will contribute to certain specified outcomes. There are six outcomes specified. One of these is "meeting any targets relating to the reduction of greenhouse gases, within the meaning of the Climate Change (Scotland) Act 2009".

2.45 The applicant also referred me to section 3ZA, which sets out the purpose of planning in respect of the national planning framework and development planning. This is said to be the management of land in the long-term public interest. Anything that contributes to achieving sustainable development or the national outcomes (within the meaning of Part 1 of the Community Empowerment (Scotland) Act 2015 ("the 2015 Act") is considered as being in the long-term public interest. The national outcomes defined under the 2015 Act are not the same as the outcomes defined in section 3A. The government's environment national outcome adopted under the 2015 Act requires that we value, enjoy, protect and enhance the environment. The vision for the outcome includes Scotland being "at the forefront of carbon reduction efforts [and] renewable energy" as well as other sustainable technology.

2.46 The requirements of sections 3A and 3ZA relate directly to the national planning framework (and in the case of 3ZA also to development plans). The national planning framework sets a context for planning decisions across Scotland. Consequently, the requirements indicate the outcomes Parliament envisaged planning decisions across Scotland should seek to achieve, at least once NPF4 is in place. Until NPF4 is in place, the outcomes have only limited direct relevance to the proposed development.

*United Nations Sustainable Development Goals*

2.47 Dr Hedger referred me to Section 92 of the 2009 Act, which provides that in exercising the functions conferred on Ministers by the 2009 Act, they must do so in a way that contributes to sustainable development, including the achievement of the United Nations sustainable-development goals (UNSDG). I am not convinced that, in exercising a function under the Electricity Act, Ministers are subject to 2009 Act section 92. The UNSDG are mentioned though as a measure of the achievement of the environmental national outcome adopted under the 2015 Act.

2.48 Dr Hedger, objecting to the application, argued that climate action was only one of the 17 UNSDG. I understand the origin of the UNSDG to be connected with the identification in international conventions of climate change as a problem that required to be addressed at a global level. It appears to me that the importance of climate action is not to be minimised simply because it is only one of a number of goals. On the contrary, effective

climate action will be necessary to address other goals, such eliminating poverty and hunger, securing sustainable communities and preserving life on land and water.

Policy on energy and climate change

2.49 There is no dispute regarding the seriousness of climate change, the urgency of addressing it, or that the UK is subject to international obligations to reduce its carbon emissions with the aim of keeping within 1.5 degrees of warming of the global climate.

2.50 The consequences of exceeding 1.5 degrees of global warming are described in the United Kingdom (UK) Government's Net Zero Strategy (October 2021) as follows:

> "… if we fail to limit global warming to 1.5°C above pre-industrial levels, the floods and fires we have seen around the world this year will get more frequent and more fierce, crops will be more likely to fail, and sea levels will rise driving mass migration as millions are forced from their homes. Above 1.5°C we risk reaching climatic tipping points like the melting of arctic permafrost – releasing millennia of stored greenhouse gases – meaning we could lose control of our climate for good."

2.51 To mitigate climate change, greenhouse-gas emissions must be reduced globally. Following the close of the inquiry, the IPCC published its Sixth Assessment Report on Mitigation of Climate Change, on which I invited parties to make submissions. The report finds that global emissions were still growing over the years 2010 to 2019, though at a slower pace than previously. In those years, the report estimates emissions were the equivalent of 410 gigatonnes of carbon dioxide. The report estimates a budget for further emissions from 2020 onwards that will allow a 50-percent probability of limiting warming to 1.5 degrees Celsius. It estimates the budget at 500 gigatonnes carbon-dioxide equivalent. The remaining budget is therefore only about 25 percent greater than emissions in the ten years before 2020. This evidence is not disputed.

2.52 No single development, not even a large windfarm, will by itself make a material difference to the global level of greenhouse-gas emissions. Any programme that seeks to mitigate climate change must necessarily rely on a series of increments that each, in itself, will not make a significant difference. Therefore, while it is correct to say that the grant or refusal of permission for any particular development will not make a significant difference to the overall picture, it is not possible to take such an approach universally without giving up on the aim of preventing dangerous climate change. Policy is a necessary element in directing otherwise insignificant increments towards the aim of reduction in emissions. UK and Scottish policy must be read in the light of the UK and Scottish governments' commitments, domestically and under international agreements, to mitigating climate change.

*United Kingdom policy*

2.53 The United Kingdom (UK) Government declared a global climate emergency in 2019. It subsequently gave a legal commitment to achieve net zero emissions for the UK by 2050. The net-zero target was set in the context of the UK meeting its obligations under the Paris Agreement. The UK made its commitment to net zero having received a report of May 2019 from the Committee on Climate Change (CCC) – Net Zero: The UK's Contribution to Stopping Global Warming (CD7.7).

2.54 The report anticipated that a quadrupling of the supply of low-carbon electricity by 2050 would be required, alongside other measures including efficient buildings, low-carbon heating, electric vehicles, carbon capture and storage, diversion of biodegradable

waste from landfill, phase-out of fluorinated gases, increased afforestation and measures to reduce emissions on farms. It indicated the urgency of taking action and that a net-zero target was only credible if policy to reduce emissions ramps up significantly. As compared with the previous target of an 80-percent reduction in emissions by 2050, it required more electrification and more generation capacity for low-carbon electricity.

2.55 The same report recommended that Scotland should set a target for net zero emissions by 2045. The report placed reliance on Scotland doing so, in order for the UK to achieve net zero by 2050. It recommended interim targets for Scotland of a 70 percent reduction by 2030 and a 90 percent reduction by 2040.

2.56 In November 2020, the UK Government adopted its Ten Point Plan for a Green Industrial Revolution (CD7.21). Among other commitments, this sets the aim of quadrupling offshore-wind capacity to 40 GW by 2030. It makes no mention of onshore wind.

2.57 The Energy White Paper: Powering Our Net Zero Future (CD7.25), which came out in December 2020, referred to onshore wind (along with solar and offshore wind) as a key building block of the future generation mix. It stated that sustained growth in the capacity of these sectors was required in the next decade to ensure that the UK was on a pathway to meet net zero emissions in all demand scenarios.

2.58 In June 2021, the UK Government set in law the Sixth Carbon Budget. This requires emissions reduction from a 1990 base of 68 percent by 2030 and 78 percent by 2035. The UK Government's adoption of these targets followed the issue of a CCC report of December 2020 (CD7.23) making recommendations for the Sixth Carbon Budget, including the setting of these targets.

2.59 The CCC report sought to make recommendations on what could feasibly be achieved at low overall cost on a pathway it considered would bring benefits and opportunities to the UK. It found the actions required to meet the budget would include full decarbonisation of the power sector, switchover to electric-vehicle sales, installation of low-carbon heating, and roll-out of carbon capture and storage. If such action was taken also by other developed countries with developing countries following slightly later, warming would be limited to well below two degrees. The report identifies the expansion of low-carbon energy supplies as one of the key areas requiring action (alongside reduction in demand for carbon-intensive activities, take-up of low-carbon solutions and a transformation of land use). The expansion of low-carbon energy supplies is required to meet new demands from transport, buildings and industry as electrification is increased in those sectors. The report anticipates an increase in demand of 50 percent by 2035 and a doubling or trebling of demand by 2050. It acknowledges the UK Government's goal (in the Ten Point Plan) of 40 GW of offshore wind by 2030 (on a path to 65 to 125 GW by 2050) as the largest contribution to meeting demand. The methodology report that accompanied the main recommendations indicated that the CCC's modelling had relied upon a near-doubling of onshore wind generating capacity from 14 GW to 25 to 30 GW by 2050. This is at the low end of the potential the CCC estimated the UK had for deployment of onshore wind (a range of 29 to 96 GW).

2.60 The CCC report states that UK targets cannot be met without strong policy action across Scotland, Wales and Northern Ireland. The most optimistic of the five scenarios produced in the CCC's modeling indicates an emissions reduction in Scotland of 69 percent by 2030 (though without engineered removal of greenhouse gases from the atmosphere). This would fall short of Scotland's 75-percent target that the Scottish Parliament had previously set by law. The report recommends engineered removals alongside other measures to achieve the target. Although the report finds that most of the policy levers in

respect of electricity supply are reserved, it recommends that the Scottish Government should, among other measures, establish a favourable planning regime for onshore wind.

2.61 In October 2021, the UK Government adopted the Net Zero Strategy: Build Back Greener (CD7.36). This was issued to meet the requirement of section 14 of the 2008 Act for the Secretary of State to publish a report setting out proposals and policies for meeting the Sixth Carbon Budget. This contains an indicative delivery pathway, stretching to the end of the period of the Sixth Carbon Budget in 2037. The strategy expressly relies on many findings in the CCC report for the Sixth Carbon Budget. The strategy identifies a pathway to net zero. This relies on a number of key technologies, including electricity from low-carbon generation meeting higher demand for low-carbon power in buildings, industry, transport and agriculture.

2.62 The strategy's delivery pathway envisages that all the UK's electricity will come from low-carbon sources by 2035 while meeting a forty- to sixty-percent increase in demand. This represents an increase in ambition from the previous Energy White Paper (CD7.25). However, the fundamental approach is said to be unchanged from the Energy White Paper: "A low-cost net-zero-consistent electricity system is most likely to be composed predominantly of wind and solar generation, whether in 2035 or 2050." The intermittency of such generation is to be complemented with technologies such as interconnectors, electricity storage, and demand-side response. The trajectory for the Sixth Carbon Budget suggests that all these technologies will require to be built "at or close to their technical limit" to meet the challenges of decarbonisation and increased demand, according to the strategy. Rapid deployment of renewables is said to be required so that substantially greater capacity can be reached by 2030. This includes a sustained increase in the deployment of land-based renewables "including locally supported onshore wind and solar" in the 2020s and beyond.

2.63 Although the strategy does not set any express or specific target or ambition for development of onshore-wind capacity, it does make oblique reference to job creation in the onshore wind industry. As regards job-creation, it envisages 120,000 jobs supported by 2030 in the Net Zero Strategy pathways in the power sector. Of these 60,000 would be in offshore wind, while the remainder includes employment in other sectors including solar and onshore wind. This suggests the government envisages a substantial onshore-wind industry, of a scale perhaps not as great as, though comparable to offshore wind.

2.64 There is no statement of policy in the Net Zero Strategy that would indicate development of future energy capacity is to take a fundamentally different track from that relied upon in the CCC's modelling. Consequently, the lack of an express or specific UK Government target or ambition for development of onshore-wind generating capacity is not evidence that would suggest the amount of capacity relied upon in the Sixth Carbon Budget's modelling is not required. Rather the reverse: the positive statements in the Net Zero Strategy and the Energy White Paper (given that the former expresses both continuity and greater ambition than the latter) about development of additional onshore-wind capacity are evidence that the UK Government's policy aims as regards onshore wind are consistent with the evidence in the CCC report of the required increase in onshore-wind capacity.

2.65 The Net Zero Strategy was recently declared (*Friends of the Earth and others v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841) not to meet legal requirements under the 2008 Act on the Secretary of State to prepare proposals and policies to enable the Sixth Carbon Budget to be met and for the report on such proposals and policies to set out how they would meet the budget. This was because the decision to adopt it had not been informed by an understanding that the emissions reductions that had been predicted and quantified were not sufficient to achieve the net-

zero target or of how that deficit might be addressed and because the strategy did not quantify the expected reductions over the required timescale to 2050. The strategy therefore did not meet the statutory requirement to inform Parliament how the UK Government would meet the target. Nonetheless, the Strategy was not quashed and remains policy for the present. For that reason, I have not considered it necessary to seek parties' views on this ruling.

2.66 The latest UK Government statement of energy policy is the British Energy Security Strategy (CD7.41), updated on 7 April 2022. It expressly builds on the Ten Point Plan for a Green Revolution and the Net Zero Strategy. The prime-ministerial forward identifies the issues the strategy is addressing as:

- the resurgence of energy demand following the reopening of the global economy "in the aftermath of the pandemic" and
- the threat posed by dependence on Russian oil and gas following the Russian war of aggression in Ukraine.

It states that "we need a flow of energy that is affordable, clean and above all secure. We need a power supply that's made in Britain, for Britain – and that's what this plan is about." The foreword refers to measures to produce more hydrogen, to develop new nuclear reactors, to make buildings more energy-efficient, to simplify consenting processes for offshore wind, and to "giving the energy fields of the North Sea a new lease of life".

2.67 I understand there is considerable consistency with the previous strategy (as might be expected). The strategy states the ambition to increase deployment of nuclear generation capacity to 24 GW (a quarter of supply) by 2050. No deployment of additional capacity is envisaged before 2030. There is no express commitment to additional nuclear capacity by 2035 when the UK power-generation system is to be decarbonised. There is an ambition for delivery of up to 50 GW of offshore-wind capacity by 2030, which would appear compatible with the existing target for delivery of 40 GW by 2030. The ambition for 70 GW of solar power by 2030 is somewhat greater than the CCC modelling. There is a commitment to fully utilising North Sea oil and gas resources. This is in the context, though, of reducing reliance on foreign energy sources. The aim is still to reduce gas demand to 2050. There is a target to reduce gas consumption by 40 percent to 2030. The policy is also consistent with the proposal for deployment of CCUS (carbon capture, usage and storage) and with the reliance of the CCC and the Net Zero Strategy pathways on use of gas for flexible power generation even in 2050, though with carbon capture and storage.

2.68 As regards onshore wind, the strategy states:

> "Onshore wind is one of the cheapest forms of renewable power. The UK already has over 14 GW of onshore wind, with a strong pipeline of future projects in Scotland. We will improve national network infrastructure and, in England, support a number of new projects with strong local backing. … In Scotland, which has its own planning system, we will work with the Scottish Government to ensure communities and landscape issues are considered for future projects[4]."

In this respect, it appears that the strategy relies upon the delivery of new onshore wind projects in Scotland.

*Scottish policy*

[4] Notwithstanding the latter comment, no part of the UK Government has commented on any aspect of the present application other than as regards the impact on military aviation.

2.69 The Scottish Government declared a climate emergency on 14 May 2019. The 2019 Act, which updated the statutory targets, arose from a commitment made as part of the declaration of the emergency. The emissions-reduction targets identified in the Act followed from CCC recommendations, though the 2030 target was increased from the 70 percent proposed to 75 percent by Parliament. The statutory targets for reduction of net emissions of 75 percent by 2030, 90 percent by 2040 and 100 percent by 2045 have been dealt with above. They are relevant to policy formation as well as to individual decisions.

2.70 The Scottish Energy Strategy (SES) (CD7.2) published December 2017, the Climate Change Plan (CCP) (CD7.4) published February 2018 and the Onshore Wind Policy Statement (OWPS) (CD7.1) pre-date the declaration of the climate emergency and the increase of the statutory targets.

2.71 SES set an "all-energy target" for the equivalent of fifty percent of Scotland's energy use for heat, transport and electricity consumption to be supplied from renewable resources by 2030. It envisaged two different scenarios for future energy use, one more reliant on hydrogen and the other on greater power production, but both requiring an increase in renewable generation capacity to as much as 140 percent of electricity consumption. The strategy indicated that onshore wind "must continue to play a vital role in Scotland's future". That meant "continuing to support development in the right places, and – increasingly the extension and replacement of existing sites with new and larger turbines, all based on an appropriate, case by case assessment of their effects and impacts."

2.72 The OWPS addressed a number of specific issues relating to onshore wind. Its ministerial foreword refers to onshore wind playing a "vital role" in Scotland's future and being "a vital component" of the industrial opportunity created for Scotland by renewables. It refers to the requirement to strike the right balance between environmental impacts, local support, benefit and (where possible) economic benefits deriving from community ownership. In the context of discussion of efficiency of turbines, the OWPS recognises that wind-turbine technology is developing towards use of larger turbines. It gives support to the delivery of large turbines in landscapes judged to be capable of accommodating them. The OWPS also recognises the advantages of repowering at existing sites, given the availability of existing infrastructure at such sites. Nonetheless, it indicates a case-by-case assessment of acceptability of repowering with larger turbines would be required.

2.73 The CCP, published shortly after the SES, sets out policies and proposals for achieving Scotland's (then-existing) emissions-reduction targets. It summarised the SES policy position as regards energy and also considered plans for other sectors, including heat, transport, industry, waste, agriculture and land use.

2.74 Following the declaration of the climate emergency and introduction of the new emissions-reduction targets, the Scottish Government in December 2020 issued an update to the CCP, Securing a Green Recovery on a Path to Net Zero (CD7.22), with the purpose of ensuring a "green recovery" (particularly an economic recovery) from the effects of the covid-19 pandemic. It declares a purpose of continuing the rapid growth in renewable generation, moving from a low- to zero-carbon electricity system, and with the potential for negative-emissions technologies. It refers to development of 11 to 16 GW of new renewable capacity by 2032. It also refers to the target of 8 to 11 GW of offshore wind capacity by 2030. The electricity sector is said to be critical in enabling other parts of the economy to decarbonise. There is also a policy aim of exporting large amounts of clean electricity to other parts of the island, Ireland and Europe. On the pathway to 2032, the policy envisages "a substantial increase in renewable generation, particularly through new offshore and onshore wind capacity."

2.75 The Scottish Government's Land Use Strategy (CD5.20), issued in March 2021, referd to the need to increase capacity for onshore wind generation to meet net-zero targets. It states that "We will need to continue to develop wind farms, in the right places, and also look to the extension and replacement of existing sites." It refers to the OWPS as regards striking the right balance between enviornmental impacts, local support, benefit and – where possible – economic benefits for communities.

2.76 The Programme for Government 2021 (CD7.17), published in September 2021, which followed from the Scottish Government and Scottish Green Party Draft Shared Policy Programme (CD7.34), indicated the government's commitment to securing between 8 and 12 GW of onshore wind capacity by 2030, alongside the ambition for up to 11 GW of offshore wind. The commitment was subject to consultation, and a refresh of OWPS is to be issued in the course of this year.

2.77 A consultation draft of a "refresh" of the OWPS was issued (October 2021) (CD7.35). The draft refers to the increased demand for "green" electricity arising from the transition to net zero and states that this will require a consistently higher rate of onshore-wind and other renewables capacity year on year. It seeks views on an ambition of installation of 8 to 12 GW of onshore wind capacity in Scotland by 2030. The intention in setting the target is to "set a clear expectation on what [Ministers] believe onshore wind capacity can contribute".

2.78 Since this is a consultative draft, it must be treated with some caution. However, the draft does refer to evidence for setting such a target:

- It refers to the CCC evidence on the amount of onshore-wind development required in the UK to 2050 as evidence for its proposed target of 8 to 12 GW of additional onshore-wind capacity in Scotland to 2030. Although the evidence of the CCC's Sixth Carbon Budget report as regards the need for additional onshore-wind development related to the UK, Renewable UK's Onshore Wind Prospectus suggests the bulk of the development relied upon by CCC would be in Scotland (and this does also appear to be implied in the British Energy Security Strategy).
- The CCC estimate of the requirement for onshore-wind capacity was to 2050, not 2030, the date for the proposed target. In this regard, the draft refers to the need to increase renewable-generation capacity to allow decarbonisation of other sectors.
- It refers to the compatibility of the proposed target with the vision for 11 to 16 GW of additional renewable-energy capacity to 2032 set out in the update to the Climate Change Plan.

In view of this evidence, and the reliance placed by the UK Government on the pipeline of onshore-wind projects in Scotland, it appears to me that the proposed target range in the draft gives a reasonable idea of the amount of onshore-wind development that might be expected to be required in Scotland to 2030. Given the CCC's finding as regards the level of difficulty involved for Scotland in achieving the 2030 emissions-reduction target, the short time left for achieving it, and that meeting it is a legal duty, it appears to me that Ministers ought to assume, even before adoption of the OWPS refresh as policy, that an increase in onshore-wind capacity of the indicated scale will be required. Even if I am wrong to place any reliance on the draft itself, the underlying evidence suggests substantial additional onshore-wind development is required.

2.79 Even if only the lower target of the range in the draft OWPS (8 GW of additional onshore-wind capacity by 2030) is ultimately adopted, this would still represent an increase of onshore-wind generation capacity in Scotland by two thirds in just a few years. While the draft OWPS estimates that there is about 9 GW of capacity in planning or awaiting construction, not all the applications will ultimately be consented nor will all the consented

developments be built. The estimate of projects in planning as part of the pipeline includes the proposed development.

2.80 As regards the landscape and visual effects of new turbine developments, the draft OWPS refresh states: "Scotland's most cherished landscapes are a key part of our natural and cultural heritage and must be afforded the necessary protections. However, we also recognise that climate change, and our net zero ambitions, require decisive action, will change how Scotland looks and that we will need to deploy significant volumes of onshore wind generation over the next decade to help us meet our challenging legal obligations. This is likely to comprise modern, efficient turbines which will maximise the generation possible at each site and a mix of current technologies and taller turbines." If the amount of generation required is assumed to be correct, it seems likely that this comment should also be accepted.

*Evidence of progress towards targets*

2.81 The applicant's witness, David Bell, set out in appendix 2 (table 1) to his written evidence to the inquiry (CD11.4) the progress towards meeting the annual targets set under the 2009 Act. In the four years from 2016 and 2019, Scotland achieved a reduction of 2.5 percent in its greenhouse-gas emissions from the 1990 base. This represents just over 0.6 percent each year. There is information only up to the year 2019. Neither the 2018 nor 2019 target was met. The rate at which emissions reductions must be made accelerated from one percent a year in the years before 2020 to 1.9 percent in 2020 and beyond. While the statistics do not show how Scotland has performed since the end of 2019, it is clear that a step up in performance was at that point required both to achieve the required rate of decarbonisation and to catch up the distance by which Scotland had fallen behind its targets in 2019.

Planning policy

*National policy*

2.82 NPF3, published in 2014, envisages Scotland becoming a "low-carbon place" – the policy makes reference to the superseded target of achieving an 80-percent emissions reduction by 2050. Both tourism and energy are key sectors of the economy. As regards energy, security of supply and addressing fuel poverty are key objectives. Onshore wind contributes to diversification of supply. The pace of onshore-wind development is expected to be overtaken by other forms of renewables in time. There is not to be onshore-wind development in the national parks or national scenic areas. The spatial framework set out in SPP guides development to appropriate locations, taking account of features such as wild land. Scotland's spectacular landscapes are said to contribute to quality of life, Scotland's national identity and the visitor economy. Reference is made to the national parks, national scenic areas and to wild land as well as the importance of landscapes close to settlements to the identity of those settlements. A planned approach to development is said to strike the right balance between safeguarding irreplaceable assets and facilitating sustainable change. Rural Scotland is recognised as providing significant opportunities for tourism, outdoor sports and recreation.

2.83 SPP, also published in 2014, seeks to achieve a number of outcomes for development in Scotland, including that Scotland should be a "successful, sustainable place", a "low-carbon place" and also a "natural, resilient place". It locates its policies on onshore-wind development within the context of its policies on achieving the outcome of being a low-carbon place. Paragraphs 18 to 19 set that outcome in the context of achieving the now-superseded pre-2019 statutory targets for emissions reduction.

2.84 SPP provides a spatial framework for the planning of windfarm development. This is set out in table 1. The presence of deep peat caused parts of the application site to be in group 2 (areas of significant protection), while the remainder is in group 3 (areas with potential for windfarm development). Ministers have accepted that where the effects of the windfarm on peat are suitably addressed, the whole site can be treated as though it was in a group 3 area.

2.85 SPP paragraph 169 sets out the detailed considerations that are to apply to the determination of an application for windfarm development in a group 3 area. Landscape and visual impacts, cumulative impacts, impacts on tourism and recreation and on natural heritage are all listed as considerations.

2.86 In addition, SPP paragraph 202 requires the siting and design of development to take account of local landscape character and on the natural environment. It requires developers to minimise impacts through careful planning and design, considering the services the natural environment is providing and maximising the potential for enhancement. SPP paragraph 203 provides that planning permission should be refused where the nature and scale of proposed development would have an unacceptable effect on the natural environment

2.87 I understand SPP paragraph 215 to apply primarily to development within an mapped wild-land area, though it is possible its second sentence is applicable to development outside such an area. This requires further consideration of a proposal to demonstrate that any significant effect on the qualities of these areas can be overcome by siting, design or other mitigation.

2.88 SPP paragraph 170 provides that areas identified for windfarms should be suitable for use in perpetuity.

2.89 SPP paragraphs 28 to 35 set out the policy's presumption in favour of development that contributes to sustainable development (which I will refer to as "the sustainability presumption"). Paragraph 28 sets out the general principle, while paragraph 29 sets out a number of matters to be taken into account in assessing development in respect of the policy. Paragraph 32 and 33 describe how the presumption operates in relation to the development plan. These paragraphs are clearly written with an application under the Town and Country Planning (Scotland) Act 1997 in mind: a situation in which the development plan has primacy. There is a question as to how the presumption ought to operate where an application is made under the Electricity Act. I will deal with that question below, in my discussion of the balance to be struck in determining an application. At this stage, it is sufficient to say that the sustainability presumption is clearly intended to be a material consideration for any decision on development consent before the Scottish Ministers.

*The development plan*

2.90 The components of the development plan are agreed by the council and applicant, as are the relevant policies. I accept the position is as they have described it. Policy 67 of the Highland-Wide Local Development Plan is the key policy. It sets out the main development-plan considerations for the determination of a windfarm application. Visual impacts and impacts on landscape character, species and habitats are all considerations under the policy. The supplementary guidance associated with the policy, the Onshore Wind Energy Supplementary Guidance (OWESG), is agreed to be relevant. There are some issues with regard to interpretation of the OWESG criteria for assessing landscape and visual effects of a windfarm development in respect of a development at the application

site. I find it convenient to deal with these in chapter 3 of my report on landscape and visual effects.

2.91 The acceptability of development under HWLDP policy 67 hinges (among other things) on a balancing of certain significant adverse effects against the benefits of development so that the proposed development is not "significantly detrimental overall". The policy's interpretation and application, and so this balancing exercise, is subject to the same duties under the 2009 Act section 44(1) as for national policy. My comments below in this chapter on the balance to be struck are therefore as relevant to it as to national policy.

2.92 While I consider that HWLDP policy 28 on sustainable design is relevant to the proposed development, it is drawn in general terms for all development. The ground it covers is substantially dealt with specifically for renewable-energy proposals in policy 67.

2.93 Policies 55 (peat and soils), 57 (natural, built and cultural heritage), 58 (protected species), 59 (other important species), 60 (other important habitats), 61 (landscape) and 67 (renewable energy developments) are relevant to matters raised by objectors other than the council.

*Draft NPF4*

2.94 NPF4, the draft of which was published in November 2021, will have a new and expanded role. As a consequence of the Planning (Scotland) Act 2019, it will form part of the development plan. Where there is an incompatibility between it and a pre-existing local development plan, it will take precedence. Furthermore, NPF4 has been drafted to take the place of both NPF3 and SPP.

2.95 However, before it takes effect, consultation upon the draft policy must be completed with the public and statutory consultees. It cannot be adopted until a draft has been approved by the Scottish Parliament. The draft published by the Scottish Government is therefore at an early stage. It could change substantially before it is adopted. This necessarily limits its weight as a consideration, so that it has little weight, except as an indicator of the government's initial views on what policy should become and how the statutory planning outcomes might be met.

2.96 Part 1, the overarching spatial plan for Scotland, refers to the 2045 statutory emissions-reduction targets. It identifies a need for new development and infrastructure across Scotland to achieve it as part of a just transition. It also states that the strategy is to value, enhance, conserve and celebrate the best places. Part 2 describes national developments. Among these would be any renewable-energy development of 50 MW or more. The proposed development would consequently be a national development. Ministers are to work with key partners to ensure that national developments are delivered.

2.97 Part 3 sets out policies for the development and use of land to be applied in the preparation of local development plans and for determining applications for planning consent. Policy 19 on green energy is the lead policy on renewable-energy generation. It excludes development of windfarms from national parks and national scenic areas. In other areas of Scotland, though, development proposals are to be supported unless the impacts identified are unacceptable. The policy includes a list of factors to consider as regards acceptability. These are not dissimilar to the factors in paragraph 169 of the current SPP. While emissions-reduction is a factor to be considered under policy 19, policy 2 separately requires significant weight to be given to the global climate emergency. This policy requires the scale of a development's contribution to meeting emissions-reduction targets is to be taken into account in determination of the application. Policy 3 indicates development

proposals should contribute to the enhancement of biodiversity, including restoring degraded habitats

2.98 As parties have pointed out, therefore, there would be a degree of consistency between present policy and the prospective future policy framework for a proposed windfarm development at the application site.

The balance to be struck

*The interaction of the duties in section 44(1) of the 2009 Act with each other*

2.99 I asked parties whether there was a potential for conflict between Ministers' duties to do what is best calculated to achieve the statutory emissions-reduction targets and to do what they consider most sustainable. SPP paragraphs 28 and 29 set out a framework for assessing the sustainability of a development, which could properly be applied to assessing how Ministers should perform their section 44(1) duty when considering an application for a proposed development. Securing reductions in emissions to meet the statutory targets is one element to take into consideration in determining what is most sustainable. It also appears to me that if Ministers were contemplating an action that was not sustainable, it is unlikely that such an action would be best calculated to achieve the statutory targets, even if the action had the immediate consequence of some reduction in emissions. So I find that there is no necessary conflict between the two duties. Any perception of conflict is likely to be unusual.

*The interaction of the duties in section 44(1) of the 2009 Act and policy*

2.100 In my view, the straightforward words of section 44(1) indicate that the duty applies to every exercise of Ministers' functions, large or small. I consider this is confirmed by examination of the Act's purpose, made clear in the requirement on Ministers in sections A1 and 2 that they "must ensure" the 2045 net-zero target and interim targets for 2030 and 2040 respectively are met. But the section 44(1) duties are high-level (as the council points out) while policy provides greater detail regarding what actions might be taken to achieve the targets. In my view, there are three aspects to the way in which the duties and adopted policy will interact as a consequence:

- First, if a conflict were to be identified with existing policy, the section 44(1) duties would supersede the policy. It is obvious that if a policy refers to the former targets (as NPF3 and SPP do), it is superseded in this respect, because the section 44(1) duty requires Ministers to do what they consider best calculated to achieve the revised targets.
- Second, policy can provide a framework for understanding how Ministers understand and will apply a duty: I have mentioned in this regard the framework provided for assessing the sustainability of development in SPP paragraphs 28 and 29.
- Third, policy is subject to interpretation and often leaves scope for judgement and discretion. The section 44(1) duties inform the interpretation of policy and the application of any judgement or discretion under it.

2.101 On this third point: The policy framework for renewable energy in NPF3 and SPP is such that it can be readily be adjusted to take account of the revised targets. The achievement of the revised targets will plainly need to be taken into account in making the normative judgements that the policy calls for. The judgements that must be adjusted include the balance of the considerations listed in SPP paragraph 169 against its contribution to meeting the targets, the question of what effects on the environment are acceptable in terms of paragraph 203, and the question of what is "the right development" and "the right place" in terms of paragraph 28. This does not mean that these judgements

must always be resolved in favour of action that will contribute to meeting the statutory targets, whatever the other consequences of such action. It does mean that such judgements must be adjusted such that they take account of what the evidence suggests is needed to achieve the revised targets. It follows that such judgements must take account of the evidence of progress towards meeting the targets, of the scale of the change required to do so, and of the urgency of action required.

2.102 Such an approach is not dissimilar to what is done when considering the interaction of planning policy and policy relating to need for new development: planning policy must be understood in the context of the vision in the update to the Climate Change Plan for an increase of between 11 and 16 GW in renewable-generation capacity to 2032. The judgements required by planning policy have to take account of what is needed to achieve this vision.

2.103 The SES and OWPS, which both pre-date the revised emissions-reduction targets, refer to development of onshore wind "in the right place" and the requirement for case-by-case assessment. The policy for development "in the right place" appears to be a reference back to the requirement in SPP for "the right development in the right place". A similar comment can be made on the adjustment of the judgement required of what is "right".

2.104 Newer policy, post-dating the introduction of the new emissions-reduction targets, must also be understood in the light of the targets. This is the case for the references in Scotland's Land Use Strategy (CD5.20 p27) to continuity of the need to development windfarms "in the right places" and to striking "the right balance" between benefits and other interests. The policy refers directly to the emissions targets and the need to increase development of renewable capacity as factors to be taken into account.

2.105 I have reviewed the evidence above of what is required to achieve the statutory targets. The evidence suggests that the targets will not be easy to achieve (particularly Scotland's 2030 target, which in the CCC's modelling was beyond what was technically feasible). New renewable-energy capacity is required, including new onshore-wind capacity. I have taken the view that Ministers should assume the requirement for new onshore-wind development in order to meet the emissions-reduction targets is broadly in line with the target range for new onshore-wind development proposed in the draft OWPS Refresh.

2.106 I do not suggest that, in absolute terms, the Scottish Ministers have placed or should place less weight than previously on the environment generally, or on protection of the landscape or visual amenity in particular. In my view, though, the evidence of the need for action to meet the emission-reduction targets, and of the particular role of onshore-wind development as part of that, increases the weight to be given to the benefits of such development in that respect. This must necessarily change the relative balance in favour of permitting onshore-wind development.

*Need assessed against progress towards the targets*

2.107 The council has pointed out that targets for renewable-energy development have not been treated as a cap by Ministers. It suggests it can be deduced from this that a shortfall in meeting statutory emissions targets also should not affect the balance to be struck. I disagree. The council are conflating two different kinds of need. The purpose of the statutory targets is to introduce a formal, legal urgency into government action. The targets' achievement must necessarily be a consideration in government decisions, and if the government is behindhand in achieving the targets, it indicates that more action is required. However, even if the targets are achieved, the need to take measures to mitigate

climate change is likely to remain until such time as the world has net-zero emissions. That latter need will continue to be a factor favouring development that contributes to such mitigation.

*Time as a consideration*

2.108 Policy, and particularly the update to the CCP, indicates urgency is needed in taking action to achieve the statutory targets. Furthermore, in practical terms, climate change is a cumulative problem: emissions released now will continue to affect the climate, contributing to warming of the climate in years to come, and even once net-zero annual emissions has been achieved. It follows that the construction of infrastructure that reduces emissions sooner rather than later will make a greater cumulative contribution to preventing dangerous climate change. These factors (both the urgency of meeting the targets and the practical advantage of taking action early) are considerations that will in some cases outweigh justified criticism that design of a proposed development might have been improved in some way.

*Reasoning in recent decisions on the balance to be struck*

2.109 A number of reports and decisions were drawn to my attention in which reporters set out their reasoning on the balance to be struck between the benefits of onshore-wind proposals in terms of reducing greenhouse-gas emissions and the adverse effects of those developments. Millenderdale (CD10.10), Paul's Hill II (CD10.19), Strathy Wood (CD10.55), North Lowther (CD10.25), and Glenshero (CD10.57) were all referred to. I find little to distinguish in the reasoning in these cases. The balancing exercise involves balancing the benefits of the proposed development against its adverse environmental effects. The weight to be given to the benefits of renewable-energy development in terms of reducing carbon emissions and meeting renewable energy targets is to be considered (as the reporter says in the Glenshero report) "in the context of the increased importance of renewable energy in the UK and Scotland and the increasing need to respond to climate change." The weight to be given to such benefits, therefore, is not "special weight" or "disproportionate weight" as the reporters for Glenshero and North Lowther observed, but weight proportionate to their importance and the legal obligation to meet the emissions-reduction targets. The conclusion that proportionate weight must be given to reducing carbon emissions is compatible with the reporter's observation in the Paul's Hill II report that a business-as-usual approach is unlikely to deliver emissions reductions to meet the statutory targets. That is my view too.

2.110 I recognise that these more recent decisions, along with more recent evidence and policy announcements, mean that the reasoning on the planning balance in my report for the Golticlay windfarm issued in February 2020 (CD10.40) is superseded.

*Tilted balance*

2.111 The parties have acknowledged (and I have accepted) that the development plan, while a relevant consideration, has no special primacy or other special status in determination of the application.

2.112 SPP paragraph 33 provides that where relevant policies of a development plan are out of date or the plan is more than five years old, the presumption in favour of development that contributes to sustainable development ("the sustainability presumption") will be a significant material consideration. The key element of the development plan in this case, HWLDP, is more than five years old.

2.113 Ministers have previously accepted, in the context of applications for housing development under the Town and Country Planning (Scotland) Act 1997 and in circumstances in which there is a shortfall in the five-year effective-housing-land supply (which means development-plan policy is to be treated as out of date), a "tilted balance" applies in favour of grant of permission for such a development. In such a housing case, the degree of tilt on the balance relates to the degree of the shortfall. That such a tilted balance applies was the view expressed by the court in *Gladman v Scottish Ministers* [2020] CSIH 28. This followed from the Supreme Court's decision in the English case of *Suffolk Coastal DC v Hopkins Homes Limited* [2017] UKSC 37[5], which addressed the equivalent English national planning policy.

2.114 Ministers found, in their recent decision on the Glenshero windfarm (also an application under the Electricity Act and also in Highland) as follows (page 12):

> "As the Highland-wide Local Development Plan is more than five years old, Ministers are applying the principle set out in paragraph 33 of SPP and regard the presumption in favour of development that contributes to sustainable development as a significant consideration in this case."

They then went on to make this further finding:

> "Even when taking into account the presumption in favour of development that contributes to sustainable development as a significant consideration in favour of the proposed Development and applying the tilted balance, Ministers consider that the proposed Development would not in overall terms, be a sustainable development, and would not represent "the right development in the right place" as expected by paragraph 28 of SPP."

2.115 Until the Glenshero decision appeared, my understanding was that SPP paragraph 33 was not relevant to the context of an Electricity-Act application. This was because in such an application, the development plan did not have any enhanced status under statute, but was simply one material consideration among others. Therefore, while the development plan being out of date was a consideration that might reduce the weight to be given to it in the decision, the mere fact of the development plan being out of date was not a relevant reason to give increased weight to a different policy arising from a different document. Previous reporters, including the reporter in the Paul's Hill II windfarm have taken the view, for this reason (see paragraph 8.23 of that report), that SPP paragraph 33 was not applicable to an application under the Electricity Act. Such a position was taken by the council in the present case. The applicant in the present case also prepared its policy submissions on the assumption that SPP paragraph 33 was not relevant and the tilted balance did not apply (although it subsequently took the view that SPP paragraph 33 and the tilted balance did apply on the basis of Ministers' decision in the Glenshero case).

2.116 It seems to me that there are two possible ways of understanding Ministers' approach to the sustainability presumption in the Glenshero case:

- First, that Ministers consider, even though the development plan has no special status in an Electricity-Act application, that the enhanced status accorded to the sustainability presumption by SPP paragraph 33 should apply where the development plan is out of date; or

[5] An English case dealing with the interpretation of the (English) National Planning Policy Framework, which has been cited with approval by Scottish courts on account of the similar features in the English policy to the sustainable development presumption and policy on housing-land supply in SPP. It is this decision in which the term "tilted balance" was coined.

- Second, because there is some uncertainty about the application of SPP paragraph 33 in the context of an Electricity-Act application, and because Ministers were otherwise of the view that the Glenshero application should be refused, they tested their conclusion against the interpretation of their policy that would most favour granting that application (which interpretation involved applying a tilted balance).

2.117 While, on a straightforward reading, the first interpretation seems the better, Ministers provide no reasoning as to why SPP paragraph 33 or the tilted balance should apply in a context in which the development plan has no enhanced status. This suggests to me that the second interpretation – that Ministers in the Glenshero decision were testing their conclusion against the interpretation of policy that least favoured it – is the better understanding of Ministers' position in that decision. The language of the Glenshero decision is consistent with this understanding of it: the decision simply states that Ministers are applying the principle set out in paragraph 33, but makes no comment that principle ought to be applied or why it should be applied. In view of this, I will make my assessment of the proposed development on the basis of a policy interpretation in which SPP paragraph 33 is not applicable, but test my conclusion against an interpretation in which it is.

2.118 I find two further difficulties in applying SPP paragraph 33 to arriving at recommendations in the present case:

- First, it appears to me that, since the development plan has no special status, a purposive understanding of the policy would lead to the interpretation that any enhanced status of the sustainability presumption should govern only the relationship of development-plan policy and national policy, rather than provide the framework for the decision overall. Nonetheless, I understand Ministers to have applied SPP paragraph 33 to the overall Glenshero decision. I will therefore apply the policy in the same way in testing my conclusion. However, it is a point that Ministers may wish to review before reaching their final decision.
- Second, there is a question of what specific factors create the tilt on the balance. I deal with this point below.

2.119 In cases in which the SPP sustainability presumption has an enhanced status, SPP requires that "decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against wider policies in … SPP". I understand therefore (in accordance with the decision in *Gladman v Scottish Ministers* [2020] CSIH 28 paragraph 47) that, for any refusal, any adverse impacts of the development must significantly and demonstrably outweigh the benefits of development.

2.120 In housing cases, to which most of the caselaw relates, the balance and its degree of tilt has been related to a particular need for development. In the *Suffolk Coastal* case, the court gave a theoretical non-housing example: a situation in which the development-plan policies for the supply of employment land had become out of date as a result of the arrival of a major new source of employment. The court suggested that such a change might also cause transport policies to become out of date. Other competing policies would then need to be given less weight in accordance with the tilted balance. In these examples, though, the reason for a finding that existing development-plan policy is out of date directly relates to a development need, which in turn sets the degree of tilt on the balance. In the present case, the sustainable-development presumption is triggered simply because the development plan is more than five years old. There is no direct relationship between that fact and any tilt.

2.121 Furthermore, in the examples, the need that sets the tilt is specific, localised and finite. There are several needs that the proposed development could go some way to meeting: there is a need to reduce emissions both to address climate change and to meet emissions-reduction targets; there is a need for additional renewable-energy capacity; and there is a need for onshore-wind development as part of that. However, which of these needs should inform the tilt on the balance is not clear, nor is the degree of need easily specified or located.

2.122 Although Highland Council took the view that SPP paragraph 33 did not apply in Electricity-Act applications, it also conceded that the strong policy support for renewables meant that the balance was already tilted. It acknowledged that it was difficult to ascribe an angle of tilt. However, it also acknowledged that substantial weight is to be given to the benefits of renewable energy. In the policy session, the council conceded that as a consequence there was always a strong tilt on the balance in favour of renewable-energy development. Until specific development targets are adopted for renewable-energy development or for onshore-wind development in particular, this seems to me the approach that must be taken. I agree with the council that the question of whether paragraph 33 formally applies has little effect on the angle of tilt on the balance.

*Implications of policy for size of turbines and the impact of scale disparities*

2.123 The applicant has argued that the council has focused its case on aspects of design and upon scale disparities which are and will become increasingly inevitable as the target dates in 2030 and 2045 approach. I have identified that the OWPS recognises the technological trend towards larger turbines and the efficiency that this brings. It supports the deployment of larger turbines but only subject to case-by-case assessment and only in landscapes capable of accommodating them. In any such assessment, the advantages of locating one windfarm next to another, in terms of limiting impact on the wider landscape, must be set against any adverse effects that differences in scale of the proposed turbines would have. Groups of windfarms are not unusual in Scotland. Repowering is encouraged, given the opportunity for efficiency and to reduce impacts by using existing infrastructure. It seems to me very likely, in general terms, that some degree of differences in scale will emerge in some windfarm clusters. However, the degree and acceptability of such differences is a matter of judgement in any particular case, taking into account in the balance the factors I have described. That is so for the proposed development and the adverse effects of the differing scale its turbines would have from other turbines in the cluster.

## CHAPTER 3: LANDSCAPE AND VISUAL EFFECTS AND EFFECTS ON WILD LAND

Summary of landscape and visual impact assessment (LVIA)

- EIAR Chapter 4 provides a landscape-and-visual-impact assessment (LVIA).
- 2019 SEI Chapter 3 updates the LVIA to take account of the now-consented proposals for Lochluichart Extension 2 windfarm and to provide further assessment of aviation lighting.
- 2021 AI Chapter 4 updates the LVIA to take account of the revised position of turbines 5 and 7, the revised aviation-lighting scheme and cumulative effects with the revised Lochluichart Extension 2 proposal

3.1 The applicant's LVIA, as updated, assessed the proposed development's effects on landscape designations, on landscape character, and on visual amenity of a number of receptors. As a basis for its assessment, it used maps showing the theoretical visibility of the proposed turbines (in other words, visibility against a model of topography that takes no account of intervening surface features such as buildings or vegetation). It provided plans of the zone of theoretical visibility (ZTV) for the proposed turbines to tip height and hub height and for their cumulative visibility with existing, consented and proposed developments. It also provided a set of visualisations of the proposed development at nineteen viewpoints.

3.2 The 2019 SEI provided an assessment of the cumulative effects of the proposed development with the now-consented Lochluichart Extension 2 (and also of the effects of the proposed aviation-lighting schemes).

3.3 The 2021 AI provided an assessment of the effects of re-siting two turbines, T5 and T7, and of the cumulative effects of the proposed development with the proposed Lochluichart Extension 2 redesign.

3.4 The LVIA, as updated, found the following significant landscape effects:

- Major effects on the RCY2 Undulating Moorland landscape character area (LCA), Strath Bran unit.
- Major/moderate effects on the RCY4 Rocky Moorland LCA, Loch Luichart unit.
- Major/moderate effects on the RCY7 Rounded Hills LCA, which would be confined to
    - the summits of Meall na Speirag, Beinn Liath Bheag and Meallan Caoruinn (hills lying to the west and north west of the existing Lochluichart turbines)
    - low-lying positions along the A835 corridor
    - the southern extent of Strath Vaich and
    - the summit of Little Wyvis.

3.5 The LVIA found no significant effect on any landscape designation or wild-land area (WLA).

3.6 As regards effects on visual amenity, the LVIA found:

- significant visual effects at viewpoints 1 (Aultguish Inn), 2 (Old Drove Road), 5 (Sgurr Marcasaidh), 15 (Meall a' Ghrianain, 17 (Loch Glascarnoch) and 19 (Little Wyvis).
- no significant effect on any settlement.
- significant effects on the A835(T) Ullapool to Tore road: for eastbound road users major/moderate alongside Loch Glascarnoch and major near the Aultguish Inn; for

westbound users major/moderate north of Inchbae and major between Lubfearn and the Aultguish Inn.

- A significant effect on certain paths:
    - the parts of the Croick to Black Bridge path approaching the Loch Vaich dam, and from the dam to the A835.
    - a major effect on the Fish Road, a drove road that passes through the application site from the A835.
    - a major/moderate effect on the walking path up Am Faochagach
    - a major/moderate effect on the walking path to Beinn Liath Mhòr a' Ghiubhais Lì from Loch Glascarnoch.
    - A major/moderate effect on the path to Beinn a' Chaisteal, by Strath Vaich.
    - A major/moderate effect on the path to the summit of Little Wyvis from the A835.

3.7 The LVIA assessed effects on residential visual amenity at three residential properties, Lubfearn, Black Bridge and Hydro House. It did not find that the proposed development's effect would be overwhelming or oppressive at any of these.

Agreed matters

3.8 The council and applicant set out the areas of their agreement on landscape and visual matters in their statement of agreement sections 6 to 7. They agreed (in summary) that:

- the methodology of the applicant's LVIA generally followed good practice relative to formal guidance issued by NatureScot, the Landscape Institute, and Highland Council, and was appropriate.
- the study area, the viewpoints, the visualisations and ZTV plans provided an appropriate basis for consideration of the proposed development.
- the change to the fabric of the landscape within the site was non-significant and reversible.
- there would be significant effects on landscape character in LCAs RYC2 Undulating Moorland – Strath Bran unit, RCY4 Rocky Moorland – Loch Luichart unit, RCY7 Rounded Hills – Dornoch Firth/Loch Fannich unit, but there would not be significant effects on other LCAs.
- there would be significant visual effects on viewpoints 1, 2, 5, 15, 17 and 19 and non-significant effects on viewpoints 3, 4, 10, 11, 12 and 18. The council and applicant disagreed on whether there would be significant effects on the remaining seven viewpoints.
- there would not be significant visual effects on any settlement.
- there would be significant effects on the A835, though they disagreed as to the extent.
- There would be significant effects on the Fish Track drove road and on the sections of the tracks recorded by Walkhighland from the A835 to Am Faochagach, from Loch Glascarnoch to Beinn Liath Mhòr a Ghiubhais Lì, from the A835 to Beinn a' Chaisteal by Strath Vaich, and from the A835 to Little Wyvis.
- there would be no significant effects on any designated landscape.
- the council no longer relies on its second reason for objection relating to the proposed development's adverse effect on wild land areas 28 and 29.
- the council does not object to the proposed development in respect of its effect on visual amenity of any residential property.
- leaving aside the proposed Lochluichart extension 2 resdesign, no potential for significant cumulative effects arises in respect of consented or proposed schemes.

- the proposed development is acceptable in relation to military and civil visible and infra-red aviation lighting, the worst-case requirement being described in the 2019 AI.

The applicant's case on landscape and visual effects

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| Inquiry Report of Brian Denney<br>Precognition of Brian Denney<br>Inquiry Report of Malcolm Spaven<br>Closing Submissions paragraphs 32 to 48 |

3.9 Kirkan windfarm is an appropriate form and scale of development. It can be accommodated within its local and wider landscape context, whilst giving rise to only localised significant landscape and visual effects. The extent of any landscape and visual effects would be limited by the topographic containment of the proposed development. Localised significant effects of windfarms in terms of views and character are an inherent and inevitable consequence of such development and should not of themselves be considered a justification for refusing a windfarm, such as Kirkan, in a landscape outwith nationally designated sites.

3.10 Taking into account the objections of the council, Mountaineering Scotland, the John Muir Trust and Dr Hedger, the applicant's evidence is that there are no landscape and visual effects that appear, in terms of intensity, nature or geographical extent, to be other than would be reasonably expected for a windfarm in the general location of the proposal and of the proposed scale.

3.11 The council's objection does not relate to any national landscape designation, to the impact on the Ben Wyvis Special Landscape Area (SLA), impact on landscape character, or impact on residential amenity. Concerns about aviation lighting were withdrawn. The council made no case at inquiry against the proposed development on the basis of its effect on wild land, following the withdrawal of the NatureScot objection.

3.12 The significant visual effects of the proposed development are not such as would outweigh its benefits.

3.13 As regards the council's criticism that Kirkan is not in a bowl in the landscape, this is a matter of perception. Though it might not be perceived as being in the same bowl as the existing turbines, the topography provides material containment. As regards criticism of its location in relation to the A835, it is well set back from the road.

3.14 Disparity of scale between the Kirkan turbines and those of the existing Corriemoillie/Lochluichart cluster is not a disquieting factor. Inherent unsuitability cannot be assumed.

3.15 As regards the question of existing mitigation for the Corriemoillie/Lochluichart cluster being undone, mitigation for those developments addressed those developments. Since consent was obtained without objection or refusal from the planning authority, the requirement for mitigation has not been tested at inquiry. Acceptability must be judged relative to the effects of Kirkan, not of other developments. Furthermore, the acceptability of Kirkan is to be assessed on the policy balance as it stands in 2022, not at the time of earlier decisions.

3.16 As regards the magnitude of Kirkan's visual effects, the applicant's witness finds significant effects to 14 kilometres, while the council's witness finds significant effects to 23

kilometres. At all viewpoints other than VP17, the proposed development is seen as an extension of the Corriemoillie/Lochluichart cluster. It is inevitable that in some views it would increase the horizontal extent of development. There are not site-specific circumstances that point to the desirability of addressing the development in a particular way, so the emerging pattern of development is not an issue.

3.17 Although a significant effect at viewpoint 17 is acknowledged, there is no adverse effect on the part of the A835 that is on the North Coast 500 route. The significant effect on the A835 arises only for small segments close to viewpoint 17.

3.18 Although the council has picked out certain features for criticism, these features are of no particular priority importance. Kirkan is also is in an upland location and well away from settlements and houses and in those respects is like the existing cluster.

3.19 The proposed development would be seen as an extension to existing windfarms from all except one viewpoint. The local significant landscape and visual effects of Kirkan would be very limited in geographical extent, they would fall in a Group 3 area, and they could not remotely be said to relate to matters of noted and exceptional sensitivity. Additionally, Kirkan would, except from the area around a single viewpoint, be seen in the immediate context of existing and permitted wind-energy development.

The council's case on landscape and visual effects

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| Inquiry report of Simon Hindson<br>Precognition of Simon Hindson<br>Closing submissions paragraphs 2 to 27 |

3.20 There are two key receptors particularly adversely affected by this wind-energy development:-

(i) road users (including tourists) on the A835 and

(ii) recreational users of the outdoors (primarily hill walkers).

3.21 In assessing visual impacts in this case, it is particularly important to recognise that a viewpoint is representative of what a receptor (i.e. a person or people) will experience in that particular view, and in the context of its surroundings. Acknowledgement of the limitation of visualisations from a necessarily limited number of viewpoints is particularly important as regards this development as:

(a) the impact on road users will not be just at VPs 1 and 17 but as they travel a lengthy section of the A835 (being the majority of the 20 kilometres comprising sections 5-8), and

(b) the impact of the development on hill walkers will not just be at representative summits but also at the many other summits affected, as well as in numerous instances as they travel to and from those summits.

3.22 The main differences between the parties relates to the assessment of magnitude of visual impact at a number of viewpoints (VPs 6, 8, 13, 14 and 16), including at viewpoints where there is agreement as to a significant impact (VPs 17 and 19). In some case there is also a difference as to the significance of such impacts as identified (VPs 7 and 9) and as to the sensitivities of general road users (VP 1 and 17). The applicant has repeatedly understated the magnitude of impact. In the council's assessment, there would be significant effects at viewpoints 6 (Ben Wyvis), 7 (avenue of the Fairburn Estate), 8 (Sgurr a'

Mhuilinn), 9 (Beinn a' Bha'ach Àrd), 13 (An Coileachan), 14 (Beinn Dearg), and 16 (Meall Mòr) in addition to the significant effects identified in the LVIA at viewpoints.

3.23 The impacts are directly affected by consideration of the location, design and scale of the windfarm. Many of the adverse impacts that the council identifies have their roots in the poor location, design and scale of Kirkan and the failure to adequately assimilate it with adjoining Corriemoillie / Lochluichart cluster.

3.24 Given the similar location of the Corriemoillie and Lochluichart windfarms and similar issues they faced, their responses and approaches are instructive. Likewise, the guidance in Siting and Design (CD6.3) is relevant, in particular paragraphs 4.16 and 4.17. The design rationale for Corriemoillie and Lochluichart included having turbines of comparable heights and containment within a bowl. Kirkan would ride roughshod over the previous design approaches, as to their desire to assimilate turbines into the landscape and to assimilate the varying windfarms, and as to limiting impact on the A835. The approach was sound. It put NatureScot's design guidance into practice. There is not a basis for departing from it for Kirkan. The Kirkan EIAR does not discuss previous design approaches. There is no discussion as to what led to 175-metre turbines being considered appropriate. There is no evidence given for the suggestion that matching turbine type and geometry was impractical on commercial or technical grounds. The evidence of the council's witness was to the contrary. Save in the very basic sense that Kirkan adjoins the Corriemoillie/Lochluichart cluster, there is no design logic apparent to the viewer, just conflict both in terms of turbine design and scale and fit within the landscape in conflict with the guidance in Siting and Design.

3.25 Kirkan is accepted to be an extension to the Corriemoille/Lochluichart cluster, but the contrast of its turbines with the existing turbines gives rise to many of the adverse impacts. The scale of the proposed turbines in terms of their rotor diameter and height will have a disproportionate visual impact given their location immediately adjacent to materially smaller ones. The contention that as they are, on average, sited lower than the average of the Corriemoillie/Lochluichart cluster so therefore the height differential is reduced is of no weight. First, there are a variety of base heights of both existing and proposed turbines (and average comparison is worthless) and, secondly, there is no viewpoint where this is readily apparent or at which it can be suggested it materially mitigates the impact. This stark contrast in turbine scales will be clearly noticeable from many of the viewpoints. This is exacerbated when the proposed turbines are seen from the receptor in front or behind the operational turbines. It will also be exacerbated by the different rotational speed of the turbines (particularly at lower wind speeds). This will be particularly clear in instances of overlapping or stacking with existing turbines but also when they are viewed closely adjacent thereto.

3.26 The proposed siting of the turbines outwith of the landscape features that largely contain Corriemoillie/Lochluichart cluster from most views from the road network and limits/mitigates views from elevated positions has also exacerbated the visual impacts.

3.27 When viewed from hilltop viewpoints, including VPs 5, 8, 9, 14, 15, 18, the development would appear outwith the low-lying shallow bowl in which the operational wind farms sit. It would appear closer to the receptor.

3.28 The turbines of the proposed development are in direct view of users of the route when travelling west to east due to the nature of their siting and scale.

3.29 Consequently, the council's evidence on magnitude of change in views is more realistic than that of the applicant. In many (but not all) instances, it is supported by

Mountaineering Scotland and chimes with the views on visual impact of NatureScot. The applicant's evidence under-assessed impacts, in particular over-discounting for the effect of distance and under-assessing the extent to which the scale differences of the turbines would be important, particularly at distance.

3.30 The applicant's evidence also under-assessed the importance of the hill-top and mountain summits, repeatedly commenting that they will be visited by a limited number of receptors. Many of these viewpoints are, however, Munros and Corbetts and their popularity should not be under-estimated. A large number of people visit the Highlands to "bag" Munros and Corbetts. In doing so, these users would be focused primarily on their surroundings. While the applicant has given these receptors a high sensitivity rating, their evidence downplays them.

NatureScot

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| letter in response to EIAR 1 July 2019<br>letter in response to 2021 AI 3 November 2021 |

3.31 NatureScot initially objected to the proposed development due to significant adverse effects at night on the qualities of Wild Land Areas 28 (Fisherfield – Letterewe - Fannichs) and 29 (Rhiddoroch - Beinn Dearg - Ben Wyvis). It advised a windfarm may be accommodated on the site subject to effects of turbine lighting being substantially reduced. The application as modified, described in the 2021 AI, would not significantly affect the qualities of WLAs 28 or 29 after dark, since turbine lights are already present in the vicinity of the proposal. NatureScot withdrew its objection as a consequence of the modification.

3.32 During the day, the proposed development would be seen from WLA 29 in front of the existing turbine cluster or to its side. The Kirkan turbines would be distinctly taller. Significant landscape and visual effects would result for wild-land qualities 1 and 3 of WLA 29 (the appreciation and sense of awe from the wide open elevated panoramas and the sense of sanctuary and solitude). This arises because the turbines would be closer to WLA 29 than the existing cluster and the turbines would be larger. The strength of these qualities would be weakened at the margins of the WLA. There would be a significant adverse effect on the perceived extent of the WLA since the proposed development would interpose human elements in views from WLA 29 to WLA 28 where there currently are none. This effect occurs primarily in Strath Vaich. The proposed turbines would add complexity due to the contrast in scale with existing turbines. They are a poor fit with existing developments.

3.33 The proposed development would, in the day, also have a significant adverse effect on one of the qualities of WLA 28 – an awe-inspiring range of colossal, steep, rocky and rugged mountains interlinked around deep and arresting corries, glens and lochs. The extension of the existing turbine cluster and increase in prominence of turbines due to their height would affect parts of the WLA sensitive to this form of development. It would diminish the strength of the quality.

3.34 There would be a significant effect on a stretch of the A835 about 12 kilometres long. The proposed development would introduce a large-scale human element into a well-travelled and enjoyed route, forming a gateway between the settled and managed landscapes of the east and the remoter, upland, rocky landscapes of the west. The proposed turbines would compete with the framed views to the east of Ben Wyvis and Little Wyvis.

Mountaineering Scotland

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| Updated objection 1 December 2021 |

3.35 Mountaineering Scotland's assessment takes a holistic approach to the experience of people in the mountains. It takes as its baseline the 42 existing turbines in the Corriemoillie/Lochluichart cluster and the five consented turbines of Lochluichart Extension 2.

3.36 Although the proposed turbines would be contained to some degree by higher land, they would generally overtop the containing topography. In many views, the proposed development would appear as part of an extensive group of turbines with existing development. From some angles it would expand but maintain the relatively compact shape of the existing group. From other angles, it would substantially increase the horizontal extent of development. The proposed turbines would in height and rotor diameter contrast with existing development. From some angles, this can have a significant impact on how the development is perceived.

3.37 The proposed development is surrounded by three Wild Land Areas and three Special Landscape Areas at distances ranging from 3 to 13 kilometres in which there is mountaineering interest. The proposed development would be visible with other turbines in most such locations. The notable exceptions are the main routes to Ben Wyvis and Little Wyvis and Strath Vaich.

3.38 Mountaineering Scotland agree with the assessment of significant effects on the mountain viewpoints 5 (Sgurr Marcasaidh), 15 (Meall a' Ghrianain), and 19 (Little Wyvis). It considers that there would also be significant effects viewpoints 6 (Ben Wyvis), 8 (Sgurr a Mhuilinn), 13 (An Coileachan), and 14 (Beinn Dearg). There would be a significant adverse effect on the hill route down from Beinn Wyvis, on the route to Sgurr a' Mhuilinn by Meallan nan Uan, and on the route over Beinn Liath Mhòr Fannaich to Sgurr Mòr. Consequently of the 13 hill viewpoints assessed in the LVIA, seven would be significantly affected, while all seven of the hill routes identified in the LVIA would be significantly affected. This reflects the highly visible location in which the proposed development is seen against a contrasting backdrop, the increase in horizontal extent of turbines from some angles and the greater prominence and larger turbines proposed compared with the existing development. The proposed turbine lighting would also have an adverse effect on the dark skies in the area.

John Muir Trust

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| Objection 23 May 2019 (CD2.9) |

3.39 The assessment of the proposed development's effect on the Rhiddoroch, Beinn Dearg and Ben Wyvis WLA in the applicant's LVIA is at odds with the finding of the reporter on the Carn Gorm windfarm. The effect on Ben Wyvis in that case was found to be significant. The impact of the very tall turbines proposed would devalue the special qualities that make the summits of Ben Wyvis, Beinn Dearg, Meall a' Ghrianain, Meall Mòr and other hills wild land.

3.40 The turbines would also be highly visible in the Fisherfield, Letterewe, Fannichs WLA. They would detract from the area's unique qualities and have an adverse effect on visual amenity of locals and visitors. The EIAR assessment does not take into consideration the cumulative impact of Lochluichart Extension 2. The proposed turbines are inappropriate to the area's landscape. If Kirkan was permitted, the total of 66 turbines in the cluster would have an unacceptable effect.

Dr Merylyn Hedger

Objection (CD2.25)
Extended precognition, sections 1 and 2 (CD14.1)
Closing submissions

3.41 Dr Hedger is a local resident. She travels the A835 in both directions frequently en route to Inverness and Dingwall.

3.42 This additional and very tall wind farm at this sensitive corridor location will fundamentally alter the character of the approach/gateway to the North West, where there are many communities dependent on tourism (for instance, associated with the North Coast 500 tourist route – "the NC500"). Ullapool's tourist advertising states it is in one of the least spoilt natural environments in the UK. The proposal would provide an unwelcome "entry sign". The Black Bridge-Aultguish stretch is a perceptible gateway. Moreover it effectively marks the split between east and west Scotland both in scenery and climate.

3.43 The site is also close to designated areas. Were this application to be approved, there would be considerable concern both in the sub-region and nationally. There may be large numbers of supporters in the central belt, and some in the north-west. But Wester Ross has long been recognised as an area of outstanding natural beauty with special qualities.

3.44 Whilst the site may lie in a narrow ribbon where windfarm development has potential, according to the Spatial Framework policy of the West Highlands and Islands LDP area (2016), it is so close to very sensitive areas that development there should not be considered. It also would not conform to HWLDP policies 28 and 67. You cannot hide 175-metre-high turbines sited at 300-350 metres above ordnance datum when their essential function is to harvest wind. The site is visible to a wide area at lower altitudes. The proposed development would disturb enjoyment. This is demonstrated by LVIA figures 4.6s, 4.6b., 4.6c and 4.6g showing Zones of Theoretical Visibility.

3.45 There are ever-increasing numbers of tourists using this route to the Ullapool area, Coigach/ Assynt, the north coast and the Stornoway ferry to the Hebrides. Travelling northwards now, the existing windfarms are themselves visible and their lighting is somewhat disconcerting at night for drivers. However, there will also be new substantial impacts for travellers when travelling southwards. Whilst the A835 is not marked as the main route on the NC500, it is clear the route is increasingly marketing itself as a concept: *"The NC500 is so much bigger than the route itself – it is simply a guideline that enables you to explore hundreds more miles off the main route".* Furthermore, Loch Glascarnoch and its dam are billed as attractions in some suggested NC500 itineraries.

Other objections

3.46 A number of issues were raised:

- The proposed development would compound the already-unacceptable effect of existing windfarms.
- The proposed turbines are larger and more intrusive than existing turbines.
- The turbines would be seen beyond the containing topography along the A835 and from mountain walking routes
- The horizontal sprawl of windfarm development would be extended
- The location is prominent and the turbines would stand out from a dark natural backcloth
- Turbine lighting would be a further intrusion.
- The Highlands are saturated with turbines.
- There would be an unacceptable effect on the Rhiddoroch, Beinn Dearg and Ben Wyvis WLA and the Fisherfield, Letterewe, Fannichs WLA
- The turbines would have an adverse effect on the A835, which is used by tourists and associated with the North Coast 500 tourist route.
- The turbines are proposed at a gateway location and give a poor impression to those arriving in the area.
- There would be an adverse effect on amenity of hillwalkers

Reporter's conclusions

*Sufficiency of evidence on cumulative effects*

3.47 The now-consented Lochluichart Extension 2 was not included in the visualisations provided with the EIAR. The 2019 SEI provided ZTV plans and an assessment of cumulative effects for scenarios in which the consented Lochluichart Extension 2 formed part of the baseline. The 2021 AI did the same for the proposed redesign of that development. Neither updated the visualisations by providing wirelines including the now-consented Lochluichart Extension 2 turbines or the proposed Lochluichart Extension 2 Redesign turbines. Mountaineering Scotland has, however, provided in its evidence visualisations produced by the applicant for the Lochluichart Extension 2 Redesign, depicting the proposed Lochluichart Extension 2 Redesign turbines in wirelines with those of the proposed development. These are provided for viewpoints at Ben Wyvis, An Coilichean, Sgurr Mòr, Beinn a' Chaisteal, Sgurr a' Mhuilinn and Beinn Dearg. I consider that the evidence before me is sufficient for me to obtain the necessary understanding of the cumulative effects of the proposed development to reach my recommendation for Ministers.

*Effects on landscape designations*

3.48 The zone of the proposed development's theoretical visibility within landscape-character areas at and around the application site is plotted in EIAR figure 4.3b. An assessment of effects on landscape designations is provided in EIAR technical appendix 4.5.

3.49 The proposed development's visibility in the Wester Ross NSA would be limited in extent, distant and partial as described in the EIAR. NatureScot did not question the LVIA finding that there would not be a significant effect on the NSA. I agree with the finding too.

3.50 In the Ben Wyvis SLA, the EIAR identified three key qualities of relevance: the uninterrupted panoramas, the wildness of the mountain, and the mountain's landmark

prominence and distinctiveness. As regards the quality of wildness, I agree with the LVIA that the proposed development would largely be seen with the existing turbines of the Corriemoillie/Lochluichart group. The proposed development would also be perceptibly in a different, lower-lying landscape. Although there would be a perception of wind-turbine development being brought rather closer to viewpoints within the designation, the impact on wildness would be limited, given the existing baseline of wind turbines in the view. As regards the quality of Ben Wyvis's landmark prominence, I agree with the LVIA that there would be little impact on views from which this quality is best appreciated, with the exception of views from the west on the A835 corridor. I accept that it is views of Little Wyvis, rather than Ben Wyvis itself that would be affected. As regard the quality of the panoramic views from the SLA, I have found that there would be significant effects on some key receptors, including paths to Glas Leathad Mòr (viewpoint 6) on the eastern side of the hill and on the view from the summit itself. Nonetheless, I accept the proposed development would not directly affect the key panoramic views to the uplands of Rhiddoroch, Beinn Dearg or Beinn Wyvis and would appear in the middle ground in views of the Fannichs, alongside existing turbines. I find that the effect on the SLA as a whole falls below the threshold of significance.

3.51 Although proposed development would have a number of significant effects on visual receptors within the Fannichs, Beinn Dearg and Glencalvie SLA, the proposed development would be visible over only a relatively small proportion of the area. I agree with the LVIA that the proposed development would not substantially affect the special qualities for which the area is designated.

3.52 I agree with the LVIA that the proposed development would not have a significant effect on any other landscape designation.

*Effects on landscape character*

3.53 The zone of the proposed development's theoretical visibility within landscape-character areas at and around the application site is plotted in EIAR figure 4.2b. The effects on landscape character are assessed in EIAR appendix 4.4. The council's witness did not disagree with the LVIA's assessment of landscape-character effects summarised above. Such views as there are of the proposed development from beyond the landscape character types and units described are relatively distant. I see no reason to disagree with the LVIA's assessment either.

*Significance of visual effects at viewpoints (including cumulative effects)*

3.54 I agree with the assessment in the applicant's LVIA that the proposed development would have significant effects at viewpoints 1 (Aultguish Inn), 2 (Old Drove Road), 5 (Sgurr Marcasaidh), 15 (Meall a' Ghrianain), 17 (Loch Glascarnoch) and 19 (Little Wyvis).

3.55 Viewpoint 6 (Ben Wyvis): The views from the summit viewpoint are panoramic, with dramatic views across the east coast, to the Monadh Liath, the Fannichs, and Beinn Dearg. The area of change in the view brought about by the proposed development would be relatively localised as the LVIA finds. The proposed turbines would be seen from the summit itself just above the lip of the broad hilltop. They would not appear in direct views to the mountatins to the west or north west, but in the moor below. The proposed turbines would not bring a wholly new element into the view, since they would stand in front of existing turbines. The proposed development, seen from the summit of Ben Wyvis, would fit with the shape of approved and existing development (and also with that of the proposed Lochluichart Extension 2 Redesign should it be consented). The development would bring turbines tangibly closer to the viewpoint. The contrast in turbine size and rotation speed

with existing turbines would be noticeable to someone viewing the windfarm from the summit, and possibly sufficiently noticeable to attract attention. The proposed development would increase the influence of views of turbines from the summit, from which the Fairburn, Novar and Corrie na Cloiche windfarms can be seen, as well as the Corriemoillie / Lochluichart cluster. I consider the degree of change at the viewpoint is better described as "prominent but localised" than as "discernible". Consequently, I find that the magnitude of effect would be moderate. Given the high sensitivity of the viewpoint as a receptor, the effect would be major/moderate and over the threshold of significance.

3.56 Mountaineering Scotland refers to the discordant effect that Lochluichart Extension 2 Redesign would have with the existing turbine cluster. Nonetheless, I do not consider that adding the proposed development to a baseline including the redesign proposal would result in a materially greater effect upon the viewpoint. There would still be a significant effect of similar degree.

3.57 Viewpoint 7 (Avenue of the Fairburn Estate): There is broad agreement between the council and the applicant in respect of the viewpoint's assessment, with the exception that the council considers the effect at the viewpoint would be significant, while the applicant does not. While I accept that the proposed turbines that would be visible would be perceived as larger than the existing turbines by a viewer directing his or her attention towards them, and that they would be somewhat separated by the landform, they would be seen at a distance in the same portion of the view as the existing development. They would also be skylined against a northern sky, which would often – though not in all weather conditions – reduce their impact. I agree that the change would be discernible, but the effect would not be significant. While turbines of Lochluichart Extension 2 Redesign would theoretically be visible at the viewpoint, they would be in the most distant part of the cluster. I do not consider that the addition of the proposed development to a baseline including the redesign proposal would have a materially different effect from that with existing turbines.

3.58 Viewpoint 8 (Sgurr a' Mhuilinn): The proposed development would create a lateral extension to the right of the Lochluichart / Corriemoillie cluster. The proposed turbines would be seen front-lit against the dark moorland backcloth and would be evidently larger than the existing turbines, with a different rotation speed. There would be some visual dissonance as a result, though the distance limits the effect. I agree with the council that the prominent position of the turbines perceived at either end of the proposed development would add to this effect. The proposed turbines would also be seen outside the bowl contained by the small hills of Beinn nan Cabag and Beinn a' Bhric within which the existing turbines are located, and so there would be some perception of another layer being added to the cluster. The larger turbines would appear further from the viewpoint. This would increase the complexity of the view of the windfarm. But all this is in the context of dramatic panoramic views from the viewpoint at the summit, with the turbines seen at a distance of almost fifteen kilometres, in the same cluster as the existing turbines. There would be a discernible, but not a prominent change within an otherwise unaltered context. Hence there would be a slight magnitude of effect. Given the high sensitivity of the viewpoint, the overall degree of effect would be moderate. Nonetheless, given the existing baseline view, the distance, and the wider context with stronger interest elsewhere in the view, I do not find the effect would be over the threshold of significance.

3.59 The Lochluichart Extension 2 Redesign would extend the Corriemoillie / Lochluichart cluster to the left within the view, extending beyond the landscape containment of the existing development. Added to this baseline, the proposed development would extend the cluster further to the right. Although there would be a tangible increase in the angle of the view taken up with turbines, I do not consider thought that the degree of effect cumulatively

is substantially different from the effect of the proposed development with existing windfarms.

3.60 Viewpoint 9 (Beinn a' Bha'ach Àrd): There is no difference between the council and the applicant as regards the magnitude of the proposed development's effect at this viewpoint, only over its significance. In the context of the wide views from the summit, and given the distance from the viewpoint, I do not find the effect of the proposed development to be significant. I do not consider that the cumulative effect, should the Lochluichart Extension 2 or its redesign proposal form part of the baseline, would be significant.

3.61 Viewpoint 13 (An Coileachan): The proposed development would appear beyond and somewhat to the left of the existing Corriemoillie / Lochluichart cluster within the view. The turbines would be larger and more noticeable as the LVIA recognises. Like the existing turbines they would be backclothed against the moorland. There would be some dissonance from the comparison of existing turbines and the larger, more distant proposed turbines and from the comparison of rotation speeds. The proposed turbines would appear in the direct view to Ben Wyvis as Mountaineering Scotland points out. The proposed development would however be in the same part of the view as the existing turbines, seen at over 11 kilometres, and would be seen in the context of a wide and dramatic panorama. There would be a discernable change in an otherwise unaltered context and therefore an effect of slight magnitude. Given the high sensitivity of the viewpoint, the degree of effect would be moderate. Given the dissonance that the proposed development would introduce into the view of the cluster, I find that the effect would be over the threshold of significance.

3.62 The proposed turbines of the Lochluichart Extension 2 Redesign would be seen over the shoulder of Beinn Liath Bheag in the same area as the proposed development. While the different sizes of the proposed development's turbines in immediate comparison with the proposed redesign's turbines would slightly add to the dissonance in the view, the overall cumulative effect of the proposed development added to such a baseline would not be substantially different in degree to its effect with the existing turbines alone.

3.63 Viewpoint 14 (Beinn Dearg): The propoposed development would appear at the opposite end of Loch Glascarnoch, a feature that with Loch a' Ghabhrain draws the eye along it towards the proposed development. For someone observing the windfarm from the peak, it would be noticeably larger than the existing development, would stand in a group with a perceptibly separate identify from the existing cluster, and the larger size and slower rotation speed would contrast to a degree with existing turbines, leading to some disonance. The proposed turbines would generally be partially backclothed against contrasting moorland colours. They would considerably increase the horizontal extent of the existing cluster. Unlike the existing cluster, there would be little landscape screening of the proposed turbines. They would appear large in comparison with the small hills in their immediate context, such as Beinn nan Cabag and Carn na Dubh Choille, as well as with the existing turbines. In this sense, it can be said that they would be out of scale with their immediate context. However, in the broad context of the panoramic views from the peak, they are seen at 16 kilometres in an area of lower-lying moorland, not interfering with direct views to any of the dramatic skylines, and – notwithstanding that they could be identified as a separate group – their context already includes turbines in the baseline. I agree with the applicant's LVIA that the magnitude of the effect in the context of the view from the peak is slight. Given the high sensitivity of the peak, the degree of effect is moderate, but I agree with the applicant's LVIA that the effect at such a distance would not be significant.

3.64 Mountaineering Scotland raised an issue of consistency between the assessment of the effect on Beinn Dearg as not significant, while the effect on the path up Am Faochagach, which it argued had a similar view, was found to be significant. The LVIA

made its finding of significance for the Am Faochagach path primarily on the basis of the introduction of the proposed development as a new infrastructure feature in views from the lower part of the path where no windfarm development is currently seen. I accept that analysis. It is also relevant that views from the Am Faochagach path would be somewhat closer to the proposed development than those from the summit itself while views to the proposed development would not be set in such a wide panorama as at the summit.

3.65 The turbines of the proposed Lochluichart Extension 2 Redesign would appear in front of and as part of a group with the existing cluster, while the proposed development would appear, as I have described, as a perceptibly separate group to the left. I do not consider that the cumulative effect of adding the proposed development to a baseline including the Lochluichart Extension 2 Redesign would result in a cumulative effect that would be materially different from the effect with the existing turbine cluster.

3.66 Viewpoint 16 (Meall Mòr): The proposed turbines would be seen to the right of the Ben Wyvis massif, through a cleft in the hills between Tom a' Choinnich and Càrn Mòr. The existing turbines are already seen in this cleft and the proposed turbines would appear in front of them. The larger size of the latter would appear logical given that they would be seen as closer. The proposed turbines would form a group with the existing turbines. I acknowledge that the southernmost proposed turbines would be seen to extend south of the existing cluster and three turbines would be seen across the Queen's Cairn at the shoulder of Tom a' Choinnich. In my opinion, though, this is a detail that would barely affect the amenity of the viewpoint, given the interest in the views of Ben Wyvis to the west and and across the east coast. The proposed development would still appear contained within the cleft in the hills along with and of a piece with the existing cluster. The effect would not be significant. Although the turbines of the proposed Lochluichart Extension 2 Redesign would appear in front of the existing cluster and to its right, the degree of their visibility across Càrn Mòr is likely to be limited, and the addition of the proposed development to such a baseline would have an effect similar to that with the existing turbines.

3.67 I therefore find that there would be a significant visual effect at viewpoints 6 and 13 as well as at the viewpoints identified in the applicant's LVIA.

3.68 While the applicant and council agree that the visual effect at viewpoints 1, 17 and 19 are significant, they disagree on the degree of significance of the effect.

3.69 Viewpoint 1 – Aultguish Inn: The viewpoint is at the inn, which is on the A835.

3.70 The council argues that the effect on local road users would be major, rather than the major/moderate found in the LVIA. Though relatively few people live locally, I agree that the degree of adverse change in the familiar view would have a major effect for such road users.

3.71 The 2019 SEI finds that the consented turbines of Lochluichart Extension 2 would be prominent on the skyline at the Aultguish Inn, though they would be seen in conjunction with the existing Lochluichart and Corriemoillie arrays, which moderates the degree of their prominence. The SEI finds that the addition of Lochluichart Extension 2 would be a modest change to the baseline for the proposed development and that the addition of the proposed development to such a baseline would not materially alter the LVIA's findings as compared with the addition of the proposed development to a baseline of the existing turbines. The 2021 AI indicated that the Lochluichart Extension 2 Redesign would not alter the 2019 SEI's findings except in respect of the degree of sequential effect on the A835. I agree with this assessment.

3.72 Viewpoint 17 – Loch Glascarnoch: The viewpoint is at a parking area to the north of the A835, near the loch's edge. I understand the viewpoint as being representative of views from the A835 along the loch edge.

3.73 The council argues that the magnitude of effect should have been assessed in the LVIA as substantial rather than moderate and the degree of the effect's significance assessed as major, rather than major/moderate. The council identifies as factors the sustained view of the turbines for eastbound road users, the impact on views on Little Wyvis to which views are channelled along the strath, the effect on the transition (the landscape gateway) between the wilder, more rugged west and the settled east, and the lack of turbine development in the view at present. The council also notes the visual effect would extend into hours of darkness, when three of the visible turbines would be lit.

3.74 The applicant's witness took the view that the turbines would not become a dominant feature or become a primary characteristic of the landscape when travelling along the section of the route from which significant effects would arise. The view would continue to be primarily characterised by the features of the highland landscape through which the route passes, including Loch Glascarnoch and Ben Wyvis. The witness also referred to turbines being already visible from the A835, near viewpoint 1, as a factor that limited the effect.

3.75 The turbines would make a notable alteration to the view of Little Wyvis and consequently to the view of the Ben Wyvis massif. Although views change as the road bends along the loch edge, Little Wyvis and the Ben Wyvis massif are key features that are fairly consistently in the direct view of eastbound vehicles and to which views are channelled. Turbines of the proposed development would appear fairly consistently in views from Loch Droma until they briefly disappear from view behind the lochside slopes near the south-eastern head of Loch Glascarnoch. I do not regard the existing turbines, which cannot be seen at viewpoint 17 or from any point on the road as it passes along Loch Glascarnoch to be relevant to assessment of the visual effects at the viewpoint. Nonetheless, I agree with the applicant's witness that the view would continue to be primarily characterised by features of the highland landscape through which the road passes, including Loch Glascarnoch, Ben Wyvis and the view to Little Wyvis. The turbines would be a new and very prominent feature in an important part of the view, but would not dominate it at any point. The introduction of the three turbine lights in a presently dark but relatively low-lying area of the view along the trunk road and beside an existing reservoir would result in a notable change in the night-time view. Overall, I agree that – in the broad bands provided for the assessment of magnitude of effect – the magnitude of the effect at the viewpoint is better assessed as moderate rather than substantial. I find consequently that an assessment of an effect of a major/moderate degree of significance is appropriate.

3.76 While the tubines of Lochluichart Extension 2 (both the consented and revised proposals) would be seen by eastbound travellers on the A835, they would be seen to the right of the view of Little Wyvis. While they would introduce a view of turbines into the baseline view at the viewpoint, they would be far less obtrusive than the turbines of the proposed development. If the proposed development was added to a baseline including the Lochluichart Extension 2 turbines (either the consented or revised proposal), I do not consider the effect would be substantially different.

3.77 Viewpoint 19: The viewpoint is at the summit of Little Wyvis. It also represents views on the path over much of the hill's ascent.

3.78 The council argues that the magnitude of effect would be substantial at the viewpoint rather than moderate, as assessed in the LVIA. The council cites as factors that the

turbines would be closer in the view than the existing development, the ancillary infrastructure would be visible, the turbines would appear out of scale with existing development, they would not appear to follow a consistent design, and would not relate to existing development.

3.79 I acknowledge the factors the council cites. From this particular viewpoint, the proposed development would not relate particularly well to the existing development. It would not be contained in the same landscape bowl, nor would it in shape fit with the existing cluster. The proposed development would appear somewhat separate from the existing cluster, extending the view of windfarm development latterally towards the view of Loch Glascarnoch, and including evidently larger turbines, creating dissonant layers in the view. Nonetheless, Little Wyvis is a lofty viewpoint with wide views across the lowlands and coast of the Black Isle, Cromarty, Easter Ross and to the mountains of Strathfarrar, to the Fannichs, Sgurr a' Mhuilinn, Fionn Bheinn, Beinn Dearg and Ben Wyvis itself. The proposed turbines would appear in the lower middleground of the view and would not interfere with direct views to these features. I conclude that it represents a notable - if prominent – alteration to the view in a broader unaltered context. Consequently, I find that the magnitude of impact is moderate, and the significance of the effect at the viewpoint is major/moderate

3.80 I do not consider that the addition of the proposed development to a baseline including Lochluichart Extension 2 (either the consented or revised proposal) would result in an effect of a different degree.

*Visual effects of aviation lighting*

3.81 The 2021 AI described the revised aviation-lighting scheme for the proposed development. Aviation lighting is a requirement because the proposed turbines are over 150 metres in height. The initial assessment made was for 2000 candela lights on each turbine hub and three 32 candela lights on each turbine tower. The revised scheme requires aviation lighting only on the hubs of only six of the 17 turbines (1, 3, 7 10, 16 and 17) on cardinal points of the proposed development. The six lights would be operated at a reduced brightness of 200 candela when there is visibility of five kilometres or more. This would be increased to 2000 candela at times of lower visibility.

3.82 The applicant also proposed that the aviation lighting should be activated when an aircraft transponder was detected in the proximity of the windfarm. The 2021 AI calculates that such a system would result in the aviation lights being on for only about 0.1% of night hours. Although the applicant's evidence suggests the CAA would be likely to accept transponder-activated lighting, no definitive decision that it would has been provided in evidence. The Ministry of Defence has also not indicated such a scheme would be acceptable (though this is less of a direct concern, since the Ministry has indicated infra-red lighting is acceptable to it for safety of military aircraft). I therefore consider that the proposed development should be assessed on the basis of the reduced scheme for lighting cardinal turbines, but with the lights being on throughout the night hours. I consider also that proximity-activated avaition lighting should be fitted if the necessary consents are obtained.

3.83 The proposed lighting, as described in the EIAR, would be controlled by caps and collars so that it would emit a narrow band of light, brightest between 0 and 3 degrees from horizontal, but diminishing in brightness above and below that angle. Consequently, the lights would be seen at their brightest from more-distant, elevated viewpoints. Light attenuates with distance. I agree with the applicant that the value of night-time views is generally low (this may not always be the case in locations designated or otherwise valued

for dark skies, though there is no such designation in the present case). The susceptibility of night-time views to the impacts of aviation lighting is reduced in areas in which there is already visible lighting.

3.84 The applicant provided an assessment, including visualisations and wirelines, of the effect of the proposed development's aviation lighting at a number of night-time viewpoints. This assessment found no significant effect.

3.85 NatureScot stated in its response to the 2021 AI that, in night-time views from wild land areas 28 and 29, the effect of the reduced aviation-lighting scheme would not be significant, given that the lights would be seen in the vicinity of aviation lighting on existing turbines.

3.86 I agree with Dr Hedger inasmuch as the proposed aviation lighting would compound an existing, somewhat disconcerting, effect on drivers on the A835 from the appearance of existing aviation lights against a dark background at an unexpected location off the road. I agree with Mountaineering Scotland that the proposed aviation lighting would slightly increase an existing adverse effect for walkers at night time in the wild land. I agree though also with the applicant and NatureScot that the degree of effect from the addition of the proposed development to the existing baseline would not be significant.

*Visual effects on transportation routes*

3.87 In considering the effect of the proposed development at viewpoint 17, I have considered the effects on eastbound travellers on the A835. I found that there would be an effect of moderate-major significance in respect of the viewpoint. The eastbound views represented by the viewpoint are sustained and increase from Loch Droma and along Loch Glascarnoch. The turbines have a subtantial effect near the Aultguish Inn. There is undoubtedly a significant effect on eastbound users of the road. I agree with the LVIA's assessment that it is of major/moderate significance along Loch Glascarnoch and of major significance by the Aultguish Inn. Thereafter, the turbines fall behind an eastbound traveller. The consented Lochluichart Extension 2 and the proposed Lochluichart Extension 2 Redesign would also be seen from the road. The position in which those those turbines would be seen, on the shoulder of the hill rather than close to the view of Little Wyvis, means that neither would substantially diminish the sensitivity of road users as a receptor or the degree of significance of the effect.

3.88 For westbound road users, topography and vegetation limits views towards the turbines until Inchbae. I agree with the LVIA that westbound road users would experience significant adverse effects between Inchbae and the Aultguish Inn, the effects being major/moderate north of Inchbae and major between Lubfearn and Aultguish Inn.

3.89 Tourists will often use the road, and that is a factor I take into account in reaching my view on the degree of adverse effects. While I acknowledge that users of the North Coast 500 tourist route (NC500) might use the road as a short cut, rather than taking the road through Wester Ross, that plainly involves a decision to leave the designated route. Since the part of the A835 affected is not designated as part of the NC500 and since I have not found any effect on the NC500 itself, I do not find its nearby presence or the presence on the A835 of tourists who have used the NC500 to be a substantive additional consideration.

*Visual effects on walking paths*

3.90 It is not disputed that the proposed development would have significant visual effects on walkers on a number of paths as set out in the LVIA, including the paths up Strath Vaich

and to Beinn a' Chaisteal, the path to the summit of Little Wyvis, the path up Am Faochagach, the path up Beinn Liath Mhòr a' Ghiubhais Lì and the Fish Road. Mountaineering Scotland and the council argued that there were significant effects on other paths:

- *Paths to summit of Ben Wyvis*

3.91 This is a signposted path up to Ben Wyvis from a car park at the Black Water up the Allt a' Bhealaich Mhòir leading to An Cabar, then along the ridge north east to the main summit, Glas Leathad Mòr. The path is evidently popular. The existing turbine cluster is visible from most of the higher parts of the path on the steep slopes of An Cabar and particularly from the erratic boulder at which climbers often stop to appreciate the landscape. The proposed development would bring larger turbines closer to the view. Càrn na Dubh Choille and Càrn Gaineamhach largely screen the existing cluster from the eastern edge of the Garbat Forest westward.

3.92 I have found that the visual effect of the proposed development at the viewpoint at Glas Leathad Mòr would be significant. That viewpoint is representative of views also from the path as it descends An Cabar. If the proposed development proceeds, a number of its turbines would be seen where there is no existing view of turbines, particularly on the return journey from Ben Wyvis, directly in front, at a distance of four to five kilometres, across the opposite hills, as the path passes down through the Garbat Forest. The forest is open around the path, there would be direct views to the turbines, turbine hubs would be seen, and some turbine blades would cut the skyline of Càrn na Dubh Choille and Càrn Gaineamhach, which form the horizon. Walkers would have a sense of proximity to the turbines, which they do not have with the existing cluster. The path through the forest does not have the same formal value as the path up An Cabar, since it is not within the Ben Wyvis Special Landscape Area. Nonetheless, the overall sensitivity of the path is still high. I find that the effect of the proposed development on the path would be significant. In my view, the main effect on the path is on the return journey from An Cabar to the Black Water car park. The impact on views from the broad ridge between Glas Leathad Mòr and An Cabar would be similar to the impact on views at the summit of Glas Leathad Mòr itself – over the threshold of significance – but walkers would not generally be facing the views of the turbines (as they would on the way down) or stopping to take in the view in the way they would at the summit.

3.93 The path up Ben Wyvis across Tom a' Choinnich to Glas Leathad Mòr would also be significantly affected: the views would be affected in a way similar to the views from the path between An Cabar and Glas Leathad Mòr, at least from the point where the path approaches Càrn Gorm on the shoulder of Tom a' Choinnich.

- *Circular walk by Meallan nan Uan and Sgurr a' Mhuilinn*

3.94 The proposed development would be seen on the circular walk to Sgurr a' Mhuilinn across the sharp ridge of Meallan nan Uan. I acknowledge that the proposed development would be seen from Meallan nan Uan but I find for similar reasons as I found for the summit (viewpoint 8), the effect would not be significant.

- *Path via Beinn Liath Mhòr Fannaich to Sgurr Mòr*

3.95 I have found that the effect on viewpoint 13 at An Coileachan would have a threshold level of significance. Some similar views would be obtained on the path by Beinn Liath Mhòr Fannaich to Sgurr Mòr at at the summit of Sgurr Mòr itself. There would be direct views towards the windfarm when descending from the summit of Beinn Liath Mhòr, though

most of the proposed turbines would drop out of sight within about 500 metres from the summit of Beinn Liath Mhòr and only a few blade tips would be seen on the shoulder of Creag Dhubh Fannaich. Given the much greater distance than at viewpoint 13, I do not consider that the effect would be significant. Although the proposed development would be seen intermittently from the walk along the ridge from Sgurr Mòr across Meall nam Peithirean and Meall Gorm to An Coileachan, given the distance and the wide and dramatic views from the ridge that set the context, I do not find the effect significant other than from the viewpoint on An Coilichean.

*Effects on wild land*

3.96 A number of objectors, including the John Muir Trust, raised the impact of the proposed development on wild land in their objections. Although NatureScot did not object to the proposed development on the basis of its effect on wild land, it disagreed with the applicant as regards whether effects on WLAs 28 and 29 would be significant.

3.97 WLA 29: NatureScot argued that there would be a significant adverse effect on two of the three wild-land qualities of the area, these being:

- Quality 1: A range of awe-inspiring, massive, high, rounded hills and plateux as well as steep rocky peaks and ridges, offering elevated panoramas.
- Quality 3: A very large interior with a strong sense of remoteness and sanctuary that seems even more extensive where appearing to continue into neighbouring wild land areas

3.98 I agree with NatureScot that the presence of additional, larger turbines in views from the elevated hills represented by the viewpoints in the wild land area (including 14, 15, 6 and 19) would have some adverse effect on the wildness qualities of the area. In my opinion, though, the effect of views of turbines on wild land is already established by the existing cluster. I acknowledge NatureScot's point that the proposed development's taller turbines would increase the prominence of turbine development in the wild-land area, particularly on the western slopes of Ben Wyvis and Little Wyvis, and on the slopes of Beinn Dearg. The contrast would lead to greater perceived complexity in the view of the turbine cluster. The proposed development would introduce new views of turbines within Strath Vaich and on the eastern slopes of Am Faochagach above Strath Vaich. I agree with NatureScot that the new views of turbines, including those on the higher western slopes of the strath would diminish the sense of remoteness and sanctuary. Though the proposed turbines would represent a more prominent interruption in views from wild-land area 29 to area 28, they would not, for the most part, be a wholly new interruption. Overall, though, I agree with NatureScot that there would be significant effects on the wild-land qualities of WLA 29, though - as the applicant points out - these would largely be restricted to areas at its edge that do not show wild qualities as strongly. I therefore consider that while the adverse effect on the two qualities would be significant, it would be at a threshold level of significance.

3.99 WLA 28: NatureScot argued that the proposed development would have a significant adverse effect on one of the four identified wild-land qualities of the area, this being:

- Quality 1: An awe-inspiring range of colossal, steep, rocky and rugged mountains interlinked around deep and arresting corries, glens and lochs.

NatureScot's position is that the extension of obvious human elements and the substantial increase in prominence of the proposed turbines would affect parts of the wild-land area that are very sensitive to such development. I disagree. The closest area of visibility of the proposed development would be from the dramatic eastern ridges of the Fannichs. The existing turbines are seen in the same views. I acknowledge that the proposed development would increase the prominence of the cluster, but the effect on wild land is already established

by the views of the existing cluster. I do not consider the adverse effect would be greatly increased by the addition of the proposed development. I do not find it would be significant.

*Siting and design of the proposed development in respect of landscape and visual effects*

3.100 The council's witness contended that the proposed development's adverse effects arose from poor choices regarding the location, design and turbine size of the proposed development. NatureScot also referred to siting and design choices as a cause of adverse effects on Wild Land Areas 28 and 29. The council's witness referred particularly to paragraph 4.16 and 17 of NatureScot's guidance on Siting and Designing Windfarms in the Landscape (CD6.3). These paragraphs give advice on the siting and design of windfarm extensions. They indicate that design objectives should echo those of the original windfarm, including aspects of scale, form, colour and rotation speed. Further, extensions should not compromise the landscape context of neighbouring windfarms and should respect existing focal points in the landscape. The potential for a windfarm extension to outlive the original windfarm (and so stand on its own) is also to be considered. The council referred to the design rationale of the existing cluster as having comparable turbines heights and containment within a bowl. It argued the proposed development would erode this rationale.

3.101 While I have not agreed with the council's assessment of the degree of adverse visual effects at the LVIA's viewpoints, I do agree with the council that adverse visual effects arise from the juxtaposition of larger, apparently slower-rotating turbines alongside the existing turbines of the cluster. I have noted a number of viewpoints in which the juxtaposition is a facet of the adverse effect. Smaller turbines could have been proposed, in the sense that it seems unlikely it would have been impossible to procure smaller turbines when the proposed development came to be built (though I recognise that there might be some practical difficulties if, for instance, only reconditioned turbines of such heights were available). In that respect, using larger turbines was a design choice. The resulting adverse effects weigh against the proposed development.

3.102 When the ZTV of the proposed development and the existing cluster are compared, as in EIAR figure 4.6a, they largely overlap. However, the proposed development does have, as a result of the size of its turbines and its siting in the landscape, adverse effects on some important receptors in locations the existing cluster is largely not seen or has a substanially lesser effect. The existing cluster has remarkably little effect on the A835, except in the section near the Aultguish Inn. The proposed development would introduce views of turbines in the view of Little Wyvis in the section of the A835 running from Loch Droma alongside Loch Glascarnoch. It would introduce new views of turbines in Strath Vaich, which would impact upon the walking route through the strath and diminish the wildness of its upper part along and to the west of Loch Vaich. It would also substantially increase the existing effect on the path down Ben Wyvis by An Cabar, and introduce new, relatively close views of turbines on the lower part of the path.

3.103 I agree with the council that the proposed development would not occupy the same landscape bowl as the proposed development. Some of the adverse impacts of the proposed development I have described in the previous paragraph do not arise for the existing cluster because of the landscape screening its location provides: views of the existing cluster are screened by landscape from the Garbat Forest; the position of the existing turbines just east of Beinn Liath Bheag and Meall Mhic Iomhair and set back from the A835 largely screens them from view for eastbound travellers except in the section of the A835 just to the north; all but the lower part of Strath Vaich is screened by Sròn Gorm. However, the proposed turbines are in the same broad moorland area as the existing turbines (notwithstanding the change in landscape character) and in many respects are

similarly screened by landscape from important receptors. The proposed development, like the existing development, has little effect on the A832 as it passes Loch Luichart or on the A835 as it passes Garve or along the Black Water, despite its proximity. Its position in the landscape behind hills such as Creagan an Eich Ghlas and Càrn na Dubh Choille restricts such views, just as the position of the existing cluster behind the low hills forming the edge of its bowl limits views of it.

3.104 The proposed turbines are sited to fit reasonably well (leaving aside the contrast of rotation speed) with the existing cluster from certain viewpoints, such as viewpoint 6 on Glas Leathad Mòr. This is not universal at all viewpoints though. I have noted the poor fit of the proposed development with the existing cluster at viewpoint 19 as one of the facets of the adverse effect at that viewpoint. The proposed development would at other viewpoints (such as viewpoints 5, 15 and 19) increase the perceived horizontal extent of the cluster, though such a perceived increase in extent would be difficult to avoid in design of any windfarm extension.

3.105 I understood the council to argue that there was a perception of containment of the existing cluster that would be adversely affected by the proposed development. The existing turbines are seen in a single depression in the landscape. The existing and proposed turbines, when seen together, would be seen in separate depressions in the landscape with the low hills of Beinn nan Cabag and Beinn a' Bhric between them. However, views that it is possible to obtain with an overview of the existing cluster and proposed turbines together tend to be more distant, elevated views. In most of such views, the proposed development would appear as an extension of the existing cluster, notwithstanding what appear at such a distance to be the undulations between the existing cluster and proposed development. The extended cluster would still be perceived as being contained within the same moorland context with low hills to the east and the slopes of Meall Mhic Iomhair the west. I do not consider this aspect of the proposed development's siting adds substantially to its adverse effects.

3.106 Consequently, while I find that adverse effects arise from choices on siting and design of the proposed development, I do not agree with the council that the proposed design rides roughshod over the previous design approaches. Avoidance of visual effects is not the sole consideration in windfarm design. Other constraints and the harnessing of the benefits must be taken into account. It appears to me that the adverse effects arising from design choices need to be considered in the overall balance and in the context, in particular, of the applicant's justification for using turbines of the size proposed.

*Onshore Wind Energy Supplementary Guidance (OWESG) criteria for landscape and visual effects*

3.107 OWESG includes in paragraph 4.17 ten criteria that set a framework for assessing the landscape and visual effects of a proposed windfarm development. The gudance indicates that these criteria are not absolute requirements but rather intended to make developers aware of key constraints. The criteria are usually set alongside a landscape-sensitivity study for windfarm development, to which they would relate. The study would identify features such as "key locations", "gateways", "valued landmarks", "key recreational routes" and so on which are referred to in the criteria. There is no such study that covers the area of the application site. Nonetheless, the criteria remain sufficiently relevant that I consider they ought to be addressed. The council has made an assessment of the proposed development against the criteria in its report of handling. Each criterion has a measure and a threshold that a developer is advised to seek to achieve.

3.108 The council acknowledged that the proposed development met criteria 1 and 10 but argued it did not meet the other criteria. The second criterion relates to the proposed development's effect on key Gateway locations or routes. Since there is no related landscape-sensitivity study, there is no definition of the term "Gateway" or "key route". Neither the council nor NatureScot in their evidence is specific about the exact location of any landscape gateway. The boundary between the Garve unit of the narrow farmed strath LCT (RCY8) and the rocky moorland occurs on the A835 some distance to the south east of the proposed development and the proposed development is unlikely to be visible from the road at that boundary. The proposed development itself sits on the boundary of the undulating moorland LCT (RCY2), the rocky moorland LCT (RCY4), and the rounded hills LCT (RCY7). I do not understand the council's or NatureScot's evidence to refer to a transitional experience between those landscapes. I do not consider an issue arises directly in terms of the OWESG criteria in respect of the experience at a particular "gateway" between landscape character types or units.

3.109 Dr Hedger identified a gateway to the north west at the Black Bridge to Aultguish section of the A835. I do accept that there is a sense of transition experienced when travelling along the A835 in this section, and more generally in the section between Garve and the Aultguish Inn, between the settled landscapes of the east and the wilder, rocky moorland of central Ross. The council argues that the A835 meets its criteria to be a key route. The route is undoubtedly an important one, connecting Wester Ross and the port of Ullapool and ferry route to Lewis and other islands to the bigger towns of the east coast. Given my assessment of the development's effect on the A835, I do not find that the proposed development would overwhelm landscape characteristics that contribute to the distinctive transitional experience. It would, though, detract from the framed view of Little Wyvis as a landscape marker of the east when travelling east. It would also introduce prominent views of turbines on the eastbound journey including lights at night in the journey along Loch Glascarnoch which would extend the experience of man-made features into the wilder western landscapes. For westbound travellers, there is presently a strong sense of transition leaving the relatively tight wooded glen of the Black Water and entering the moorland. Consequently the proposed development would detract from the experience of landscape transition along the road. In this sense, I find the proposed development does not meet the criterion's threshold.

3.110 As regards criterion 3, Ben Wyvis and (more locally) Little Wyvis are undoubtedly valued as landmarks. I do not agree with the council that the proposed development would diminish the prominence as natural landmarks of Ben Wyvis or Little Wyvis in views towards them. The turbines of the proposed development, even though prominent in such views, would be subordinate to the Ben Wyvis massif. The proposed development would, though, appear prominently in views to and from the massif, including having significant adverse effects at viewpoints 6 and 19 and appearing prominently in the framed views of Little Wyvis from the A835 eastbound. This would cause a degree of disruption to the relationship of both hills to their setting, particularly that of Little Wyvis. In this sense, I find that the proposed development does not meet the threshold for criterion 3.

3.111 The council did not raise a concern in respect of the proposed development's adverse effect on the Fish Road, a cultural landmark, but referred to the proposed mitigation. Given that there is a significant residual effect, I find that the proposed development does not formally meet the criterion in this respect either.

3.112 As regards criterion 4, since there is no landscape-sensitivity study, there is no definition of "key recreational routes". I do not find that the proposed development would overwhelm any recreational route. I have found that it would have significant adverse effects on the amenity of the Fish Road, the paths up Strathvaich and to Beinn a' Chaisteal,

the path up Little Wyvis, the path up Am Faochagach, the path up Beinn Liath Mhòr a' Ghiubhais Lì, and paths to the summit of Ben Wyvis. It would have a significant adverse effect on views from a number of neighbouring hills, including the popular summit of Ben Wyvis – Glas Leathad Mòr – and An Coileachan in the Fannichs. It would not meet the threshold for the criterion.

3.113 As regards criterion 5, which relates to the proposed development's effect on the amenity of transportation routes, the council accepted that the proposed development would meet the criterion except in the section of the A835 between Loch Droma and the section close to the application site. The proposed development would significantly detract from amenity in that section and so would not meet the criterion.

3.114 Criterion 6 relates to the proposal's fit with the existing pattern of nearby wind-energy development. The proposed development does in some respects contribute positively to the existing pattern of development. It is located in the same moorland area as existing development and in some views, particularly the view from Glas Leathad Mòr, it is perceived to fit well with the existing turbine cluster, forming a compact group. I have also found that there would be some dissonance arising from the contrast in size and rotation speed of the proposed turbines with the existing turbines. Overall, given that the threshold requirement is to "contribute positively" to the existing pattern, I do not find that the proposed development wholly meets this criterion.

3.115 The council's evidence takes criteria 7 and 9 together. They are both criteria that, like criterion 6, deal with the relationship of the proposed development to existing development. In my view, the proposed development would be largely perceived as an extension of the existing cluster. I have acknowledged the council's point that the proposed development would not appear in the same landscape bowl as the existing development, but it would appear adjacent in the same broader context of upland moorland. I do not consider a criterion such as criterion 7, which relates to the spacing between existing clusters is relevant, given the perception of the proposed development as forming part of the same cluster. I also do not consider that the landscape setting of existing turbines would be substantially affected. The dissonance between existing turbines and proposed turbines could be said to increase the prominence of existing turbines, so formally I do not consider that criterion 9 is met. In my view, though, the scale differences are more properly an issue dealt with under criteria 6 and 8.

3.116 As regards criterion 8, there would clearly be a contrast between the turbines of the proposed development and those of the existing cluster in terms of height and rotation speed. I agree with the council's evidence that the proposed turbines would be perceived as bringing the group closer to the viewpoint on Ben Wyvis (which in fact they would). They would result in the group as a whole being more prominent at that viewpoint. The dissonance between existing and proposed turbines would compound the prominence of the group to some degree. In this sense, I accept that the proposed development would not comply fully with criterion 8.

3.117 I therefore find that the proposed development would not accord with criteria 2, 3, 4, 5 (for part of the A835), 6, 8 and 9. However, for the most part the thresholds provided for the criteria are not sensitive to the degree of the effect to which the criterion relates. In my opinion, the main adverse effects of the proposed development arise from the juxtaposition of larger turbines with smaller existing turbines, the perceived poor fit in some views of the proposed development with the existing cluster, the introduction of new views of the proposed turbines from the A835 and into Strath Vaich and the impact on wild land, particularly as a result of the new visibility of man-made structures the proposed development would introduce. I acknowledge that there are adverse effects arising from

the perceived horizontal extension of the existing cluster, though these must be set against the advantages of colocating development. While I agree that the perception of extension of development beyond the bowl in which the existing cluster is located is an adverse effect, it appears to me a criticism at a level of detail that would not substantially affect the overall judgement.

## CHAPTER 4: OTHER MATTERS

4.1 As regards matters other than those dealt with in chapters 2 and 3 of this report, the council and the applicant agreed that the proposed development would be acceptable in relation to its effects on ecology and ornithology, peat management, peat habitats, peat stability, carbon balance, military and civil visible and infra-red aviation lighting, tourism and recreation, socio-economic impacts, cultural heritage, public safety, good-quality agricultural land, construction traffic and its effect on local highways and other road users, radar and seismological equipment, geology, hydrology and hydrogeology, air quality, telecommunications, television reception, on-site utilities and health and safety, and human rights.

4.2 Other objectors raised a number of issues, in particular:

- The vagueness of the application as regards what exactly is proposed, including in respect of the number of turbines;
- The siting of the proposed development on peat and its consequent effect on carbon balance;
- The adverse effects on tourism, including on the NC500, and consequent adverse economic effects.
- The effect upon public access along the Fish Road, the former drove road, during construction.
- The adverse effects on wildlife, including sea eagles, golden eagles and other species.
- The unreliability and intermittency of renewable energy.

4.3 The applicant argued that the proposed development would have a net economic benefit.

*The clarity of the application*

4.4 The layout of the proposed development is shown in 2021 AI figure 1.1. The proposed development is clearly for a maximum of 17 turbines of up to 175 metres to blade tip. Although the red-line boundary of the application site takes in a larger area, no consent would be granted on the basis of the present application for more than 17 turbines or for turbines in substantially different locations, beyond the proposed micrositing tolerance. Since the consent would permit – but not require – development, it cannot be absolutely certain that all 17 turbines would be built out, though there is no reason to believe they would not be. That is the case for any development consent.

4.5 The John Muir Trust objected to the proposed micro-siting tolerance of 50 metres. Environmental impact assessment was carried out on the basis of a description that would permit such a degree of micrositing. The evidence does not suggest that, subject to the arrangements made in respect of effect on peat, any significant effect would arise as a result of change in the location of the proposed 175 metre turbines by up to 50 metres. The Trust itself provided no substantive evidence to suggest that such an effect could arise. I have adjusted the micrositing condition agreed between the council and applicant such that it would not permit a material change to the proposed development beyond the micrositing tolerances.

*Peat and peat habitats*

4.6 SEPA initially objected as the statutory consultee with responsibility for effects of development on peat as a factor in the carbon balance. It withdrew its objection on the

basis of the arrangements proposed in the 2019 SEI for provision of floating tracks and revision of access-track layout and the 2021 AI's repositioning of turbines 5 and 7 to reduce impact on deep peat. RSPB Scotland referred in its objection to the importance of avoiding deep peat (more than 0.5 metres deep) but did not expressly object on this ground. No other party objected in respect of the proposed development's effects on peat. Given that the statutory consultee is content with the design as revised, I consider that the proposed development's effects would be acceptable, subject to the revisions set out in the 2019 SEI and 2021 AI and the approval of a final peat-management plan under a condition of consent.

*Wildlife*

4.7 The proposed development's effects on ecology and ornithology are assessed in chapters 6 and 7 of the EIAR. Chapter 6 found no significant effect on either habitats or non-bird species. It proposed mitigation of such effects as it found, including the appointment of an ecological clerk of works to oversee construction and decommissioning and to carry out pre-construction and pre-decommissioning surveys for protected species within six months before such activities. An outline habitat-management plan was provided. It is proposed that habitat at the site should be enhanced to provide an improved ecology for black grouse, fisheries, water vole and generally for moorland biodiversity. This is a factor that weighs in favour of the proposed development.

4.8 Chapter 7 of the EIAR found no likely significant effect on any ornithological receptor, though it predicted non-significant adverse effects on black grouse (as a result of displacement during construction and operation and collision risk) and golden eagle (as a result of collision risk, including cumulative collision risk).

4.9 NatureScot, the government's statutory advisor on effects on habitats and species did not object to the proposed development in respect of such effects. Although RSPB Scotland had some criticisms of the EIAR, it also did not object to the proposed development. Its response to the EIAR indicates that positive habitat management for golden eagle should be included as mitigation in the proposed development and that operational mitigation should be applied to all priority species and habitats. I will consider the RSPB's proposed conditions in the chapter of this report on conditions. I do not find the proposed development would have any unacceptable effect in respect of wildlife

4.10 EIAR chapter 7 noted that the Glen Affric to Strathconon Special Protection Area, 4.7 kilometres south of the proposed development, was designated for its importance for breeding golden eagle. No nesting golden eagles within the SPA were found within the six-kilometre core range from the project area. The likelihood of significant effects on the SPA was consequently ruled out.

*Tourism*

4.11 I have found that the proposed development would have a number of significant adverse landscape and visual effects. Some significant adverse effects would occur on recreational routes and on summits of popular hills, such as An Coileachan and Ben Wyvis, and also on the A835, a road I have no doubt many tourists use. I also have no doubt that tourism is important to the economy of Ross and of the Highland Council area generally. Tourists have many motivations for coming to any particular destination, though. No substantive evidence was led by objectors that would suggest any significant number of tourists would be dissuaded by the presence of an additional windfarm alongside the existing cluster – even those coming for walking on paths and hills that would be significantly affected visually by the proposed development.

4.12 Mountaineering Scotland asserted that there is evidence of mountaineering tourism and recreation being adversely affected by windfarm development and that windfarms within designated landscapes have a direct adverse effect on tourism employment in their vicinity. It did not provide this evidence though. It acknowledged that no study had looked at the effect of windfarms in proximity to (rather than within) designated landscapes or at the effect of adding turbines to an existing cluster. It acknowledged it was plausible that the greatest impact on mountain tourism would be from the initial windfarm and that increasing the number of turbines thereafter might have a more minor effect, with the magnitude depending upon the visual fit of the additional turbines. It argued that there may be a point beyond which an area is excessively populated with turbines, and becomes avoided by walkers.

4.13 Previous decisions and reports (such as the report on the Drum Hollistan windfarm) have not found evidence of a substantial adverse effect on tourism from the proximity of windfarms. If Mountaineering Scotland is correct that there is a saturation point at which a large proportion of walkers avoid landscapes because of the visibility of turbines, there is no evidence that such a point has been reached. Indeed, it was clear to me on my site inspection that hills such as Ben Wyvis, the Fannichs and Beinn Dearg remain popular with walkers, notwithstanding the presence of existing turbines prominently in views. In my opinion, the proposed development would not change that. I conclude that, although there would be some significant adverse visual effects of the proposed development experienced by some visitors, there is no substantive evidence this would lead to a significant adverse economic effect as a result of the impact on tourism or mountain tourism in particular, either individually or cumulatively.

*Public access to land*

4.14 Scotways objected to the proposal to close off access from the Fish Road, a drove road and public right of way, during construction. Part of the road would be used as the access track to bring construction material to the site. The applicant subsequently proposed that the route for public access along the path should be formally diverted during construction. This is secured by condition 20 in appendix 2 (which I have slightly adjusted, so that it refers expressly to provision of an alternative access).

4.15 It appeared to me on my site inspection that the drove road is of interest for its history and archaeological value. I found the going hard in many places, though, and very wet even after a few days of dry weather. The route was in some places difficult to identify. I did not encounter anyone using it. It does not appear to me that its importance as a route for public access is of so high a degree that the set-back of the turbines would be required from it, as suggested by Scotways.

*Net economic effect*

4.16 The applicant's planning statement, published in 2019, estimated that the capital expenditure associated with the proposed development would be £82 million and that it would generate employment. It seems very unlikely to me that all of this expenditure would be made in Scotland or locally in the Highlands. Nonetheless, the applicant has indicated that it has put arrangements in place to maximise the local economic benefits. Taking into account my findings on tourism, I consider it likely that the proposed development would have an overall net economic benefit both locally and for Scotland, though the evidence is not such as would demonstrate a significant net benefit. Nonetheless, this weighs somewhat in favour of the proposed development.

4.17 The applicant has given a commitment to make community-benefit payments and to promote a shared-ownership scheme. The landowner has undertaken to make a number of improvements to the environment and infrastructure of the Strathvaich Estate. It does not appear to me that these benefits have a direct connection to the project, leaving aside that they are commitments made by the applicant and landowner contingent on the project going ahead. For that reason, I do not consider that they are material planning considerations.

*Unreliability and intermittency of renewable energy*

4.18 I have described in chapter 2 how UK and Scottish energy policy relies upon an increase in renewable capacity. The intermittency of renewable energy is a known issue. That does not make it unreliable. It simply means that there is a question both of ensuring a suitable energy mix and an engineering challenge in terms of dealing with the effects of intermittency, for instance, on the grid.

*Conclusion*

4.19 I do not find any factor raised by objectors, other than those dealt within in chapter 3 of this report, that weighs substantially against the proposed development.

## CHAPTER 5: CONDITIONS

5.1 I held a brief hearing session on conditions in which the applicant and the council took part. In recommending the conditions that might apply if the application is approved I have also considered matters raised in the consultation responses (see Chapter 1) and my conclusions in Chapter 2 to 4. A draft list of conditions was largely agreed between the council and the applicant and submitted before the hearing (CD15.2). Several consultees proposed conditions in their responses to the environmental information. I refer to these where it appears to me that the conditions agreed between the council and the applicant do not reflect what consultees sought.

5.2 There was initially disagreement between the applicant and the council on proposed conditions 7 (decommissioning) and 18 (noise). At the hearing, the council conceded that the noise condition as advanced by the appellant was appropriate in form. The applicant submitted a revised condition in respect of decommissioning which was agreed with the council (Council email 27 April). I also requested the parties to confirm if the archaeology condition would secure mitigation measures proposed in the EIAR in respect of the Fish Road. The applicant subsequently supplied a revised condition in a form agreed by the council. I have incorporated these various agreed revisions in the proposed conditions set out in appendix 2 to this report.

5.3 I have made some minor amendments to the conditions. In this most part, this has simply been to ensure their meaning is clear, without any change to the intended meaning (as I understood it) of the condition as agreed by the parties. I have made more substantive changes to conditions 5 (civil aviation lighting), 9 (micrositing), 11 (construction-traffic management), 13 (habitat-management plan) and 18 (noise).

5.4 In condition 5, I have added a requirement for the approved scheme for aviation lighting to set out steps to be taken to seek the necessary consents for a proximity-activated aviation-lighting system (so that it does not just require proximity-activated lighting to be installed if the necessary consents are obtained).

5.5 In the form agreed by parties, condition 9 would have permitted (with the agreement of the planning authority) the relocation of infrastructure without limit beyond the 50-metre micro-siting tolerance from positions shown on the Site Layout Plan. Such an arrangement appears wrong in principle to me. If the proposed development could be changed without limit, it appears to me that the result could be a development with different environmental effects from that for which environmental impact assessment was carried out and materially different from that for which the application was made. Such an arrangement could easily have unanticipated effects on third parties, who would not have had an opportunity to comment on such changes, and would appear to nullify the consenting and EIA processes.

5.6 In condition 11, I have inserted the requirements for approval of the site access and for provision of a visibility splay requested by Transport Scotland. It may be that these requirements could have been secured through the approval of the construction-traffic management plan. I considered though that, because they had been specifically requested and because the provision of a visibility splay was a requirement that would last the life of the development, they ought to be included expressly in the conditions.

5.7 In the reason for condition 13, I have inserted that improvement of habitat is one of the purposes of the plan, in addition to protection of habitat. This appears to me to be the position taken in the EIAR.

5.8 In condition 18, I changed the definition of “dwelling” to include buildings with permission for use under use class 7 (hotels and hostels). This seemed appropriate to me because the Aultguish Inn (a hotel) is one of the locations listed in tables 1 and 2 at which noise-immission limits are set.

5.9 RSPB Scotland proposed four conditions. The first of these sought to prevent works, including vegetation clearance, commencing during the bird-breeding or lekking seasons until a bird-disturbance management plan had been approved. There is a requirement as part of the Construction Environment Management Plan (CEMP) required under condition 10 to have species-protection plans approved. It appears to me that such measures can be secured as part of such a plan.

5.10 The second RSPB condition would require the approval of the habitat-management plan and the incorporation in it of measures in respect of peatland, black grouse and golden eagle. Condition 13 in this report’s appendix 2 requires approval of a habitat-management plan based on the outline habitat-management plan (OHMP) included with the EIAR. The OHMP includes measures for management of peat habitats and to enhance habitat for black grouse. The peat-management plan required to be approved as part of the CEMP would also secure measures to minimise impact on peat. The displacement effect and collision risk for golden eagle was not found to be significant in the EIAR (and RSPB did not suggest it would be). No proposal for specific habitat-enhancement measures that would benefit eagles was drawn to my attention, and I doubt that a HMP for the windfarm site itself is an appropriate locus for providing habitat-enhancement measures for eagles. The planning authority may properly consult RSPB on a proposed HMP without an express requirement to do so being included in the condition. Monitoring of bird populations at the application site (the subject of RSPB’s fourth condition) is something that can be included in the HMP and in species-protection plans, if the planning authority considers it a necessary part of such measures.

5.11 The third RSPB condition relates to the appointment of an ecological clerk of works. This is covered by condition 12 in appendix 2.

5.12 I am satisfied that the conditions as set in appendix 2 are necessary and reasonable, having regard to the likely impacts and the mitigation required in respect of these. I recommend that they should be imposed if the consent is granted.

5.13 Although the council’s transport-planning team requested the conclusion of an agreement under section 96 of the Roads (Scotland) Act 1984, I do not consider it is necessary to require such an agreement to be concluded before the issue of consent. The council has statutory powers under section 96 to recover certain costs in respect of the impact of construction traffic on roads. An agreement simply makes arrangements in advance to address how those costs are to be recovered.

## CHAPTER 6: REASONED CONCLUSION, POLICY ASSESSMENT AND RECOMMENDATION

Environmental impact assessment

6.1 I have found that the proposed development would have no significant effects apart from those I have identified on landscape, visual amenity and on WLA 29. I have discussed the relevant evidence and the degree of these effects in chapter 3 of this report. I have identified and discussed significant effects in paragraphs 3.4, 3.6, 3.53 to 3.55, 3.61, 3.69 to 3.79, 3.87 to 3.89, 3.91 to 3.93 and 3.98 of this report. My reasoning and conclusion on the significant effects of the proposed development is up to date on the date of issue of this report.

6.2 I have set out conditions I would propose should Ministers decide to grant consent and deemed planning permission in appendix 2 of this report. These appear to me sufficiently to secure the mitigation measures proposed in EIAR table 14.1, 2019 SEI table 4.1 and 2021 AI table 6.1. The appointment of an ecological clerk of works and archaeological clerk of works is proposed to supervise the implementation of mitigation measures proposed to protect the environment and monitor implementation of the proposed archaeological mitigation measures during construction and decommissioning of the proposed development. In addition, water-quality monitoring and monitoring of private water supplies is proposed during construction. Monitoring measures are to be incorporated into the proposed habitat-management plan to ensure it is meeting its objectives.

Policy assessment

*National planning policy*

6.3 In terms of the spatial framework for development of onshore wind, the proposed development would be partly in group 2 and partly in group 3. The group-2 area is such because of the mapped presence of deep peat. I have found that the proposed development would not have any significant effect on peat. Consequently, I find that the whole proposal can be treated as being within group 3. It is therefore within an area in which windfarms are likely to be acceptable subject to detailed consideration against policy criteria.

6.4 Taking account of the factors in SPP paragraph 169, I consider that net economic impact, the contribution of the proposed development to meeting the statutory targets and effect on greenhouse gas emissions, and the opportunity for energy storage provided are the substantive considerations that weigh in favour of the proposed development. Its significant adverse landscape and visual effects and effect on WLA 29 are the substantive considerations that weigh against it. Insofar as other matters are relevant, I consider that they can be adequately regulated under conditions of consent.

6.5 Since the effect on the WLA is mainly in an area where turbines are already visible or at the edge of the area where wild land qualities are not as marked, I consider that there has been partial success in overcoming significant effects in terms of SPP paragraph 215. I do not consider that the residual threshold-level effect on the WLA is, by itself, an issue on which the decision should turn.

6.6 As regards SPP paragraph 202, though there would undoubtedly be a significant effect on the landscape from the proposed development, its siting plainly does take into

account that there are turbines already in the local landscape. The design seeks to minimise effects on the wider landscape by co-locating with existing turbines. I consider its adverse effects could have been reduced by design. The adverse scale comparisons could have been reduced by using smaller turbines. Adverse effects on the A835 might have been reduced by removing northerly turbines from the design (though I have not considered the visual effect at other viewpoints of such a deletion). Such changes in design would have resulted in a reduction in the benefits of the proposed development (and – in the case of a reduced turbine height – could make it more difficult to secure the turbines to carry out the development). In my view, for a windfarm, the question of whether adverse effects have been minimised sufficiently to meet the policy requirement must necessarily be a matter of balancing them against the benefits of the development.

6.7 The requirement in SPP paragraph 203 that, where the nature or scale of the development has an unacceptable impact on the environment, consent should be refused applies both to the proposed development's adverse landscape and visual effects and to its effect on WLA 29. What is acceptable or unacceptable is a judgement to be made taking account of the balancing exercise I have described in this report's chapter 2. I consider the balance below.

6.8 As regards the factors for sustainability set out in SPP paragraph 29, I consider that the net economic benefit, its delivery of energy infrastructure and the support it gives to climate-change mitigation count in favour of the proposed development. I consider that design and the use of existing capacities of the land are neutral factors: the co-location of the proposed development with the existing cluster does make good use of existing capacities of land in some respects, since it restricts the landscape and visual effects of windfarms in the wider landscape. However, some aspects of the proposed development's design count against it – particularly the visual dissonance with the turbines of the existing cluster and the extension of significant visual effects to new areas. The proposed development's adverse landscape and visual effect plainly count against it, though again, my assessment is not wholly negative, since I consider the co-location of the proposed development with the existing cluster limits effects on the wider landscape. It can therefore be said to protect the landscape in some limited respect. As I identified in this report's chapter 2, the question of how these factors balance is one that must take account of the requirement to meet the statutory targets for emissions reduction and the evidence of how they are to be met.

*Local planning policy*

6.9 With regard to HWLDP policy 67, it is not disputed that the proposed development is sited so that it is well related to the energy source. The installed capacity would be up to 81.6 MW, which would be a substantive contribution to meeting policy targets for renewable energy and would also contribute to the measures required to meet statutory targets for reduction in emissions. I have found that the effect on the local economy is likely to be positive, though the evidence does not demonstrate that the effect would be significant. Policy 67 calls for a balance to be struck such that the proposed development is not to be permitted if it is significantly detrimental overall, either individually or cumulatively, having regard to significant effects on a list of factors. These include effects on natural and cultural-heritage features, visual impact, impact on landscape character and impact on the amenity of users of core paths or other established public access for walking, cycling or horse-riding and impact on other recreation interests. I have found significant landscape and visual effects and have assessed these against the criteria in paragraphs 4.16 to 4.17 of OWSG. I found that the proposed development would not accord with seven of the ten criteria for assessment of such effects.

6.10 The evidence indicates that the proposed development complies with HWLDP policies 55 (peat and soils), 58 (protected species), 59 (other important species) and 60 (other important habitats).

6.11 As regards policy 61 (Landscape), the council did not object in respect of the effect on landscape character, though others did refer to adverse effects on landscape in their objections. I have discussed the proposed development's design in chapter 3. A number of significant adverse effects on landscape character are acknowledged in the EIAR. I have discussed the design's response to landscape in chapter 3. Given that the specific policy on renewable energy, policy 67, requires a balancing exercise to determine whether a proposed development is acceptable or not, I do not consider that policy 61 would rule out a proposed renewable development simply because it has significant adverse effects on landscape. I consider that the acceptability of the proposed development under policy 61 is best dealt with by considering the proposed development's benefits in relation to its adverse landscape effects in the balancing exercise required under policy 67.

6.12 In terms of policy 57 (natural, built and cultural heritage), I have not identified any significant adverse effect on any designated site. I have, however, identified a significant adverse effect on WLA 29. I understand this to be a feature of national importance. Compliance with the policy requires that the adverse effect is outweighed by social or economic benefits of national importance. I consider that contributing to the achievement of statutory emissions-reduction targets can be conceived as benefit of national importance. I consider the question of the balance of the adverse effects and benefits can be dealt with in the context of the balancing exercise required under policy 67. There is also a policy requirement that the development should support communities in fragile areas. This appears to me to have limited relevance to a windfarm development in an area with sparse population. I have found a net positive economic effect, which I consider would benefit the local area. I consider that would meet this latter element of the policy.

6.13 As regards HWLDP policy 28, the proposed development would have impacts on landscape and scenery, as I have described. As regards the question of sensitivity of siting and quality of design, the proposed development will clearly have significant adverse landscape and visual effects. I have identified that siting and design choices play a role in the degree of adverse effects. Nonetheless, the question of whether the siting and design are sufficiently sensitive and of sufficient quality I consider is best dealt with in the context of the balancing exercise required under policy 67.

6.14 I have found that the balancing exercise under policy 67 and therefore the question of the proposed development's compliance with the development plan is similar to that for national policy and so I deal with both issues in the same discussion below.

*The policy balance*

6.15 It may be that the design for the proposed development might have been improved, in the sense that landscape and visual effects might have been reduced, but this would most likely have been at the cost of losing some of the benefits.

6.16 It has been suggested by a number of objectors that there is no shortage of sites for renewable energy and that development could be sited elsewhere without the same level of adverse effects as the proposed development has. Onshore wind turbines are very large machines, and it seems to me likely that there are few places where their installation would not be associated with significant adverse landscape and visual effects. It seems to me that there are likely to be relatively few places where a proposed development would avoid significant effects on any other facet of the environment and where there would be no

significant adverse effect on any designated landscape. Leaving aside the threshold-level effect on WLA 29, the proposed development achieves this.

6.17 Overall, given the current need for new renewable-energy development and for onshore-wind development in particular, and given the urgency of the situation, I do not consider that the adverse effects I have identified are sufficient to justify its refusal. This is so notwithstanding that improvements might have been made in the design: the advantage of taking action now is sufficient to outweigh any likely improvement that might have been obtained from a revised application. In this sense, I consider that the proposed development meets the requirements of SPP paragraph 202. I find the landscape and visual effects acceptable in terms of SPP paragraph 203. Since I consider the benefits of the proposed development, particularly in terms of reducing emissions and delivery of renewable-energy infrastructure, to outweigh the adverse effects, I consider that the proposed development can be considered the right development in the right place. I find that the proposed development is sustainable overall. I find that the proposed development would not be significantly detrimental overall in terms of HWLDP policy 67, that there are benefits of national importance to outweigh the detriment to WLA 29 in terms of HWLDP policy 57. Even if the proposed development is taken as being contrary to HWLDP policy 61, I find it accords with the development plan overall. Having regard to the matters set out in schedule 9 paragraph 3 of the Electricity Act 1989, including the preservation of natural beauty, I find that the proposed development is acceptable overall.

6.18 I have reached this conclusion without applying the enhanced status of the sustainability presumption and the tilted balance arising from policy in SPP paragraph 33. I consider that the effect of the tilted balance would in any case be similar, given that I have found the angle of any tilt would reflect the benefits of the proposed development that I have identified and taken into account.

6.19 This conclusion is compatible with proposed policy in draft NPF4.

Conclusion

6.20 For these reasons, I recommend that Ministers grant consent and deemed planning permission as sought. I have set out the development description for the purposes of section 36 consent and deemed planning permission in appendix 1 of this report. I recommend that consent and deemed planning permission are granted subject to the conditions set out in appendix 2 of this report.

*Robert Seaton*
Reporter

APPENDIX 1

S.36 Electricity Act 1989 Consent – Description of Development

The construction and operation of a wind-powered generating station with an installed capacity of over 50 MW known as Kirkan Wind Farm situated within the Strathvaich Estate, approximately 5.8km north west of Garve in the administrative area of the Highland Council. The Ordnance Survey grid reference for the Site is 236196E, 867757N. The location of the Development is shown on Figure 1.1 within Volume 3 of the Environmental Impact Assessment Report submitted in March 2019.

The Development includes:

- Up to 17 three-bladed horizontal-axis wind turbines;
- Associated turbine foundations, turbine hard-standings and crane pads;
- Up to two permanent meteorological masts and associated hard-standing areas;
- Site tracks;
- Operations-control building;
- Substation compound and modular energy-storage facility;
- Telecommunications equipment;
- 2 borrow working areas;
- Underground electricity cables; and
- Associated works/infrastructure

Deemed Planning Permission under S.57(2) of the Town and Country Planning (Scotland) Act 1997 – Description of Development

The erection and operation of a windfarm of up to 17 wind turbines and associated development on land situated within the Srathvaich Estate, approximately 5.8km north west of Garve within the planning jurisdiction of the Highland Council. The site of the wind farm and location and layout of the proposed development within the site are shown edged red on Additional Information Figure 1.1 submitted in October 2021.

APPENDIX 2 RECOMMENDED CONDITIONS

## Section 36 Conditions

### 1. Duration of the consent

(1) The consent is for a period of 30 years from the date of Final Commissioning. Written confirmation of the date of Final Commissioning shall be provided to the planning authority and Scottish Ministers no later than one calendar month after that date.

(2) Written confirmation of the date of First Commissioning shall be provided to the planning authority and the Scottish Ministers no later than one calendar month after that date.

Reason: To define the duration of the consent.

### 2. Commencement of Development

(1) The Commencement of the Development shall be no later than five years from the date of this consent, or in substitution, such other period as the Scottish Ministers may hereafter direct in writing.

(2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period.

### 3. Non-assignation

This consent may not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignation of the consent (with or without conditions) or refuse assignation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company shall notify the planning authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignation having been granted.

Reason: To safeguard the obligations of the consent if transferred to another company.

### 4. Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the planning authority, including confirmation of remedial measures taken and / or to be taken to rectify the breach, within 24 hours of the incident occurring.

Reason: To keep the Scottish Ministers informed of any such incidents which may be in the public interest.

**5. Civil Aviation Lighting**

(1) No wind turbines shall be erected until a scheme for visible-spectrum aviation lighting has been submitted to and approved in writing by the Scottish Ministers following consultation with the Civil Aviation Authority. The lighting scheme shall:

i. identify the turbines to be fitted with visible spectrum lighting;
ii. provide the specifications of the visible spectrum lighting;
iii set out further steps to be taken to seek necessary consents for an aircraft-proximity-activated lighting system; and
iv. in the event of the necessary consents being forthcoming, specify details of any aircraft proximity activated lighting system that may be installed.

(2) The scheme shall be implemented as approved.

Reason: In the interests of aviation safety.

**Conditions of Deemed Planning Permission**

**6. Redundant Turbines**

In the event that any wind turbine installed and commissioned fails to produce electricity on a commercial basis for a continuous period of 6 months then on the written request of the Planning Authority, a scheme shall be submitted for the written approval of the Planning Authority providing for the removal of the wind turbine(s) and its ancillary equipment from the site and the restoration of the relevant land within the following 9 month period. The scheme shall be implemented as approved.

Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection.

**7. Decommissioning**

(a) The Development shall cease to generate electricity by no later than the date falling 30 years from the Date of Final Commissioning and shall be decommissioned. The total period for decommissioning and restoration of the Site in accordance with this condition shall not, without the prior written approval of the Scottish Ministers in consultation with the Planning Authority, exceed three years from the date from which the Development ceases to generate electricity.

(b) No development shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to and approved in writing by the Planning Authority.

(c) Not less than 24 months before the expiry of the operational period, a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the Planning Authority. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of works and environment-management provisions.

(d) The Development shall be decommissioned, the site restored and aftercare undertaken in accordance with the approved plan.

## 8. Financial Guarantee

(1) No wind turbine foundations shall be put in place until details of the financial provisions to be put in place to cover the full cost of decommissioning and site restoration under condition 7 have been submitted to, and approved in writing by, the Planning Authority. Following such approval, documentary evidence shall be provided to the Planning Authority to confirm these provisions are in place. The provisions must be kept in place until site decommissioning and restoration is complete in accordance with condition 7.

(2) The value of the financial provision shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations approved under the terms of condition 7. The value of the financial provision shall be reviewed by a suitably qualified independent professional every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations.

Reason: to ensure sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.

## 9. Micrositing tolerance

Subject to this condition, all wind turbines, buildings, masts, borrow pits, areas of hardstanding and tracks shall be constructed in the locations shown on Figure 1.1 of the Additional Information submitted in October 2021 ("the Site Layout Plan"). Wind turbines, buildings, masts, borrow pits, areas of hardstanding and tracks may nevertheless be micro-sited within the Site, though no such elements of the development may be located more than 50 metres from the position shown in the Site Layout Plan. Unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and NatureScot), micro-siting is subject to the following restrictions:

i. No micro-siting shall take place with the result that infrastructure (excluding floating tracks or hardstanding) has a greater overall impact on peat volumes than the original location;

ii. No micro-siting shall take place into areas hosting Ground Water Dependent Terrestrial Ecosystems; and

iii. With the exception of water-crossings, no element of the proposed development shall be located within 50 metres of any watercourse.

No later than one month after the date of Final Commissioning, an updated Site Layout Plan shall be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development. The plan shall also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

Reason: to control environmental impacts while taking account of local ground conditions.

## 10. Construction and Environmental Management Plan

No development shall commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority. The required documents shall include the following:

a. Site Waste Management Plan;
b. Sustainable drainage system (SuDS) design concept including run-off and sediment control measures; and flood-risk management during both the construction and operational phases of the development;
c. Dust-management and cleaning arrangements for the site entrance, including wheel-washing facilities to be provided adjacent to the access from the A835(T);
d. Pollution-prevention and -control measures;
e. Arrangements for on-site storage of fuel and other chemicals;
f. Details of foul-drainage arrangements;
g. Details of temporary site illumination;
h. Details of any watercourse-engineering works including any stream crossings, which shall include provision of oversized bottomless culverts or single-span bridges designed to accommodate a 1-in-200-year peak flow (plus an allowance for climate change) and allow mammal passage for the nine new water crossings;
i. Details of the methods to be adopted to reduce the effects of noise occurring during the construction period in accordance with BS5228;
j. Post-construction restoration/reinstatement of the working areas;
k. Spoil-management plan, including management of any peat generated from site works;
l. Peat-Management Plan;
m. Details of the mineral working areas and restoration proposals;
n. Details of the construction works, constructions methods and surface treatment for all hard surfaces and tracks;
o. Method of construction of the crane pads;
p. Method of construction of the turbine foundations;
q. Method of working cable trenches;
r. Method of construction and erection of the wind turbines and meteorological masts;
s. Details of temporary site compounds including areas designated for offices, welfare facilities, fuel storage and car parking;
t. Water-Quality Management Plan;
u. Species-Protection Plan(s);
v. Habitat-Specific Protection Plans for wet dwarf shrub heath and blanket bog;
w. Details for the submission of a quarterly report summarising work under taken at the site and compliance with the conditions imposed under the Deemed Planning Consent during the period of construction and post-construction reinstatement.
x. Method for managing surface water through the construction period.

The CEMP shall be implemented as approved.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIAR accompanying the application, or as otherwise agreed, are fully implemented.

## 11. Construction-Traffic Management

(1) No development shall commence until a Construction-Traffic Management Plan (CTMP) has been submitted to, and approved in writing by, the Planning Authority in consultation with Transport Scotland.

(2) The CTMP shall include arrangements for establishing a community-liaison group to discuss the arrangements for the delivery of all road and construction-traffic mitigation measures required for the development. This should include, but not be limited to, traffic-management arrangements:

- to be in place during any roadworks associated with the development;
- for the operation of local roads during delivery of abnormal loads and
- identification of contact arrangements between the community-liaison group and the Company/developer during the construction of the development.

(3) Prior to commencement of deliveries to site, the proposed route for any abnormal loads on the local- and trunk-road networks and any accommodation measures required (including the removal of street furniture, junction-widening, and traffic management) must be approved in writing by the relevant roads authority.

(4) During the delivery period of the wind-turbine-construction materials, any additional signing or temporary traffic-control measures necessary due to the size or length of any loads being delivered or removed must be undertaken by a traffic-management consultant whose appointment shall be approved by Transport Scotland and the Planning Authority before delivery commences.

(5) Development shall not be commenced unless the proposed means of access to the trunk road has been submitted to and approved in writing by the Planning Authority. No deliveries shall be made to the site for other purposes until the approved access has been implemented.

(6) Visibility splays shall be provided and maintained on each side of the access to the A835. These splays must be triangles of ground bounded on two sides by the first 4.5 metres of the centre line of the access driveway (the set-back dimension) and the nearside trunk-road carriageway for 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road, unless otherwise agreed in writing with the Planning Authority. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2 metres positioned at the set-back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

The works shall thereafter be carried out in accordance with the approved CTMP.

Reason: To ensure road safety. To ensure that transportation will not have any detrimental effect on the road and structures along the route. To minimise interference with the safety and free flow of the traffic on the local and trunk roads. To minimise adverse impacts on residents and local businesses in the area. To ensure that vehicles entering or exiting the site access an undertake the manoeuvre safely and that the standards of access layout complies with current standards.

## 12. Ecological Clerk of Works

(1) An ecological clerk of works (ECOW) shall be appointed to supervise all works of construction, decommissioning and restoration within the application site. The identity and

terms of appointment of the ECOW shall be submitted to and approved in writing by the Planning Authority. An ECOW shall be employed for the periods of:

i. Windfarm construction, including preparation, micro-siting and post-construction restoration; and
ii. Windfarm decommissioning and site restoration.

In relation to (i), the terms of appointment shall be submitted prior to the commencement of the development, and in relation to (ii), prior to the commencement of any decommissioning works.

(2) The terms of appointment shall require the ECOW to:

i. Carry out pre-construction surveys to inform the CEMP required in terms of condition 10;
ii. Impose a duty to monitor the development's compliance with the ecological and hydrological commitments provided in:
    - the EIAR and other information lodged in support of the application,
    - the Construction- and Environmental-Management Plan approved in accordance with condition 10, and
    - the Habitat-Management Plan approved in accordance with condition 13

    ("the ECOW Works");
iii. Report to the Company's nominated construction project manager any incidences of non-compliance with planning conditions at the earliest practical opportunity;
iv. Submit a monthly report to the Planning Authority summarising works undertaken on site and incidences of micrositing in accordance with Condition 9; and
v. Report to the Planning Authority at the earliest practical opportunity any incidences of non-compliance with the conditions attached to this deemed planning permission with particular regard to:
    - the ecological and hydrological aspects of the CEMP required in terms of condition 10;
    - the Habitat-Management Plan required in terms of condition 13; and
    - the decommissioning- and site-restoration method statement required in terms of condition 7.

Reason: to secure effective monitoring of and compliance with the environmental-mitigation and management measures associated with the development.

**13. Habitat-Management Plan**

No development shall commence until a Habitat-Management Plan (HMP) following the principles set out in the Outline Habitat-Management Plan submitted as part of the EIAR at Technical Appendix 6.6 has been submitted to and approved in writing by the Planning Authority.

(2) The HMP shall set out proposed habitat management of the site during the period of construction, operation, decommissioning, restoration and aftercare, and shall provide for the maintenance, monitoring and reporting of habitat on site.

(3) The HMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the habitat plan objectives. In particular, the approved HMP shall be updated to reflect ground-condition surveys undertaken following construction and prior to the date of Final Commissioning and

submitted for the written approval of the Planning Authority in consultation with NatureScot and SEPA.

Unless otherwise approved in advance in writing by the Planning Authority, the approved HMP shall be implemented in full.

Reason: In the interests of the protection and improvement of the habitats of those species identified in the EIAR.

**14. Construction Hours and Timing**

The hours of operation of the construction phase of the development hereby permitted shall be limited to 0700 hours to 1900 hours on Monday to Friday, and 0800 hours to 1700 hours on Saturdays and Sundays unless previously approved in writing by the Planning Authority. Outwith these hours, development at the site shall be limited to turbine delivery and erection, commissioning, maintenance and pouring of concrete foundations (provided that the developer notifies the planning authority of any such works within 24 hours if prior notification is not possible). In addition, access for security reasons, emergency responses or to undertake any necessary environmental controls is permitted outwith these hours.

Reason: In the interests of local amenity.

**15. Appearance of Turbines**

(1) No turbines shall be erected until details of the external colour and finish of the proposed turbines have been submitted to, and approved in writing by, the Planning Authority. The approved details shall be implemented. The turbines shall be maintained in good condition.

(2) The height of the turbines shall not exceed an overall height from base to blade tip of 175 metres.

Reason: To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbines assessed in the EIAR and in the interests of the visual amenity of the area.

**16. Appearance of Ancillary Structures**

No work shall commence on the erection of the control building, substation and or ancillary infrastructure until details of their location, layout, external appearance, dimensions and the surface materials of all buildings, compounds, parking areas, as well as any external lighting (excluding aviation lighting), fencing, walls, paths, surface-water drainage infrastructure (including provision of attenuation volumes for surface water and run-off rates limited to existing greenfield run-off rates) and any other ancillary elements of the development, have been submitted to, and approved in writing by, the Planning Authority. The approved details shall be implemented.

Reason: In order to secure an appropriate appearance in the interests of amenity and to assimilate the buildings and other infrastructure into the landscape setting.

**17. Aviation**

Prior to the erection of the first wind turbine, the developer shall provide written confirmation to the Ministry of Defence of:

- the anticipated date of commencement of, and completion of, construction;
- the height above ground level of the highest structure in the development; and
- the position of each wind turbine in latitude and longitude.

Reason: In the interests of aviation safety.

**18. Noise**

The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions. Furthermore:

(A) Where there is more than one dwelling at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. In the event of a noise complaint relating to a dwelling which is not identified by name or location in Tables 1 and 2 attached to these conditions, the Company shall submit to the Planning Authority, for written approval, proposed noise limits to be adopted at the complainant's dwelling for compliance checking purposes. The submission of the proposed noise limits to the Planning Authority shall include a written justification of the choice of limits. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the planning authority for the complainant's dwelling.

(B) No electricity shall be exported on a commercial basis to the grid until the Company has submitted to the Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.

(C) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the Company shall, at its expense, employ an independent consultant approved by the Planning Authority to assess the rating level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

Within 14 days of receipt of a written request from the Planning Authority, the Company shall provide the Planning Authority with the information relevant to the complaint logged in accordance with paragraph (F) of this condition.

The independent consultant's assessment must be undertaken in accordance with the procedures described in the attached Guidance Notes and must relate to the range of conditions which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request from the planning authority and such other conditions as the independent consultant considers necessary to fully assess the noise at the complainant's property.

(D) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions within 2 months of the date of the written request of the Planning Authority, unless the time limit is extended in writing by the Planning

Authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the Planning Authority on the request of the Planning Authority. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

(E) Where a further assessment of the rating level of noise immissions from the wind farm is required to assess the complaint, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment to the Planning Authority unless the time limit for the submission of the further assessment has been extended in writing by the Planning Authority.

(F) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). This data shall be retained for a period of not less than 24 months. The Company shall provide this information in the format set out in Guidance Note 1(e) to the Planning Authority on its request, within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a "dwelling" is a building within Use Classes 7 or 9 of the Use Classes Order, which lawfully exists or had planning permission at the date of this consent.

Reason: In the interests of residential amenity

**19. Advertisement on Infrastructure**

None of the wind turbines, anemometers, power-performance masts, switching stations or transformer buildings / enclosures, ancillary buildings or above-ground fixed plant shall display any name, logo, sign, lighting (with the exception of aviation lighting permitted under Condition 5) or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the Planning Authority.

Reason: In the interests of the visual amenity of the area.

**20. Access-Management Plan**

There shall be no Commencement of Development until an Access-Management Plan has been submitted to and approved in writing by the Planning Authority. The plan shall detail:

- any areas subject to access restrictions during the construction period;
- alternative access provision during the construction period and associated mitigation; and
- proposals for recreational access during the operational phase of the wind farm.

The plan as approved shall be implemented in full, unless otherwise agreed in writing with the Planning Authority.

Reason: In the interests of ensuring public access and securing access rights throughout the construction and operation of the wind farm.

**21. Borrow Pits – Scheme of Works**

No borrow pit shall be opened up until a site-specific scheme for the working and restoration of each borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority. The scheme shall include:

i. Rock testing undertaken on appropriate samples from the two borrow pits to determine its suitability for unbound track and hardstanding construction;
ii. A detailed prioritisation plan for all borrow pits on site which shall provide detail on which borrow pits are required or likely to be worked and the sequence in which they will opened up;
iii. A detailed working method statement based on site survey information and ground investigations;
iv. Details of the handling of any overburden (including peat, soil and rock);
v. Drainage, including measures to prevent surrounding areas of peatland, and Groundwater-Dependent Terrestrial Ecosystems (GWDTE) from drying out;
vi. A programme of implementation of the works described in the scheme; and
vii. Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period, to include topographic surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles.

The approved scheme shall thereafter be implemented in full.

Reason: To ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Impact Assessment Report accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit(s) at the end of the construction period.

**22. Borrow Pits – Blasting**

No blasting shall take place until such time as a blasting method statement has been submitted to and approved in writing by the Planning Authority. The method statement shall include details of measures required to minimise the impact of blasting on residential dwellings in the vicinity of the site. The scheme shall include:

i. Details on ground vibration limits at agreed blast monitoring locations; and

ii. Limitations on blasting to between the hours of 10.00 to 16.00 Monday to Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on national public holidays, unless otherwise approved in advance in writing by the planning authority.

Thereafter the approved scheme shall be implemented

Reason: To ensure that blasting activity is carried out within defined timescales to control impact on amenity and in accordance with best current practice.

**23. Water Quality and Fish Population Monitoring**

There shall be no Commencement of Development until an integrated hydrochemical and macroinvertebrate scheme for water-quality monitoring and monitoring fish populations during construction has been submitted to and approved in writing by the Planning Authority.

This shall include, but not necessarily be limited to:

i. Frequency of monitoring during the construction period, not less than once a month;
ii. Reporting mechanism to the planning authority, Marine Scotland and SEPA being not less than quarterly during the construction period; and
iii. Proposed method for agreeing any mitigation required.

Thereafter, any mitigation identified shall be implemented.

Reason: In the interests of water-quality management and protection and enhancement of the water environment.

**24. Forestry Impacts Management Plan**

Prior to the commencement of development, a scheme encompassing the commitments made at rows 2.1 to 2.5 of Table 14.1 of the EIAR must be submitted to and approved in writing by the Planning Authority in consultation with Scottish Forestry. The Scheme shall apply to all felling associated with the Development and shall be implemented in full, unless otherwise agreed in writing by the Planning Authority and Scottish Forestry.

Reason: to ensure safe and environmentally-sound forestry-management practices and to secure replanting and protect Scotland's woodland resources in accordance with the Scottish Government's policy on the Control of Woodland Removal.

**25. Radio Network**

Erection of turbines shall not commence until a scheme for microwave-link mitigation has been approved in writing by Joint Radio Company on behalf of SSE Networks.

Reason: To prevent interference with radio systems.

**26. Programme of Archaeological Works**

(1) No ground-breaking works shall commence on site unless and until the terms of appointment of an independent Archaeological Clerk of Works ("ACoW") have been submitted to, and approved in writing by, the Planning Authority. The scope of the ACoW's appointment shall include monitoring compliance with the archaeological scheme of mitigation and programme of works that shall be submitted to and approved in writing by the planning authority before any works take place on site. The programme of works shall include, but not be restricted to the measures set out in the Schedule of Mitigation in section 5 of Table 14.1 of the Environmental Impact Assessment Report.

(2) The ACoW shall be appointed on the approved terms from Commencement of Development, during any period of construction activity and during any period of post-construction restoration works approved under condition 7.

(3) No later than eighteen months prior to decommissioning of the Development or the expiry of the Section 36 consent (whichever is the earlier), details of the terms of appointment of an independent ACoW throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for approval.

Reason: to secure effective monitoring of and compliance with the archaeological mitigation and management measures associated with the development.

## 27. Energy-Storage Facility

No work shall commence on the erection of the energy-storage facility until details of its layout, dimensions, external appearance, landscaping (including bunding) and drainage (including provision of attenuation volumes for surface water and run-off rates limited to existing greenfield run-off rates) are submitted to and approved in writing by the Planning Authority. The approved details shall be implemented.

Reason: To ensure that the environmental impacts of the energy storage facility conform to the impacts assessed in the EIAR.

## 28. Military Aviation Lighting

Prior to the erection of any wind turbine generators, or the deployment of any construction equipment or temporary structure(s) 50 metres or more in height (above ground level) the Company must submit an aviation infra-red lighting scheme for the approval of the Planning Authority in consultation with the Ministry of Defence defining how the development will be lit throughout its life to maintain military aviation-safety requirements. This should set out:

i. Details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with; and
ii. the locations and heights of all wind turbine generators in the development identifying those that will be fitted with infra-red aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used.

The scheme shall be implemented as approved.

Reason: In the interests of aviation safety.

## 29. Private-Water-Supply Method Statement

(1) No development shall commence unless and until a private-water-supply method statement and monitoring plan in respect of private water supplies has been submitted to, and approved in writing by, the Planning Authority.

(2) The detail of the private-water-supply method statement must detail all mitigation measures to be taken to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of the section 36 Consent and which may be affected by the Development.

(3) The private-water-supply method statement shall include water-quality sampling methods and shall specify abstraction points.

(4) The approved private-water-supply method statement and monitoring plan shall be implemented in full, unless otherwise agreed in writing by the Planning Authority.

(5) Monitoring results obtained as described in the private-water-supply method statement shall be submitted to the Planning Authority on a quarterly basis or on request during the approved programme of monitoring.

Reason: To maintain a secure and adequate-quality water supply to all properties with private water supplies which may be affected by the Development.

**Guidance notes for condition 18**

These notes are to be read with and form part of condition 18, the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

**Guidance note 1**

(a) The LA90,10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the Company shall submit for the written approval of the planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the planning authority, such as direct measurement at a height of 10 metres, this wind speed, averaged across all operating wind turbines, and corrected to be representative of wind speeds measured at a height of 10 metres, shall be used as the basis for the analysis. It is this 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods

synchronised with the periods of data recorded in accordance with Note 1(d).

**Guidance note 2**

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in paragraph (c) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90,10\ minute}$ noise measurements and corresponding values of the 10- minute 10-metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the 10- metre height mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

**Guidance note 3**

(a) Where noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

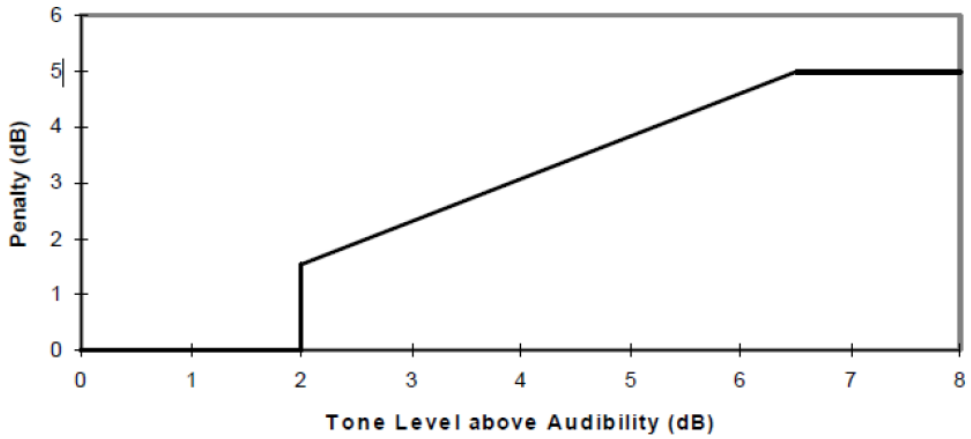
(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.

(e) A least squares “best fit” linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.




**Guidance Note 4**

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the planning authority in its written protocol under paragraph (d) of the noise condition.
(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.
(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (d) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
(d) The Company shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the planning authority in its written request under paragraph (c) of the noise condition.

(f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log\left[10^{L_2/10} - 10^{L_3/10}\right]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the planning authority for a complainant's dwelling in

accordance with paragraph (d) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (d) of the noise condition then the Development fails to comply with the conditions.

**Definitions**

| Definitions | |
|---|---|
| **Consent** | Means the consent granted under section 36 of the Electricity Act 1989 to construct and operate the generating station, which forms part of the Development, and any reference to Consent shall not be taken to include the deemed planning permission unless otherwise stated |
| **Commencement of Development** | Means the initiation of any development pursuant to the consent and/or the deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997 but excluding the Permitted Preliminary Works[6]. |
| **Company** | Means Kirkan Wind Farm Limited (Company Number 09172025) having its registered office at 22-24 King Street, Maidenhead, Berkshire, SL6 1EF, or in substitution its permitted assignees who are in possession of a letter of authorization from the Scottish Ministers in accordance with Condition 3. |
| **Development** | Means the wind-powered generating station and ancillary development located within the Site as described in Annex 1 [7]. |
| **Final Commissioning** | Means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling thirty six months from the date of Commencement of Development. |
| **First Commissioning** | Means the date on which electricity is first exported to the grid on a commercial basis from any of the wind turbines forming part of the Development. |
| **Permitted Preliminary Works** | Means (i) any site investigation or other preparatory works or surveys which do not involve breaking ground and/or which are required for the purpose of satisfying or discharging any pre-commencement obligations under the planning conditions, and (ii) the provision of any temporary contractors' facilities within the Site which are necessary for (i) above |
| **Planning Permission** | Means the deemed planning permission for the Development as described in Annex 1 granted by direction under section 57 of the 1997 Act. |

[6] This is a modified version of the definition used in the Specimen Conditions – it has been adjusted to refer to the correct section of the 1997 Act (s27 rather than s26) and to exclude a narrow category of minor works, defined as "Permitted Preliminary Works". It will be necessary for some investigations / minor works to take place ahead of main construction to enable approval of details under pre-commencement conditions. This approach was accepted by the Reporter and the Scottish Ministers in the context of the Benbrack wind farm.

[7] A draft Annex 1, agreed between the planning authority and the applicant is submitted with this Table

| | |
|---|---|
| **Site** | Means the area of land delineated by the outer edge of the red line on the Site Layout Plan. |

## APPENDIX 3:  CORE DOCUMENTS

List of Core Documents

APPENDIX 4: APPEARANCES and WEBCAST

Appearances

| Inquiry Session | Participants |
|---|---|
| | |
| Landscape Inquiry<br><br>https://dpea.public-i.tv/core/portal/webcast_interactive/659727 | For the applicant:<br>Advocate: Marcus Trinick QC<br>Witness: Brian Denny (Chartered Landscape Architect, Fellow of the Landscape Institute, member of the Institute of Environmental Management and Assessment)<br><br>For the council:<br>Advocate: James Findlay QC<br>Witness: Simon Hindson (Strategic Projects Team Leader, Member of the Royal Town Planning Institute)<br><br>Merylyn Hedger OBE (Master of Civic Design, PhD in energy policy, retired corporate member of the Royal Town Planning Institute) |
| Policy Hearing Session<br><br>https://dpea.public-i.tv/core/portal/webcast_interactive/659728 | For the applicant:<br>David Bell BSc(Hons) DipUD MCIHT MRTPI<br>Marcus Trinick<br><br>For the council:<br>Simon Hindson<br>James Findlay<br><br>Dr Merylyn Hedger |
| Conditions Hearing Session<br><br>https://dpea.public-i.tv/core/portal/webcast_interactive/659728 | For the applicant:<br>David Bell<br>Marcus Trinick<br><br>For the council:<br>Simon Hindson<br>James Findlay |

Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR

Scottish Government
Riaghaltas na h-Alba
gov.scot

# Supplementary report of Inquiry into application under section 36 of the Electricity Act 1989 and deemed application for planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended)

**The construction and operation of the proposed Kirkan windfarm on land 5.8 kilometres north west of Garve**

| | |
|---|---|
| • Case reference | WIN-270-14 |
| • Case type | Application for consent (s 36 Electricity Act 1989) and deemed planning permission (s 57 Town and Country Planning (Scotland) Act 1997) |
| • Reporter as appointed by Scottish Ministers | Robert Seaton |
| • Applicant | Kirkan Windfarm Limited |
| • Planning authority | The Highland Council |
| • Other Inquiry parties | Dr Merylyn Hedger |
| • Date of application | 29 March 2019 |
| • Date case received by DPEA | 06 April 2021 |
| • Method(s) of consideration and date(s) | In addition to the public inquiry held on 21 to 22 March 2022 referred to in the main report, a hearing was held on 31 January 2023 |
| • Date(s) of site visit(s) | None in addition to the dates listed in the main report |
| • Date of report | 9 March 2023 |
| • Reporters' recommendation | Grant section 36 consent and deemed planning permission |

## Background

1. This report is supplementary to my report issued on 9 August 2022 in respect of the public inquiry held into the proposed development on 21 to 22 March 2022. Ministers returned this matter to me because they wished me to consider the effect of what was then the revised draft of the Fourth National Planning Framework (NPF4) upon parties' cases and my recommendation to them. Since the matter was returned to me, NPF4 has been published in its final form.

2. I arranged a hearing on 31 January 2023 to allow the applicant and other parties who had indicated they wished to take part in further procedure to make submissions on the effect of NPF4 on their cases in respect of the proposed development.

3. I invited parties also to make submissions on the effect of the new Onshore Wind Policy Statement (OWPS) and on the draft Scottish Energy Strategy and Just Transition Plan (which were also published before the hearing).

4. Three parties were represented at the supplementary hearing: the applicant and Highland Council and Dr Merylyn Hedger, the latter two being objectors to the application.

5. This report therefore relates to the effect on Ministers' decision of

- NPF4
- OWPS and
- the draft Scottish Energy Strategy and Just Transition Plan.

## Summary of main points made by parties at the supplementary hearing

Applicant

6. There has been a seismic policy shift. NPF4 recognises the climate emergency and nature crisis as twin drivers of national policy. While decision-makers may previously have given significant weight to emissions reduction, NPF4 policy 1 directs that such weight should be given. Onshore wind is supported in all areas except national parks and national scenic areas. In the context of necessarily taller turbines, OWPS expressly recognises landscape change as inevitable.

7. The phrase "the right development in the right place" just expresses that there is a planning balance. The balance was changing with the climate emergency before NPF4. The phrase's meaning in terms of environmental protection has not been constant from the time of its first policy use.

8. NPF4 policy 11 supports the proposed development in principle. The only factors engaged in policy 11(e) are (ii) – landscape and visual effects, and (xiii) – cumulative effects. Kirkan's effects would be localised, but even if Ministers find they are not, appropriate mitigation has been applied. Significant weight should be given to the benefits of the proposed development as a national development, which will help deliver the NPF4 spatial strategy. Policy 4(a) is no more than an expression of a planning balance to be applied in respect of the natural environment. The biodiversity benefits of the proposal mean it has the support of policy 3.

9. The proposed development would comply with HWLDP policy 67. It does not matter if there would be material difficulties with policy 67, since the proposal is supported

by NPF4, and if there is any incompatibility between an NPF4 provision and that of the local development plan, whichever is the later is to prevail.

10. The OWPS sets a target of a minimum of 20GW of installed capacity by 2030. This represents 130 percent of present installed capacity. The target is challenging. Kirkan is able to make a contribution to achieving it. New applications made after 2023 will struggle increasingly to make such a contribution. This puts a premium on Kirkan. In the context of recognising the need for taller turbines to achieve the target, OWPS expressly recognises landscape change is inevitable.

11. Kirkan deserved consent in the previous policy context. NPF4 advances the need case in the balance further over the notably narrow significant adverse visual effects.

Highland Council

12. Highland Council listed a number of NPF4 policies as relevant to the proposal:

- Policy 1 – Tackling the climate and nature crisis
- Policy 2 – Climate mitigation and adaptation
- Policy 3 – Biodiversity
- Policy 4 – Natural places
- Policy 5 – Soils
- Policy 7 – Historic assets and places
- Policy 11 – Energy
- Policy 22 – Flood risk and water management
- Policy 23 – Health and safety
- Policy 25 – Community wealth benefits
- Policy 33 – Minerals

It focused its case on policies 4 and 11.

13. Although NPF4 introduces policy to address the climate and ecological emergencies and recognises the need for further onshore-wind development, it does still require a balance to be struck between impacts and benefits of a development on the environment and economy. Only the right development in the right place is to be approved. An analysis of recent Ministerial decisions on windfarm consents shows that the new policy framework essentially implements the reasoning in those decisions – that significant weight is to be placed on emissions reduction and that significant adverse landscape and visual effects are a consequence of such a policy.

14. While there are changes in NPF4 to improve the policy environment for windfarm development, there is no increase in in-principle policy support for a proposal in a location such as Kirkan. For Kirkan, policy remains similar to that in SPP. The council had conceded that the proposed development was to be treated as being within a group-3 area in terms of SPP (where windfarms were “likely to be acceptable”). As the national spatial strategy sets out, policy is still about ensuring the right development in the right place. There is no lessening of protection for the environment in NPF4, other than certain express changes, such as to the protection of wild land or restrictions of development on peatland.

15. The designation of the proposed development as a national development in NPF4 does not obviate the requirement for a full assessment of its benefits against its adverse

effects. In the north of Scotland, NPF4 supports renewable-energy development, though protection of environmental assets is a joint priority.

16. Significant weight was already placed on development benefits in terms of emissions reduction, before the adoption of NPF4 policy 1. NPF4 policy 4(a) provides for a balance to be struck with impact on the natural environment. Policy 4(d) requires significant adverse effects to be outweighed by benefits. Policy 11(a) provides support for the proposed development, but that is not new. The evidence does not demonstrate that the proposed development's net economic impact will be maximised in accordance with policy 11(c). As regards the considerations in policy 11(e), the proposed development's effects in this case are not localised and the design exacerbates adverse effects.

17. As regards the OWPS, the meeting of the 2030 ambition is to be "fully aligned" with our rich natural heritage. There are many expressions in policy suggesting continuity of protection of the environment and nothing express that would suggest reduction in protection. Consequently, the balancing exercise is essentially the same. The balance still does not favour a grant of consent in this case.

18. There is time for other, better developments to be consented such that the 2030 ambition is achieved. Achievement of the 2030 ambition will involve landscape change, but need not involve development not in the right place. The requirement to "go further and faster" does not translate into less landscape protection.

19. HWLDP policy 67, the most relevant policy, is compatible with NPF4. They both support renewable-energy development, and while the policy test is not the same in terms, it is likely to lead to the same outcome.

Dr Hedger

20. Although consideration must be given to NPF4 and the OWPS, the core arguments remain the same. Adverse effects include effects on designated areas, including the Wester Ross and Assynt and Coigach National Scenic Areas and the Fannichs, Beinn Dearg and Glencalvie Special Landscape Area, on the identified wild-land areas WLA28 and 29, and on the A835 (including upon tourists associated with the NC500 travelling on it). There would also be an adverse effect on peat. These outweigh the benefits of the proposed development. There is a backlog of consents awaiting implementation. This should be addressed rather than permitting the proposed development.

21. NPF4 still seeks to ensure only the right development in the right place, and that development should be in sustainable places. Natural assets are to be protected and enhanced under policies 3, 4, 5 and 6. Under policy 4(a), development that has an unacceptable effect is not to be supported. The landscapes of the north west coast and islands are noted as important to Scottish national identity.

22. The OWPS seeks a balance to ensure both environmental and economic benefits to Scotland are met, taking into account the net-zero challenge. The vision statement indicates maximisation of wind resource can only take place where environmental effects are acceptable. As regards the battery storage and hydrogen conversion OWPS encourages, Kirkan would be far from suitable markets.

**Reporter's assessment of the proposed development in the new policy context**

New policy on energy and climate change

23. I discussed relevant policy on energy and climate change 2.49 to 2.81 of my main report. Most of the policy I discussed remains current. The only element that is superseded is the previous Onshore Wind Policy Statement (2018), discussed at paragraph 2.72.

24. The Scottish Government adopted its new OWPS in late 2022. This set an ambition for a minimum installed capacity of 20 GW of onshore wind in Scotland by 2030.

25. The OWPS's 2030 ambition is expressly set in the context of Scottish Government policy to support rapid decarbonisation of the energy system, which in turn is set in the context of achieving Scotland's statutory emissions-reduction targets. The OWPS also relates the 2030 ambition directly to the finding of the Climate Change Committee that the UK will require 25 to 30 GW of installed onshore-wind capacity by 2050 and the finding of RenewableUK's Onshore Wind industry Prospectus that suggested the bulk of the remaining capacity required would need to be built in Scotland. It should furthermore be seen in the context of the UK Government's Net Zero Strategy, which I discussed in my main report, paragraphs 2.61 to 2.65. It is evident the UK strategy places reliance on development of onshore-wind capacity on a scale comparable to that proposed in the OWPS, alongside other technologies, for decarbonisation of the UK electricity system. It is in this context that the OWPS states that "deployment of onshore wind is mission critical to meeting our climate targets".

26. I understand the adoption of the 2030 ambition to be one among a number of actions or intended actions to meet emissions-reduction targets. Development of other renewable technologies is required as well (including offshore wind, for which separate ambitions and targets have been set by UK and Scottish Governments). I reject any implication in the council's evidence (such an implication may be present in paragraph 3.3 of its supplementary hearing statement on NPF4, CD12.3a) that, on current policy, other types of renewable generation can be deployed as an alternative to meeting the ambition on onshore wind.

27. The OWPS deals with a number of planning considerations in respect of new onshore-wind development. In broad terms, the OWPS's Ministerial foreword states:

> "While imperative to meet our net zero targets it is also vital that this ambition is delivered in a way that is fully aligned with, and continues to enhance, our rich natural heritage and native flora and fauna, and supports our actions to address the nature crisis and the climate crisis."

28. As regards landscape and visual effects in particular, the OWPS states:

> "Meeting the ambition of a minimum installed capacity of 20 GW of onshore wind in Scotland by 2030 will require taller and more efficient turbines. This will change the landscape." (The underlining is in the policy document).

As the applicant pointed out, the change in the landscape envisaged in OWPS is linked in the policy with the increased height of turbines necessary to achieve the targets.

29. OWPS including comment on a number of other planning considerations:

- It encourages shared land use, in the context of the need to change from current uses to forestry and peatland restoration while making space for other essential activities including onshore wind and the protection and enhancement of habitats and biodiversity.
- It recognises that onshore windfarms will in some cases have to be built on areas of peat, references good practice in respect of development on peat, and encourages onshore-wind development to contribute to peatland restoration.
- It encourages onshore-wind development that manages intact habitats, restores degraded areas of habitat and improves connectivity between nature-rich areas.
- It confirms Scottish Government guidance to require use of "The Assessment and Rating of Noise from Wind Farms (ETSU-R-97)" in assessing and rating windfarm noise.
- It refers to economic opportunities arising for Scotland from renewables, including for supply chain, skills and tourism. As regards potential negative effects on tourism, OWPS states "current evidence suggests that whilst there may be discrete impacts in some cases, this is not the general rule."
- It supports co-location of battery storage with onshore-wind development.

These matters are all covered in planning policy. I will deal with them when dealing with relevant policies in NPF4.

30. Parties agreed that the draft Scottish Energy Strategy and Just Transition Plan had little weight in Ministers' decision, given that it was still at draft stage. I agree too.

Planning policy

31. The Third National Planning Framework (NPF3) and Scottish Planning Policy 2014 (SPP) were superseded when NPF4 was published. Paragraphs 2.82 to 2.89 of my main report (discussing NPF3 and SPP) therefore no longer apply. Similarly, the discussion at paragraphs 2.111 to 2.122 of the tilted balance arising from application of SPP paragraph 33 no longer applies. Since NPF4 now forms part of the development plan, my comments on the development plan in paragraphs 2.90 to 2.92 require to be updated.

*The status of NPF4*

32. NPF4 is a statutory document, published in accordance with the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). It forms part of the development plan for the purposes of town and country planning. It sets out the Scottish Ministers' policies and proposals for the development and use of land and plays a key role in supporting delivery of the UN Sustainable Development Goals.

33. As I have set out in my main report, the development plan does not have a statutory status in an application for consent under section 36 of the Electricity Act 1989. Nonetheless, I understand that NPF4 must now be read with the existing local development plans adopted by Highland Council, so that the development plan is understood as a whole.

*NPF4 spatial strategy*

34. Regional spatial priorities are set out for several broad areas of Scotland. I understand the proposed development's location to be in the north of Scotland (and particularly the rural heartland of the north), rather than for the north and west coast and islands, in respect of spatial priorities. The beauty and isolation of the heartland is one

element to be taken into account in the description of planning issues arising in the north. The description also refers to the area's environmental quality and landscape sustaining key economic sectors, including clean energy. The discussion of priorities refers to how the north can continue to contribute to meeting the Scottish Government's ambitions for a net-zero and nature-positive country. I understand the policy's reference to "continue" in this respect to be to permitting of new development (since NPF4 is about guiding new development) and other works rather than to be suggesting that there should be continued reliance on the area's existing contribution.

35. Strategic renewable-electricity generation and transmission infrastructure is one of the national developments that is stated to support delivery of the spatial strategy for the area. The discussion of cross-cutting outcome and policy links on NPF4 page 8 indicates that the global climate emergency and the nature crises form the foundations of NPF4's spatial strategy as a whole. I must read the spatial strategy accordingly.

36. Protection of environmental assets, stimulation of investment in natural and engineered solutions to climate change and supporting local economic development by making sustainable use of the areas' world-class environmental assets to innovate and lead greener growth are all co-priorities, as the council points out. It is not unusual to set priorities in a plan that, if they do not necessarily always conflict, might be perceived to jostle with each other. Nothing in the NPF4 priorities for the north suggests that the proposed development would be unacceptable in principle in the area. Rather, it is encouraged, though insofar as there is any conflict with the priority of protecting environmental assets, a balance must in practice be struck between the priorities.

*The status of the proposed development in NPF4 as a national development*

37. Since the proposal is for more than 50 MW renewable installed capacity, it is a proposal for a national development in the category of strategic renewable-electricity and transmission infrastructure. Additional electricity generation of scale from renewables is stated to be fundamental to achieving a net-zero economy and in supporting network resilience in rural areas. As the council points out, this category of national development indicates a need across all Scotland.

38. National-development status does not confer consent or even a presumption that consent will be granted. For a national development that could take place anywhere in Scotland, national-development status does not mean other planning considerations regarding its location are overridden. Proposals at any particular location still require to be considered against relevant planning policies. In general terms, though, national developments are significant developments of national importance that will help deliver the spatial strategy set out in NPF4 part 1. They must be treated as such in determination of applications.

*Interpretation and application of development-management policies in NPF4*

39. The council's hearing statement refers to a number of policies as relevant to determination of the application (though its objection relates particularly to policies 4 (natural places) and 11 (energy) as I understand). I will deal with each of the policies referred to by the council in the order they appear in NPF4.

*Policy 1 – tackling the climate and nature crises*

40. The policy requires significant weight to be given to the global-climate and nature crises in considering the proposal. This does not mean the weight to be given will override other considerations.

*Policy 3 – biodiversity*

41. In my main report, I found that the proposed development would not have any significant adverse effect on habitats or protected species, subject to good construction practice and mitigation measures secured by condition. NPF4 policy 3 goes beyond requiring an avoidance of harm. The policy's branch (a) requires development proposals to contribute to the enhancement of biodiversity, including restoring degraded habitats. Branch (b) requires proposals for national developments such as the proposed development to demonstrate the proposal will conserve, restore and enhance biodiversity, including nature networks, so that they are in a demonstrably better state than without intervention. A number of criteria are applied to the policy's branch (b), which it must be demonstrated a proposed development has met. Branch (d) meanwhile requires that potential adverse effects on biodiversity should be minimised.

42. The applicant has provided an assessment by its ecology consultants in CD11.10 of the proposed development against the requirements of policy 3. The outline habitat-management principles proposed by the applicants (CD1.4 appendix 6.6) include proposals for peat restoration for "an expected area of 15.8 hectares, with a maximum restoration area of 122.6 hectares identified", for creation and improvement of fish habitats in the Glascarnoch River and Blackwater, for enhancement of opportunities for black grouse by improving habitat, and for reduction in predation by invasive mink on water vole. These would clearly be enhancements, so the policy's branch (a) would be met.

43. As regards the criteria in the policy's branch (b), the EIA report includes studies of habitats and vegetation, bird and animal species, hydrology, geology, hydrogeology and peat. Negative effects have been assessed. Mitigation and enhancement measures are based upon these studies and address negative effects. The proposed peatland restoration would restore modified peatland at the site and enhance the ecosystem associated with it. I agree with the assessment in table 1 of CD11.10 that measures are included in the proposed development's design or can be secured by condition to minimise potential adverse effects on biodiversity identified. I consider that the enhancement of peatland functioning as a carbon store and habitat and the other measures to improve black-grouse, fish and water-vole habitat qualify as local community benefits of the biodiversity and nature networks. I find that criteria i, ii, iii and v of branch (b) are all met.

44. As regards branch (b)(iv), there is no finding in the EIA report on the significance in environmental terms of the benefits from habitat management according to the principles proposed. Nonetheless, in terms of the policy, I find that the biodiversity enhancements proposed in the outline habitat-management principles would be significant, in the sense that they would be considerably more than negligible. There is plainly a range of outcomes that may be achieved in terms of the area of peat restoration in accordance with the peat-management plan and habitat-management plan. I understand this to arise from uncertainty both in respect of how much peat will be excavated during site development (and there is, of course, a public interest in minimising peat disturbance) and how much will be used for other purposes, such as re-instating areas around constructed infrastructure and re-instating track verges and borrow pits. I consider that the question of how peat

restoration is to be maximised while ensuring other aims of the peat-management plan are met can be left for the approval under condition of the peat-management plan and habitat-management plan.

45. There has been criticism that the outline habitat-management principles are merely a plan to have a plan. I find, though, that the environmental basis, the aims and the outcomes are sufficiently defined to ensure that habitat-management measures to maximise benefits can be addressed under conditions. I find that the policy's branch (b)(iv) is met.

46. I consider that the development design and mitigation proposed in the EIA report, and the adjustments in the 2019 SEI and the 2021 AI are sufficient to minimise potential adverse impacts of the proposed development on biodiversity, nature networks and the natural environment, in accordance with branch (d) of the policy.

47. Overall, I find the proposed development accords with policy 3. I also consider that the proposals for habitat management and peatland restoration are compatible with the encouragement of shared land use and restoration of degraded habitats in OWPS.

*Policy 4 – natural places*

48. Policy 4(a) provides that development proposals, which by virtue of type, location or scale will have an unacceptable effect on the natural environment, will not be supported. I consider that effects on landscape can be effects on the natural environment and I assume for the purpose of this report that they are (it may, of course, actually depend on the nature of the landscape). I also assume for the purpose of this report that effects on visual amenity can also be effects on the natural environment (even though they are, strictly speaking, effects on human receptors).

49. Parties' evidence at the hearing was that the word "unacceptable" is to be understood in terms of the planning balance: there is not a separately defined standard of acceptability. I found in my main report that the meaning of normative terms such as "unacceptable", "right place" and "right development" have to be understood in the context of Ministers' statutory duties and other policies. What is acceptable will therefore have to take account of NPF4 policy 1 and also Ministers' 2030 ambition in OWPS, as well as other existing policies and duties, such as the achievement of statutory emissions-reduction targets.

50. Policy 4(c) relates (among other matters) to proposals that will affect a National Scenic Area (NSA). I found in my main report that although the proposed development would be visible from parts of the Wester Ross NSA, visibility would be limited in extent, distant and partial and that there would not be a significant effect on the NSA. I do not find that the proposed development would be contrary to this branch of the policy.

51. Policy 4(d) relates to effects on a site designated as a local landscape area and imposes a policy restriction on development that would have significant adverse effects on the integrity of the area or the qualities for which it was identified. I did not find the proposed development would have a significant adverse effect either on the Ben Wyvis SLA or the Fannichs, Beinn Dearg and Glencalvie SLA as a whole. In terms of the policy, there would not be a significant adverse effect on the integrity of either SLA. In both cases, there are some significant adverse visual effects both on views of the SLA and in views from the SLA. Nonetheless, I did not find the special qualities for which either area was designated

to be significantly adversely affected. I do not find the policy restriction in policy 4(d) to apply. If Ministers were to take a different view, the policy requires consideration should be given to whether any significant adverse effect on the integrity of the area is clearly outweighed by social, economic or environmental benefits of at least local importance.

52. Policy 4(e) applies the precautionary principle. I do not find the precautionary principle would appropriately be applied to the landscape and visual effects of the proposed development. Policy 4 is a general policy on protection of the environment. The principle applies to circumstances in which there is uncertainty about environmental effects. I consider the landscape and visual effects of the proposed development can be reasonably well understood.

53. Policy 4(g) relates to effects of development in wild land. The restrictions on development in the policy do not apply to the proposal, since it is not within a wild-land area. In my main report, I found that the proposed development would have an effect on wild-land area 29 (Rhiddoroch – Beinn Dearg – Ben Wyvis) that was over the threshold of significance. Policy 4(g) indicates that buffer zones are not to be applied around wild land and the effects of development outside a wild-land area are not to be a significant consideration. The proposed development's effects on wild-land area 29 are therefore not a significant consideration in determination of the application.

54. Consequently, it appears to me that, in respect of policy 4, only branch (a) of the policy is a substantial consideration in determining the effect of NPF4 in respect of the proposed development. In my main report, I found that the proposed development would have a number of significant adverse landscape and visual effects. The question to be determined is whether these effects are such that they are unacceptable in terms of the policy. I consider that that is a matter to be resolved in the overall balance on the proposed development.

*Policy 5 – soils*

55. Policy 5 branch (c)(ii) supports generation of energy from renewable sources on peatland if it optimises the contribution of the area to emissions-reduction targets. The applicant produced an estimate on the carbon balance in appendix 13.1 of the EIA report using the Scottish Government's recommended model. The inputs to the model include a number of assumptions that represent the reasonable worst case, and take no account of the reduction in peat disturbance from the adjustments to development design in the 2019 SEI and 2021 AI. Notwithstanding this, the model gives an estimated payback period for input carbon-dioxide emissions of 2.3 years of the proposed development's operation against a grid mix of electricity generation (with a maximum of 4.2 years). In my experience, this is a relatively short estimated payback period for such a development in an area of peat.

56. Branch (d) of the policy requires a detailed site-specific assessment to be carried out for the development. I covered effects on peat in paragraph 4.6 of my main report (though I note I did not fully acknowledge there the objection by John Muir Trust in respect of peat). The applicant provided a peat-landslide-hazard risk assessment, peat-management plan and habitat-management plan. The applicant also made adjustments to development design in the 2019 SEI and 2021 AI partly for the purpose of reducing impact on peat. Following these adjustments, the risk assessment and mitigation proposed were accepted by Ministers' consultants, Ironside Farrar. SEPA, the statutory consultee in respect of peat management, was content that the design was capable of minimising

disturbance of peat and net effects on climate emissions and loss of carbon, subject to approval of a final peat-management plan. I accept that it is. The outline habitat-management plan envisages peatland restoration of at least 15.8 hectares, up to 122.6 hectares. It is sufficient to require approval of the final habitat-management and peat-management plans under a condition of any consent to ensure that the contribution of the area to restoration of peatland habitats and emissions reduction are optimised. The assessments carried out satisfactorily address the requirements in branch (d).

57. I find that the proposed development does (in the context that renewable-energy development is envisaged on areas of peat) avoid and then minimise disturbance of soil on undeveloped land. With good construction practice, which can be secured by condition, damage to peat can be minimised. I find that the proposed development complies with branch (a) of the policy.

58. Overall, I find that the proposed development complies with policy 5. It is also compatible with the encouragement of good practice in respect of development on peatland in OWPS.

*Policy 7 – Historic assets and places*

59. I did not find that there would be any significant effect on the historic environment, subject to the securing of mitigation measures in respect of the Fish Road (the drove road through the site). No issue arises under policy 7.

*Policy 11 – Energy*

60. The policy intent is stated to be to "encourage, promote and facilitate all forms of renewable energy development, onshore and offshore" with the outcome of expansion of renewable, low-carbon and zero-emissions technologies. Branch (a)(i) of the policy expresses support in general terms for new wind-energy development while branch (a)(iii) supports development for energy storage, such as battery storage. This latter also accords with the encouragement of battery storage in OWPS.

61. Although Dr Hedger suggested the application site was not appropriate for battery storage, I understand it to be efficient to co-locate battery storage with a windfarm development, so that they can share the grid connection.

62. Branch (c) of the policy provides that development proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply-chain opportunities. This represents a change in policy from SPP, which simply indicated that net economic impact was one of the considerations.

63. In my main report, I found that, overall, the proposed development was likely to represent a net economic benefit both locally (in the sense of the Highland Council area) and for Scotland. I acknowledged the commitment the applicant had made to maximising local economic impact from the proposed development by establishing a local-suppliers database and by its commitment to work with Highlands and Islands Enterprise and the local Chamber of Commerce to ensure local enterprise would have an opportunity to bid for contracts. I consider that commitments such as to the restoration of peatland and other measures in the habitat-management plan, the proposal for an access-management plan

during the operation of the windfarm, and improvement of access and signage for the Fish Road all give rise to socio-economic benefits in the windfarm's immediate locality.

64. In its closing submissions from the hearing on NPF4, the council argued the applicant's evidence did not demonstrate that the benefits had been maximised. It did not seek to address the evidence on this point in any detail at the hearing. I have no standards set by guidance or examples in previous Ministerial decisions to understand how maximisation of net economic impact would appear or would be secured. It appears to me that "maximisation" is a high standard to attain. Leaving aside an assertion in the applicant's planning statement regarding procurement, there is limited evidence on what the maximum might be or how I would identify that the maximum was likely to be attained.

65. Although the applicant's commitments on procurement offer an opportunity to local businesses, there is no guarantee of contracts going to them. It does not appear to me to be possible by condition to require any such guarantee, or even a guarantee of a certain percentage of local procurement. Consequently I cannot find with any certainty that the proposed development would maximise net economic impact either locally or nationally. Although (as I found in my main report) the net economic benefit is a consideration that weighs in favour of the proposed development, it appears to me that the evidence does not support a finding that the proposed development complies strictly with branch (c). I consider that my finding that the proposed development would have a net economic benefit is sufficient for it to accord with policy in OWPS.

66. I have found that the proposed development would not have a significant impact on any international or national designation in relation to policy 4. Consequently, I find it complies with branch (d) of the policy.

67. Branch (e) of the policy lists a number of impacts regarding which how they have been addressed by project design and mitigation is to be demonstrated. Of these, the proposed development would only have a significant effect in respect of impacts (ii) and (xiii) – landscape and visual effects and related cumulative effects. I acknowledge that other impacts (such as public access) are a consideration, but following mitigation secured by condition, I have not found there would be any significant effect in respect of them. Part (ii) of the policy's branch (e) acknowledges that significant landscape and visual effects are to be expected for some forms of renewable energy. I take this to include windfarms, for which branch (a) of the policy expresses support. The policy indicates that "where impacts are localised and/or appropriate design mitigation has been applied, they will generally be considered to be acceptable." The parties agreed at the hearing that this reservation applies also to cumulative landscape and visual effects, and I agree too.

68. In chapter 3 of my main report, I found a number of significant landscape and visual effects, which were identified in paragraphs 3.4, 3.6, 3.53 to 3.55, 3.61, 3.69 to 3.79, 3.87 to 3.89, 3.91 to 3.93 and 3.98.

69. I did not make a finding on whether these significant effects were localised. There is no relevant national guidance on what effects can be said to be "localised". I understand the term must be understood as localised for a proposal for a commercial-scale onshore-wind development, for which the policy's branch (a) provides support. In my view, a localised effect would be an effect that was rather less in its extent than might be expected for such a development. There is a degree of containment of the proposed development's significant effects by surrounding hills. However, significant effects do extend west along Loch Glascarnoch and the A835 and north up Strath Vaich, and are experienced as far as

An Coileachan and Meall a' Ghrianain. I do not find that such effects could truly be described as localised.

70. I considered design and mitigation through design at paragraphs 3.100 to 3.106 and paragraph 6.6 of my main report. There are adverse impacts arising from the proposed development's design. These include impacts arising from juxtaposition of the large proposed turbines with the existing smaller turbines, the visual effect of the proposed development's extension into a somewhat different landscape compartment, and the additional visibility of turbines along Loch Glascarnoch, the A835 and Strath Vaich. These effects could have been reduced by reducing turbine size or number. Avoidance of visual effects is not the sole consideration in windfarm design, though. Acceptability of adverse effects arising from design choices is a matter to be considered in the overall balance, taking into account other constraints and the benefits harnessed. Ultimately I found that the balance favoured the proposed development on the basis of the policy as it stood then.

71. What is "appropriate" in the way of mitigation in terms of NPF4 is also a matter of balance examining how adverse effects of development are addressed while its benefits are secured. This is a matter for my conclusion on the overall balance. The balance must take into account that significant impacts are to be expected for some forms of renewable-energy development. It should also take account of what is likely to be necessary to achieve the statutory emissions-reduction targets. As regards the appropriateness in general of mix of larger proposed turbines and smaller existing turbines, such would be formed in views towards the group of which the proposed development would form part, I refer to my comments at paragraph 2.123 of my main report.

72. In accordance with branch (f) of the policy, the area of the proposed development should be suitable for use in perpetuity. I will take this into account in making a judgement on the overall balance.

*Policy 22 – flood risk and water management*

73. In my main report, I did not find that the proposed development would have any significant effect in respect of flood risk or water management, subject to conditions to secure good construction practice in a construction and environment management plan and during working of borrow pits, to prevent micrositing of infrastructure other than water-crossings to within 50 metres of water-crossings, and to monitor water quality and fish populations. The proposed development complies with this policy.

*Policy 23 – health and safety*

74. Branch (f) of this policy states that development proposals likely to raise unacceptable noise issues will not be supported. The applicant's assessment of the proposed development's effects on amenity from noise were carried out in accordance with the ETSU-R-97 guidance as required by OWPS. In my main report, I found that, subject to conditions controlling turbine noise, noise from the proposed development would not have any unacceptable effect. The proposed development complies with this policy.

*Policy 25 – community-wealth benefits*

75. I have found that the proposed development would be likely to lead to a net economic benefit both locally and nationally, including creating jobs and economic activity locally. I find that the proposed development complies with this policy.

*Policy 33 - minerals*

76. Branch (e) of the policy relates to proposals for borrow pits. Such proposals are included in the proposed development. Although the council referred to this policy, it did not suggest that the proposed development would be incompatible with it. The borrow-pit proposals are tied to the proposed development, they would not have a significant adverse effect on biodiversity or other aspects of the environment, and the proposals for their restoration are adequate and can be secured by condition. They would not be contrary to any other element of the policy. The proposed development complies with this policy.

*Interpreting the development plan*

77. Following the publication of NPF4, the development plan now comprises NPF4, the Highland-wide Local Development Plan ("HWLDP"), the West Highlands and Islands Local Development Plan ("Westplan") and supplementary guidance, including the council's Onshore Wind Energy Supplementary Guidance ("OWESG"). There are no relevant policies in Westplan, so I will not refer to it further. Section 2.7 of my main report sets out the policies I was referred to in HWLDP as the most relevant in that plan.

78. Section 24 of the 1997 Act (as amended by the Planning (Scotland) Act 2019) provides that:

> "In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail".

79. A question arose at the hearing as to whether HWLDP policy 67 on renewable-energy development was compatible with NPF4 policy 11. I found in my main report that the proposed development complied overall with policy 67 and with other policies of the development plan as then constituted. Consequently, it appears to me that (at least if Ministers agree with my finding on policy 67) nothing really rides on the question of whether HWLDP policy 67 is compatible with NPF4 policy 11 (or any other policy of the local development plans in respect of NPF4).

80. Should Ministers find it necessary to consider the point, it seems to me that where two policies have the broadly the same function and purpose, like NPF4 policy 11 and HWLDP policy 67, if a proposed development was found to comply with the newer but not the older, that would indicate that the two policies were incompatible. To treat them as compatible would mean accepting that the effect of the two policies read together would be a stricter control than would be applied by the newer policy alone. The reverse would also apply (if the older policy provided a means to consent the development that was not present in the newer policy, the effect of the two read together would be less strict than the newer policy alone). Consequently it does not appear to me correct to read two such policies together. It may be that HWLDP policy 67 will always in practice have the same effect as NPF4 policy 11. However, if it should happen that they have different effects in respect of a

particular development, it appears to me that they are – by that fact – incompatible. NPF4 policy 11 would then prevail.

The balance to be struck

81. I discussed the balance to be struck in policy at paragraphs 2.99 to 2.123 of my main report. As I have said, my comments there on the tilted balance arising from SPP paragraph 33 no longer apply. Other parts need to be updated in the light of NPF4 and OWPS.

*Statutory emissions-reduction targets and the new policy environment*

82. I described in my main report how Ministers' duties in the Climate Change (Scotland) Act 2009 are relevant to understanding the normative terms in policy. This applies as much to understanding normative terms used in NPF4 and OWPS as it does to earlier policy. In other words, what is "unacceptable" in terms of NPF4 policy 4(a) and what is "appropriate" in the way of mitigation in terms of NPF4 policy 11(e), and what is "the right development in the right place" must take the achievement of the targets into account.

*Whether a premium is placed on development likely to achieve the 2030 ambition*

83. The OWPS indicates that there is 8.7 GW of built onshore-wind capacity in Scotland and 1.17 GW of capacity in construction. In addition 4.56 GW is consented and awaiting construction and 5.53 GW in the planning process at present. As I found at paragraph 2.79 of my main report, not all development that is consented will be built, nor will all development for which consent is sought be granted it. The proposed development is, of course, among those for which consent is sought. I find that an ambition to increase capacity to a minimum of 20 GW by 2020 is likely to be stretching.

84. The applicant argues that the adoption of the 2030 onshore-wind ambition means a premium is placed on the grant of consent now for a development (such as the proposed development) that can potentially contribute to the achievement of the ambition. The council argues that, in addition to existing projects for which an application has been made, there are many projects not yet in the system that could come forward by 2030. They refer to analysis by planning solicitors at Brodies (CD11.12) examining the time taken from application to grant to obtain consent for windfarm developments.

85. I find the propositions of the applicant and the council both to be largely true. I have no doubt that the refusal of this particular proposal alone is unlikely greatly to affect whether or not the 2030 ambition is achievable. It is unlikely that the achievement of the 2030 ambition relies on the consenting of any one project. But of course, the ambition can only be achieved by a fairly large number of increments, about each of which the same thing could be said. An approach to application of policy that relied on none of the increments being itself necessary would most likely result in a failure to achieve the policy's aim.

86. The Brodies research suggests that if future developments are contentious and go to inquiry, and there are not changes in the consenting system that accelerate consents, then it will, as the applicant argues, become difficult for applications made after 2023 or 2024 to contribute to achieving the 2030 ambition. Of course, while this is relevant, the time that has been taken to grant consents in the past does not necessarily predict the time that will be taken to grant consents in the future. Since the government has set its ambition, it must be assumed it will act to achieve it, making such adjustments to policy and systems as

seem necessary to do so. Recent changes in national planning policy and policy on onshore wind would appear to be made partly with such a purpose in mind. It may be, for instance, that fewer applications will go to inquiry, which may result in a shortening of the consenting process for those developments by (what has been to date an average of) a year and 9 months.

87. So, there could well be other projects for which no application has been made yet that could contribute to meeting the 2030 ambition.

88. On the other hand, there are plainly matters other than consenting to be dealt with before the commissioning of a windfarm, including final design and obtaining approvals under conditions, procurement and construction, and there is the risk of delay caused by supply bottlenecks. The later a consent is granted, the greater the risk that a project will not be commissioned by 2030. The number of projects that can contribute to achieving the 2030 ambition will self-evidently become fewer as 2030 approaches. It is therefore undoubtedly a consideration in favour of the proposed development that, if granted consent, it is likely to contribute to meeting the 2030 ambition. In this respect, such a project clearly has an advantage over (notional) projects not yet in the system that may be consented later.

89. The consideration that a proposed development can contribute to meeting the 2030 ambition does not override all other considerations. Even if there was certainty about which projects would contribute to the target if consented and which would not, the consideration that a project would assist in achieving the ambition still would not automatically override all other considerations in respect of such a project. Nonetheless, if it is likely that a development can assist in achieving the 2030 ambition, that is a factor in favour of it.

*Whether the balance is the same as under policy superseded by OWPS and NPF4*

90. Clearly the council's evidence is correct that, even following the adoption of NPF4 and the OWPS, a balance needs to be struck between the impacts and benefits of the proposed development for the environment and economy. The new policy guides what requires to be taken into account and in some cases the weight to be given to certain elements.

91. The council, in its closing submissions (paragraphs 21 and 22), produced a list of policy references from NPF4 and OWPS, from which it sought to suggest that, in the balance to be struck on new development, there was continuity with the superseded policy. NPF4 indicates that the nature crisis is a foundation of the strategy along with the climate crisis. These crises are interlinked. The nature crisis and policy to protect and restore biodiversity affects many aspects of the environment, but the visual effects in respect of which the council has objected to the proposed development are not generally engaged by new policy on biodiversity. General references to the importance of Scotland's high-quality environment in NPF4 include reference to services provided by the environment, such as clean air, water and food, and supporting biodiversity, not just the natural beauty of the landscape or effects on views or on amenity. A policy stricture that environmental effects of a proposal should be reduced through careful planning does not say anything about the degree of residual effects that is acceptable.

92. OWPS expressly accepts that landscape change will be necessary in order to achieve the 2030 ambition. NPF4 expressly accepts that significant landscape and visual effects are to be expected with certain types of renewable development, and that certain

such significant effects are generally acceptable. The elements of the new policies relating to environmental protection must be read with this in mind. A high standard of environmental protection is still applied, but it takes account of the need for the landscape to change in order to achieve the 2030 ambition, meet emission-reduction targets and address climate change (a consideration expressly of significant weight). These are factors in determining what the right development in the right place is. Given that the substance of the objections made to the development relates to its landscape and visual effects (and the council's objection is limited to visual effects), I do not need to make a wider finding on the balance to be struck for the purpose of reaching my recommendation to Ministers. I therefore qualify in this respect the finding in my main report paragraph 2.106 that the relative balance favouring onshore-wind development against environmental protection is changed.

93. As regards the requirement to "go further and faster" in order to achieve the 2030 ambition, and the effect this has on decision-making, I largely covered that point in my discussion of time as a consideration in paragraphs 2.107 and 2.108 of my main report. The achievement of the statutory emissions-reduction targets was already a consideration under the superseded policy. The setting of the 2030 ambition in the OWPS sets up a new policy urgency, more specific than the emissions-reduction targets (though the adoption of the ambition is an action aimed at achieving the targets). It has the effects I described in my main report.

94. Previous decisions of Ministers on windfarm proposals such as Paul's Hill II, North Lowther, Slickly and Limekiln referred to by the council were made against a different policy context. I do not find the council's claim that the new policy is (to paraphrase) merely a codification of Ministers' previous practice as illustrated in those decisions very useful in understanding the changed policy environment. There is plainly some continuity between new and superseded policy, but there are changes in the policy environment too, which I have discussed.

95. Overall, then, I find the new policies do ratchet the need case upward, at least relative to the acceptability of the proposed development's landscape and visual effects and the related appropriateness of its design. That does not mean that onshore-wind proposals must be consented in every case. Those proposals with effects that are unacceptable in terms of NPF4 policy 4(a) or in respect of the considerations referred to in policy 11(e) – having taken into account the requirements to give significant weight to the climate emergency, to achieve the statutory emissions-reduction targets, and to achieve the 2030 ambition (as well as aims of other Government policy) – still must be refused.

*Striking the balance for the proposed development*

96. My assessment of how the previous policy balance (under the superseded policies) should be applied to the proposed development is set out in paragraphs 6.15 to 6.19 of my main report. I found that while the proposed development's design might have been improved, this would have been at the cost of losing some of the benefits. There were likely to be relatively few places where a proposed development could avoid significant effects on any designated landscape or on facets of the environment other than landscape and visual amenity. The significant adverse effect on wild land to which I referred in the policy balance is no longer a significant policy consideration. I found that the need for renewable-energy development and the urgency of the situation meant that the proposed development's adverse effects did not justify refusal. Since then, as I have found, the new policy has

increased the relative weight of the proposed development's benefits at least in respect of landscape and visual effects. I therefore confirm my finding in my main report, subject to a some comments on particular policies:

97. As regards NPF4's regional spatial priorities for the north of Scotland, insofar as there is any conflict between the priorities, taking account of the adverse landscape and visual effects of the proposed development, I find the balance favours the use of the area's natural wind resource and the related investment involved in the proposed development, a national development.

98. The support given to the proposed development by NPF4 policy 3 in respect of its habitat-management measures is further factor weighing in its favour.

99. Notwithstanding the residual significant landscape and visual effects of the development, I find that the design mitigation was appropriate given the benefits of the development secured. Overall, I find that the development is acceptable in terms of policy 4(a).

100. I have not found a significant adverse effect on the integrity of the Ben Wyvis or the Fannichs, Beinn Dearg and Glencalvie SLAs. If Ministers were to disagree and to make such a finding, I consider that the social, economic and environmental benefits of the proposed development outweigh such an effect. Consequently the proposed development would comply with policy 4(d) even in the light of such a finding by Ministers.

101. I have found that there is insufficient evidence that the proposed development maximises net economic benefit in accordance with policy 11(c). This is not a finding that it is proven not to comply with the policy (no evidence was led that it did not). The application was made and the bulk of the evidence prepared before NPF4 came into effect, which may explain why the question of maximisation of net benefits was not addressed in more detail. Given the overall benefits of the proposed development and the net economic benefit it would have, and the support elsewhere in the development plan, I consider that any non-compliance with policy 11(c) is outweighed by other policy considerations.

102. In making my finding that the benefits of the proposed development outweigh its adverse effects, I take account that the site must be suitable in perpetuity in accordance with policy 11(f).

103. Consequently, I find that the proposed development accords overall with the development plan, including national policy set out in NPF4. As I found in paragraph 6.17 of my main report, the proposed development is acceptable overall. My finding in paragraph 6.18 on the tilted balance in terms of SPP paragraph 33 is no longer necessary to my conclusion.

**Conclusion**

104. I confirm my recommendation that Ministers grant consent and deemed planning permission as sought, subject to the conditions recommended in my main report.

**Energy and Climate Change Directorate**
Energy Consents Unit

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The Scottish Government

Kirkan Windfarm Limited
22-24 King Street,
Maidenhead,
Berkshire
SL6 1EF

25 July 2023

Dear Sir or Madam,

**CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF KIRKAN WIND FARM WITHIN THE PLANNING AUTHORITY AREA OF THE HIGHLAND COUNCIL.**

## Application

I refer to the application made on 29 March 2019 (the "Application") under section 36 of the Electricity Act 1989 ("the Act") by Kirkan Windfarm Limited, a company incorporated under the Companies Act with company number 09172025 and having its registered office at 22-24 King Street, Maidenhead, Berkshire, SL6 1EF ("the Company"), for the construction and operation of the proposed Kirkan Wind farm located in the Highlands.

The Application proposes to construct and operate (for 30 years) an electricity generating station comprising 17 wind turbines with a maximum blade tip height not exceeding 175 metres ("m"), and a battery energy storage facility with a generating capacity exceeding 50 megawatts ("MW") within The Highland Council area ("the proposed Development").

**This letter contains the Scottish Ministers' decision to grant consent for the proposed Development, as more particularly described at Annex 1.**

## Planning Permission

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 ("the Planning Act") the Scottish Ministers may on granting consent under section 36 of the Act for the construction and operation of a generating station, direct that planning permission be deemed to be granted in respect of that generating station and any ancillary development.

**This letter contains the Scottish Ministers' direction that planning permission is deemed to be granted.**

## Background

The proposed Development is to be located within the Strathvaich Estate, Garve District in the Highlands. It is situated to the south of the A835 trunk road from Garve to Ullapool and east of the operational Corriemollie and Lochluichart windfarms. The wider landscape is characterised by rolling moorland, where a number of forestry plantations are present. The surrounding land is used for deer stocking, commercial forestry and rough grazing.

The proposed Development will be accessed via an existing shared junction from the A835, with up to 10.8 kilometres ("km") of new and upgraded track.

## Legislation and Consultation

Under paragraph 2(1) of Schedule 8 to the Act, and the Electricity (Application for Consent) Regulations 1990 ("the Consents Regulations") made under the Act, the relevant planning authority, The Highland Council in this case, is required to be notified in respect of a section 36 consent application.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the EIA Regulations") on 29 March 2019 the Company submitted an Environmental Impact Assessment Report (the "EIA Report") describing the proposed Development and giving an analysis of its environmental effects.

In accordance with the Consents Regulations and the EIA Regulations, a notice of the proposed Development was published on the Company's website and advertised in the local and national press and the opportunity given for those wishing to make representations to do so. In addition, to comply with the EIA Regulations, Scottish Ministers were required to consult the relevant planning authority, as well as Scottish Natural Heritage (now operating as NatureScot), the Scottish Environment Protection Agency ("SEPA") and Historic Environment Scotland ("HES") as well as any other public body likely to be concerned by the proposed Development by reason of that body's specific environmental responsibilities. Notifications were sent to The Highland Council (the "Planning Authority") as well as to NatureScot, SEPA and HES. A wide range of other relevant organisations were also notified and consulted.

### Additional Information

On 24 October 2019 the Company produced Supplementary Environmental Information ("SEI") which included a revised layout, hydrological and peat assessments and also supplementary landscape assessments to address specific hydrological, peat as well as landscape and visual issues raised during the initial consultation.

The EIA Report and SEI were advertised and consulted upon in accordance with the requirements of the EIA Regulations.

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and the EIA Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representation on the proposed Development.

## Public Inquiry

In terms of paragraph 2(2) of Schedule 8 to the Act, if the relevant planning authority makes an objection and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held unless the Scottish Ministers propose to accede to the Application subject to such modifications or conditions as will give effect to that objection.

As set out below, the Planning Authority objected and did not withdraw that objection. Scottish Ministers did not consider it possible to overcome the objection by way of applying conditions to give effect to the Planning Authority's objection and caused a public inquiry to be held.

On the 6 April 2021 the Application was accordingly referred to the Planning and Environmental Appeals Division ("DPEA") for a public inquiry to be held.

## Public Inquiry ("PI") and its Report

On 06 October 2021, prior to arrangements being finalised in respect of the PI, the Company submitted additional information ("AI") which included amendments to the position of turbines 5 and 7 of the proposed Development in response to an objection from SEPA and further information relating to: -

- Geology, hydrology and soils
- Landscape and visual assessments
- Recreational walkers and rights of way
- Cumulative noise effects

The AI was provided to all consultees, previously issued with a copy of the EIA Report and SEI, and was advertised in accordance with the EIA Regulations.

The Reporter, appointed to hold a public inquiry, held a pre-inquiry meeting by video conference on 8 October 2021 where arrangements were made to hold an inquiry commencing 10 January 2022. A second case conference was held on 1 December 2021. The inquiry took place by video conference on 21 and 22 March 2022. The Reporter carried out unaccompanied inspections of the site and of viewpoints and other visual receptors surrounding the site on 14 to 17 October 2021, on the 5, 6, 14,

16, 17 and 18 March 2022 and on the 21 and 22 June 2022. The report of the inquiry ("PI Report") was received by Scottish Ministers on 9 August 2022.

In each chapter of the PI Report, the Reporter has summarised the arguments for each party, taking account of the precognitions, hearing statements, hearing sessions, the discussion at the public inquiry and the closing submissions. The Reporter also took into account the environmental information included in the EIA Report, SEI and AI, consultation responses, representations and all of the other information supplied for the inquiry and hearing sessions. The chapters of the PI Report provide the following:

Chapter 1 – Background, consultations and representations
Chapter 2 – Legislative and policy context
Chapter 3 – Landscape and visual impacts
Chapter 4 – Other matters:

- the clarity of the application
- peat and peat habitats
- wildlife
- tourism
- public access to land
- net economic effect
- reliability and intermittency of renewable energy

Chapter 5 – Proposed conditions
Chapter 6 – Reasoned conclusion, policy assessment and recommendations

**The Reporter's recommendation is that Scottish Ministers grant consent under section 36 of the Electricity Act 1989 and directs that planning permission is deemed to be granted, both subject to conditions.**

**Supplementary Report**

Following receipt of the PI Report, and prior to the Scottish Ministers making a determination on the Application, the Revised Draft National Planning Framework 4 ("NPF4") was laid in Parliament (8 November 2022). The Revised Draft NPF4 set out the spatial strategy with a shared vision to guide future development in a way which reflects the overarching spatial principles: sustainable places, liveable places, productive places, and distinctive places. The energy policy principles encourage, promote and facilitate all forms of renewable energy development onshore and offshore, including energy generation and storage.

The Scottish Ministers therefore asked the Reporter to re-open the inquiry in November 2022, in order to allow PI participants to comment on the implications of NPF4.

Subsequent to asking for the inquiry to be re-opened the Revised Draft NPF4 was approved by Scottish Parliament on 11 January 2023 and then adopted on 13

February 2023. Upon its adoption, commencement provisions made NPF4 part of the statutory development plan. The Onshore Wind Policy Statement ("OWPS") was also published in December 2022. The Scottish Ministers additionally published a consultation draft Energy Strategy and Just Transition Plan on 10 January 2023.

The Reporter arranged a hearing on 31 January 2023 to allow the Company and other parties, who expressed a wish to take part in further procedures, to make submissions relating to NPF4. The Reporter further invited submissions on the new OWPS and on the draft Scottish Energy Strategy and Just Transition Plan.

Following this process the Reporter prepared and issued the Supplementary Report, which replaces elements of the original PI Report where specified and should be read in conjunction with it. The Supplementary Report was provided to the Scottish Ministers on 9 March 2023.

- Supplementary Report paragraphs 6 to 22 summarise the main points by parties at the supplementary hearing.
- Supplementary Report paragraphs 23 to 29 replace coverage of the Onshore Wind Policy Statement discussed at paragraph 2.72 of the PI Report.
- Supplementary Report paragraph 31 sets out that, since the adoption of NPF4, paragraphs 2.82 to 2.89 of the PI Report (discussing NPF3 and SPP) no longer apply and that since NPF4 now forms part of the development plan, paragraphs 2.90 to 2.92, which relate to the Planning Authority's Highland-Wide Local Development Plan, require to be updated.

At paragraph 104 the Reporter reconfirms the recommendation that Scottish Ministers should grant consent and deemed planning permission, subject to conditions recommended in the original PI Report.

**Summary of the Consultation Responses and Representations**

Chapter 1 of the PI Report summarises the consultation responses and the representations made in respect of the Application. Paragraphs 6 to 22 of the Supplementary Report sets out the main points made by parties who attended the supplementary hearing, on the effect of NPF4, OWPS and the draft Scottish Energy Strategy and Just Transition Plan, in respect of the proposed Development.

Public representations and consultation responses are available on the Energy Consents website at www.energyconsents.scot

Statutory Consultees

**The Planning Authority object** to the proposed Development stating it is contrary to policies within the Highland-wide Local Development Plan due to the significant adverse visual effects including impacting that of tourism, road and recreational users and the impact on the qualities surrounding the Wild Land Area 28 (Fisherfield – Letterewe – Fannichs) ("WLA 28") and Wild Land Area 29 (Rhidodoroch – Beinn Dearg

– Ben Wyvis) ("WLA 29"). The Planning Authority further state the proposal would not preserve the natural beauty of the area surrounding the application site.

The main points made by the Planning Authority at the supplementary hearing, are set out at paragraphs 12-19 of the Supplementary Report. The Planning Authority maintain their objection.

**HES** do not object. They advise that the proposed Development does not raise issues of national significance in respect of their historic environment interests.

**SEPA** do not object. They initially objected to the proposed Development due to the adverse impacts on peat including the design of part of the access tracks, lack of bunding provided in the design of the proposed battery storage and lack of restoration profile for the proposed borrow pits. Following submission of the SEI they withdrew elements of their objection but maintained their objection in respect of the location of Turbine 7.

Following submission of the AI, which relocates turbines 5 and 7 into areas of shallower peat, SEPA withdrew its remaining objection.

SEPA also advise, in addition to the conditions required to control borrow pit restoration and the final details of the proposed battery storage, that conditions for Micro-siting and Peat Management Plan would also be required.

The Scottish Ministers have attached conditions within Annex 2, which give effect to SEPA's recommendations.

**NatureScot** do not object. Although they initially objected to the proposed Development due to the significant adverse effects on WLAs 28 and 29 due to the turbine lighting they withdrew their objection, following submission of the AI, advising that the revised aviation lighting strategy, which reduced the number of visible lights proposed, would not significantly affect the qualities of either WLA. NatureScot advised that if a Transponder Activated Lighting Scheme ("TALS") could be agreed upon, it would likely further reduce the effects on WLA 28 and 29.

Internal Scottish Government advisors

**Marine Scotland Science("MSS")** welcome the consideration of fish movement requirements in the design of the proposed watercourse crossings, the 50m buffer between infrastructure and all watercourses, the proposed regular visual inspections of watercourses which will be carried out by the appointed Ecological Clerk of Works ("ECoW"), and the use of sustainable drainage principles. MSS advise that conditions should be imposed for robust integrated water quality and fish population monitoring in accordance with their guidance.

**Scottish Forestry** request conditions to secure compensatory planting, commensurate to the 16.6 ha net area of woodland loss associated with the proposed

Development, and that no tree felling should be permitted until such times as a compensatory planting plan is approved by Scottish Forestry.

**Transport Scotland** advised that conditions should be imposed requiring approval of the abnormal load route on trunk roads, the provision of necessary signage and traffic-control measures by the Company, the provision of wheel washing facilities adjacent to the A835 access, the approval of the design of the trunk road access, the securing of the visibility splay at the access onto the road and approval and implementation of a construction traffic management plan.

The Scottish Ministers have attached conditions within Annex 2, which give effect to the internal Scottish Government advisors' recommendations.

Advisors to Scottish Government

**Ironside Farrar** appraised the Peat Landslide Hazard and Risk Assessment submitted by the Company contained within the EIA Report. Following some revision by the Company, which was recommended by Ironside Farrar, they concluded the Peat Landslide Hazard and Risk Assessment was complete with no further action required.

Other Consultees

**The British Horse Society** do not object. They request that public access, including equestrian access, be considered during the project.

**BT** do not object or consider that the proposed Development would interfere with any current or planned radio networks.

**Crown Estate Scotland** do not object. They confirmed that their assets are not affected by the proposed Development.

**Defence Infrastructure Organisation ("DIO")** do not object (on behalf of the Ministry of Defence), subject to conditions securing the fitting of aviation-safety lighting to the proposed turbines in accordance with Civil Aviation Authority Air Navigation Order 2016 and requiring notification to it of the proposed Development's start and end of construction, maximum height of construction equipment and the latitude and longitude of each turbine.

**Highlands & Islands Airports Limited** do not object subject to the condition that a steady omnidirectional aviation warning light of 200 candela be fitted on the hub height of the turbines.

The Scottish Ministers have imposed conditions within Annex 2, which give effect to Highland & Islands Airports Limited's and the DIO's requirements.

**John Muir Trust object** on the basis of the proposed Development's adverse effects:-

- on the wild land qualities of WLA 28 and WLA 29 and on the A835;

- in combination with Lochluichart Extension 2 (as consented) as well as the negative impacts of the combined visibility with the wind turbines of Corriemoillie, Lochluichart, Lochluichart Extension, and Lochluichart Extension 2;
- on socio-economy arising from the adverse effects on views that would be experienced by visitors; and
- on peat.

The John Muir Trust also object to the proposed micro-siting tolerance as well as raising concerns regarding sufficiency of information provided in the EIA Report relating to the cumulative landscape and visual impact assessment and the assessment of impacts on peat.

**The Joint Radio Company** do not object subject to a condition being imposed which mitigates the proposed Development's impacts on microwave links.

The Scottish Ministers have attached a condition within Annex 2, which gives effect to Joint Radio Company's requirements.

**Kyle of Sutherland District Salmon Fishery Board** do not object.

**Mountaineering Scotland object** to the proposed Development in respect of adverse visual and socio-economic impacts.

**NATS Safeguarding** do not object.

**RSPB Scotland** do not object. They expressed concerns that:-

- the survey methods used in the EIA Report resulted in an underestimate of impact on bird species;
- the cumulative impact with Lochluichart Extension 2 on golden eagle, red-throated diver and black grouse should have been considered;
- positive habitat management for golden eagle should be included as mitigation of effects on that species;
- monitoring data on red-throated diver should have been presented in the EIA Report;
- the potential impact on black grouse, and that habitat enhancement should be required to mitigate potential impacts; and that
- turbines and associated infrastructure should not be located on peat depths of greater than 0.5 metres to minimise greenhouse-gas emissions from disruption to peatland.

RSPB recommend conditions be imposed prohibiting construction taking place during bird breeding or lekking season, requiring a Habitat Management Plan ("HMP") be submitted and approved in writing and requiring the appointment of a qualified Ecological Clerk of Works ("ECoW")

The Scottish Ministers have considered RSPB's recommendations in conjunction with the EIA Report, SEI, AI, the PI Report and Supplementary Report as well as other consultation responses and representations and have imposed conditions to secure the provision of species protection plans, an ECoW and a HMP.

**Scottish Water** do not object.

**Scotways object** to the proposed Development on the basis that public access has been insufficiently considered (as a consequence of an incomplete portrayal of the recreational baseline presented in figure 4.4 of the EIA Report) and on the basis of the Company's proposal to block public access along a right of way during the construction period.

**Visit Scotland** do not object to the proposed Development. They strongly recommend any detrimental impact of the proposed Development on tourism be identified and considered in full.

Community Councils

**Garve & District Community Council** do not object.

**Strathpeffer Community Council** do not object to the proposed Development subject to due care being given to addressing local concerns regarding appearance and impact on local wildlife and the environment of the area. They reference their expectation that the Company should provide a community-benefit fund.

A summary of the consultation responses regarding the proposed Development are set out in pages 12 to 17 of the PI Report and pages 2 to 4 of the Supplementary Report have been taken into account in the determination of the Application.

Consultees that did not respond

Civil Aviation Authority, Cromarty District Salmon Fisheries Board, Cromarty Firth Fisheries Trust, Scottish Wild Land Group, Scottish Wildlife Trust, Ardgay and District Community Council, Contin Community Council, Lochbroom Community Council, Loch Carron Community Council, Marybank, Scatwell and Strahconon Community Council and Torridon and Kinlochewe Community Council.

## Summary of Public Representations

The Scottish Ministers received a total of 444 representations, 440 intimations in support of the Application and 4 in objection. A summary of the public representations is set out at paragraph 1.42 to 1.43 (pages 16 – 17) of the PI Report and have been taken into account in the determination of the proposed Development.

The supporting representations state the following benefits in summary:

- Benefits to the community and region from funding, investment and employment.
- Economic diversification from tourism.
- Indirect benefit to supply chain of goods and services for the proposed Development.
- Benefit of power generation for 50,000 homes annually.
- Low cost of renewable energy as compared to other forms of generation.
- Wind power - a form of generation that will not run out.
- No pollution such as acid-rain gases, carbon dioxide or particulates
- Saving 101,000 tonnes of carbon-dioxide emissions a year.
- The need to build renewable-generation capacity to mitigate climate change and meet treaty commitments and the urgency of doing so.
- The need for community energy self-sufficiency.
- Improvement of the UK's energy security
- Reduced need for expensive new nuclear-power stations and their consequent generation of radioactive waste.
- Public support for wind power.
- Overemphasis on aesthetic emptiness of landscape.
- Appropriateness of proposed setting – little detriment arising from the proposed Development to the surrounding area.
- Aesthetic appeal of wind turbines.

The reasons for objection can be summarised as:-

- The vagueness of the Application, including the turbine numbers.
- The appropriateness of siting such large turbines onshore and the precedent set by permitting such a development, particularly for the repowering of neighbouring windfarms.
- The adverse landscape and visual effects of the proposed Development, including effects arising from:
    - the sensitivity of the approach to Loch Broom, Beinn Dearg and the Fannichs in landscape and visual terms;
    - the prominence of the proposed location;
    - the proximity to the A835 road and the sensitivity arising from its association with the North Coast 500 tourist route ("NC500");
    - the contrast of the turbines to their moorland backcloth in many views;
    - the cumulative effects with the existing cluster of turbines and with the consented Lochluichart Extension 2 and failure properly to consider cumulative effects with the latter;
    - the impact of turbine lighting; and
    - the impact on views from Beinn Dearg, the Fannichs, Ben Wyvis and Little Wyvis.
- The adverse effects on WLAs 28 and 29.
- The adverse effects on tourism, including on the NC500, and consequent adverse economic effects.

- The adverse effects on wildlife, including sea eagles, golden eagles and other species.
- The unreliability and intermittency of renewable energy.

The Scottish Ministers have considered the matters raised in the consultation responses and in the representations made to them on the Application and are satisfied, having taken into account the EIA Report, the SEI, AI, the PI Report and Supplementary Report that the environmental impacts of the proposed Development have been appropriately assessed and largely mitigated by design.

Having considered chapter 5 of the PI Report and the recommendations of the Reporter for conditions to be imposed, as set out at appendix 2 of the Report, the Scottish Ministers are satisfied that the conditions imposed by them at Annex 2 of this decision letter are necessary and reasonable, having regard to the proposed Development's likely impacts, the mitigation required in respect of those impacts and which take account of the recommendations and advice from consultees as summarised above.

The remaining impacts, mainly landscape and visual impacts, are considered to be acceptable in light of the overall benefits of the proposed Development. This reasoning is set out in more detail under the heading "Assessment of Determining Issues" at pages 13 through to 18 of this decision letter.

## The Scottish Ministers' Considerations

### Legislation and Environmental Matters

Scottish Ministers have had regard to the matters set out in Schedule 9 of the Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. Scottish Ministers shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

In accordance with section 36(5A) of the Act, before granting any section 36 consent Scottish Ministers are also required to:

- obtain SEPA advice on matters relating to the protection of the water environment; and
- have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

SEPA's advice has been obtained and considered as required by section 36(5A) with due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

SEPA have no objection to the proposed Development.

Scottish Ministers are satisfied that the EIA Report, the SEI and the AI have been produced in accordance with the EIA Regulations. Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the environmental information, EIA Report, SEI, AI, representations, consultation responses including those from NatureScot, SEPA, HES and the Planning Authority, and the PI Report and Supplementary Report into consideration in reaching their decision.

Scottish Ministers consider that there is sufficient information to allow Scottish Ministers to be satisfied that the Company has had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites, buildings or objects.

Scottish Ministers are satisfied that the proposed Development would not have any adverse effect on fisheries or to stock of fish in any waters.

Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and the EIA Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representation on the proposed Development.

**Main Determining Issues**

Having considered the Application, the EIA Report, SEI, AI, responses from consultees and third parties, the PI Report, the Supplementary Report and Scottish Government policies, Scottish Ministers consider that the main determining issues are:

- the landscape and visual effects (including cumulative) and effects on the wild land qualities of WLAs 28 and 29 of the proposed Development;
- the benefits of the proposed Development, including its renewable energy generation and net economic impact; and
- the extent to which the proposed Development accords with Scottish Government policies, the development plan and other relevant guidance.

## Assessment of the Determining Issues

### Landscape and Visual effects and effects on WLAs including cumulative effects

The Planning Authority object to the proposed Development on the grounds of its adverse visual impacts, with road users including tourists on the A835 and recreational users of the outdoors, primarily hill walkers, being affected. They argue that there would be significant visual effects not only at the six viewpoints acknowledged by the Company but also at five other hill-summit viewpoints and on a viewpoint in the Fairburn designed landscape. The Planning Authority consider the Company understates the magnitude of impact at most of these locations.

A summary of the position on agreed matters between the Applicant and the Planning Authority in respect of the landscape and visual impacts of the proposed Development is included at Chapter 3 of the PI Report. A summary of the Planning Authority's position on Landscape and Visual assessment at inquiry is set out in paragraphs 3.20 - 3.30 of Chapter 3 of the PI Report.

NatureScot initially objected to the proposed Development due to significant adverse effects at night on the qualities of WLAs 28 and 29 with regard to turbine lighting. Following provision of the AI which included an updated landscape and visual assessment (including (i) assessment of the revised layout, (ii) updated cumulative assessment, and (iii) assessment of a reduced aviation lighting scheme) NatureScot withdrew their objection, agreeing with the overall conclusion of the AI that the reduced aviation lighting substantially reduces the number of visible lights proposed compared to the original, and would not significantly affect the qualities of WLA 28 or WLA 29 after dark. A summary of their position is set out in paragraphs 3.31 – 3.34 of Chapter 3 of the PI Report.

NatureScot maintained their advice that the proposed Development would result in significant landscape and visual effects during the day for wild-land qualities 1 and 3 of WLA 29 as the turbines would be larger and closer to WLA 29 than the existing cluster and there would also be a significant adverse effect on one of the qualities of WLA 28 during the day due to the extension of the existing cluster and increase in prominence of turbines due to their height. They further stated that there would be a significant effect on a stretch of approximately 12 km of the A835 as the proposed turbines would compete with the framed views to the east of Ben Wyvis and Little Wyvis.

Dr Hedger, a participant at the PI, raised concerns in respect of the impact that the proposed Development would have on the character of the location at Wester Ross and the receptors travelling on the A835 (a key tourism route) including the effects of the proposed Development's aviation lighting.

The Reporter considers the landscape and visual impacts in Chapter 3 of the Report. The Reporter's conclusions on landscape and visual effects are detailed in paragraph 3.47 – 3.117 of Chapter 3 of the PI Report (pages 47 – 61).

Effects on Landscape Designations and Landscape Character

The Reporter considers effects on landscape designations and landscape character through paragraphs 3.48 to 3.53 of the PI Report finding at paragraph 3.49 of Chapter 3 of the PI Report that *"The proposed Development's visibility in the Wester Ross NSA* (National Scenic Area) *would be limited in extent, distant and partial".*

The Reporter also considers at paragraph 3.51 of Chapter 3 of the PI Report that although the proposed Development would have a number of significant effects on visual receptors within the Fannichs, Beinn Dearg and Glencalvie Special Landscape Area ("SLA") *"the proposed Development would be visible over only a relatively small proportion of the area".*

The study area provided in the landscape and visual impact assessment within the EIA Report contains a total of forty-six distinct landscape character types. A total of eleven would be subject to views of the proposed Development and were therefore included in the assessment. It is noted that the Reporter and the Planning Authority agree with the findings of the EIA Report in respect of the significance of effects on Landscape Character Areas ("LCAs") in that there would be significant effects on landscape character in the following Ross and Cromarty ("RCY") LCAs:

- RYC2 Undulating Moorland – Strath Bran unit;
- RCY4 Rocky Moorland – Loch Luichart unit; and,
- RCY7 Rounded Hills – Dornoch Firth/Loch Fannich unit

The Scottish Ministers agree with the Reporter that the proposed Development would not have significant effects on the Wester Ross NSA and that the significant effects on some of the visual receptors within the Fannichs, Beinn Dearg and Glencalvie SLA do not overall undermine the special qualities for which the area is designated. The Scottish Ministers also agree that although there are significant effects on 3 LCAs, as identified above, there would not be significant effects on other LCAs surrounding the proposed Development, as set out in Technical Appendix 4.4 of the EIA Report.

The Scottish Ministers consider that the effects on landscape character and landscape designations, including on the NSA, are acceptable.

Effects on Visual Amenity

The significance of the visual effects of the proposed Development, including the effects of aviation lighting and the effects on wild land areas, are considered by the Reporter at paragraphs 3.54 to 3.117. The Reporter agrees with the assessment presented in the EIA Report which identifies that there would be significant effects experienced at viewpoint ("VP") 1 (Aultguish Inn), VP 2 (Old Drove Road), VP 5 (Sgurr Marcasaidh), VP 15 (Meall a Ghrianain), VP 17 (Loch Glascarnoch) and VP 19 (Little Wyvis). The Reporter also considers, contrary to the assessment in the EIA Report, that there would also be significant visual effects at VP 6 (Ben Wyvis) due to the high

sensitivity of the viewpoint as a receptor and at VP 13 (An Coileachan) due to the character of the wind turbines in comparison with the existing cluster.

Scottish Ministers agree with the Reporter that the proposed Development is likely to have significant effects on visual amenity from a number of locations, including on views from a number of neighbouring hills and on A835 road users.

Within paragraph 3.86 of the PI Report the Reporter considers that *"the proposed aviation lighting would compound an existing, somewhat disconcerting, effect on drivers on the A835 from the appearance of existing aviation lights against a dark background at an unexpected location off the road"* but that this would not be a significant degree of effect from the existing baseline.

The Scottish Ministers acknowledge that the proposed Development would add to the overall night-time lighting effects but agree with the Reporter that these effects are not unacceptable.

Effects on WLAs 28 and 29

At paragraph 3.99 of the PI Report the reporter acknowledges that within WLA 28 the proposed Development would *"increase the prominence of the cluster, but the effect on wild land is already established by the views of the existing cluster".* The Reporter concludes they *"do not consider the adverse effect would be greatly increased by the addition of the proposed development."*

Scottish Ministers note at paragraph 3.98 of the PI Report the Reporter agrees with NatureScot that there would be some significant effect on the VPs and wildness qualities within WLA 29. At paragraph 53 of the Supplementary Report the Reporter advises, in the context of Policy 4(g) of NPF4, that the effects of the proposed Development on WLA 29 are not now a significant consideration in determination of the Application.

The Scottish Ministers agree that there will be some significant effects on wild land qualities with WLA 29.

The Scottish Ministers have taken into account the EIA Report, responses from consultees and third parties, the SEI, the AI, the PI Report and Supplementary Report alongside the Reporter's considerations and subsequent conclusions. The Scottish Ministers accept and agree with the Reporter's conclusions regarding the significance and extent of landscape and visual effects of the proposed Development and adopt them for the purpose of their own decision. The Scottish Ministers are satisfied that the significant adverse landscape and visual effects, the proposed Development will have, are acceptable in the context of the net economic benefits and substantial renewable energy benefits, in support of climate change mitigation, which will arise if the proposed Development is deployed.

**Benefits of the Proposed Development**

Contribution to Renewable Energy Policy Objectives

The seriousness of climate change, its potential effects, and the need to cut carbon dioxide emissions, remain a priority of the Scottish Ministers. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 introduced a target of net zero greenhouse gas emissions by 2045 at the latest. Scotland will also have to reduce emissions by at least 75% by 2030 and 90% by 2040. Scotland's Climate Change Plan 2018-2032 sets out the road map for achieving those targets and has set the goal of 50% of Scotland's energy needs to be met by renewable energy by 2030. The Climate Change Plan Update ("CPPu") was published in December 2020 and sets out the Scottish Government's approach to deliver a green recovery and pathway to deliver world leading climate change targets.

The Scottish Ministers consider that this proposed Development, with a generating capacity of up to 81.6 MW, will make a valuable contribution towards meeting greenhouse gas emission reduction and renewable electricity targets.

The carbon payback figures for the proposed Development have been presented in appendix 13.1 of the EIA Report using the approved Scottish Government carbon calculator. Use of the carbon calculator with best estimate values, based on available information and applying the conservative 'Grid Mix' replacement scenario, indicates the proposed Development will pay back the carbon emissions associated with its construction, operation and decommissioning in 2.3 years. The Scottish Ministers note the estimated payback period does not take account of the reduction in peat disturbance from the adjustments to development design in the SEI and AI. The Scottish Ministers are content that the proposed Development will provide carbon savings, and that these savings will be of an order that weighs in favour of the proposed Development.

The Scottish Ministers are satisfied the proposed Development will make a valuable contribution to Scotland's renewable energy, electricity and emissions reductions targets and agree with the Reporter that these are *"substantive considerations that weigh in favour of the proposed development."*

Economic Effects

The Reporter sets out their consideration and conclusion on the economic effects of the proposed Development in Chapter 4 of the PI Report finding that overall, the proposed Development would have a net economic benefit both locally and for Scotland.

The transition to a low carbon economy is an opportunity for Scotland to take advantage of our natural resources to grow low carbon industries and create jobs. The Company sets out in their planning statement that the proposed Development would generate employment, particularly during the construction phase. The capital expenditure is stated to be approximately £82 million (excluding the potential for battery storage). The Company state they have established a local suppliers database

and would work with Highlands and Islands Enterprise and the local Chamber of Commerce to ensure local enterprise have an opportunity to bid for contracts.

Whilst the overall net economic benefits are estimations of the effects of the proposed Development, Scottish Ministers are satisfied the proposed Development has the potential for positive net economic benefits both for the local community, The Highlands and Scotland.

**Accordance with Scottish Government Policies and the Development Plan**

Scottish Energy Strategy and Onshore Wind Policy Statement

The Scottish Government's Energy Strategy and the Onshore Wind Policy Statement ("OWPS") set out targets for the increase in the supply of renewable energy. The OWPS in particular reaffirms the vital role for onshore wind in meeting Scotland's energy targets. The statement sets out the Scottish Government's position for the ongoing need for more onshore wind development in locations across Scotland where it can be accommodated. OWPS also seeks to maximise the benefits from onshore wind to ensure that Scotland's citizens have access to affordable, low carbon and renewable energy whilst tackling the climate and nature crises in tandem.

National Planning Framework 4

NPF4 was adopted by Scottish Ministers on 13 February 2023. NPF4 sets out the spatial principles and by applying these, the national spatial strategy will support the planning and delivery of sustainable places, liveable places and productive places. The national spatial strategy acknowledges that meeting the climate ambition will require rapid transformation across all sectors of our economy and society. It states that this means ensuring the right development happens in the right place. NPF4 recognises that every decision on future development must contribute to making Scotland a more sustainable place.

NPF4's energy policy (policy 11) sets out its intent to support proposals for all forms of renewable technologies, including wind farms. Matters that are to be addressed in the design and mitigation of a development include impacts (as well as cumulative) on communities and individual dwellings; significant landscape and visual impacts; historic environment; biodiversity; trees and woodlands; public access; aviation and defence interests; telecommunications and broadcasting; road traffic; water environment; decommissioning of developments and site restoration. Energy policy requires that in considering these impacts, significant weight will be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets.

The policies within NPF4 require to be read as a whole and considered and balanced when reaching a decision on applications for wind energy development.

The Supplementary Report, considers the new OWPS as well as the relevant provisions of NPF4 for the proposed Development. The Reporter concludes, as

originally concluded in paragraph 6.17 of the PI Report, that the proposed Development accords overall with national planning policy (as now set out in NPF4).

The Development Plan

At paragraphs 77 to 80 of the Supplementary Report the Reporter sets out that the development plan now comprises NPF4, the Highland-wide Local Development Plan ("HWLDP"), the West Highlands and Islands Local Development Plan ("Westplan") and supplementary guidance, including the Planning Authority's Onshore Wind Energy Supplementary Guidance ("OWESG").

The Reporter originally concluded, at paragraph 6.17 of the PI Report, that the proposed Development accords with the development plan overall. At paragraph 103 of the Supplementary Report the Reporter reaffirms their conclusion that the proposed Development accords overall with the development plan, including national policy as set out in NPF4.

The Scottish Ministers have taken account of the Reporter's policy assessment at Chapter 6 of the PI Report as well as the assessment of the proposed Development against the new policy context at paragraphs 23-103 of the Supplementary Report and agree the proposed Development is supported by both Scottish Government policies and national and local planning policies, and adopt this reasoning for the purposes of their own decision.

## The Scottish Ministers' Conclusions

### Reasoned Conclusions on the Environment

The Scottish Ministers are satisfied that the EIA Report, the SEI and the AI have been produced in accordance with the EIA Regulations and that the procedures regarding publicity and consultation laid down in those Regulations have been followed.

The Scottish Ministers have fully considered the EIA Report, responses from consultees and third parties, the SEI and the AI, the PI Report and Supplementary Report alongside the Reporter's considerations and subsequent conclusions and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed and have taken the environmental information into account when reaching their decision.

Taking into account the above assessment, subject to conditions to secure environmental mitigation, the Scottish Ministers consider the environmental effects of the proposed Development are mostly overcome with the exception of some significant adverse landscape and visual effects as well as adverse effects on some of the qualities of WLA 29.

The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion addresses the likely significant effects

of the proposed Development on the environment. The Scottish Ministers are satisfied that this reasoned conclusion is up to date.

**Acceptability of the proposed Development**

As set out above, the seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, are a significant priority for the Scottish Ministers. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the "2019 Act") sets a target for Scotland to be carbon-neutral, meaning net-zero $CO_2$, by 2045 at the latest. Additionally, the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

Scotland's renewable energy and climate change targets, energy policies and planning policies are all material considerations when weighing up this proposed Development. NPF4, the Energy Strategy, and the OWPS make it clear that renewable energy deployment remains a priority of the Scottish Government. This is a matter which should be afforded significant weight in favour of the proposed Development.

The Scottish Ministers consider that the proposed Development, if deployed, would create net economic benefits and deliver valuable renewable energy benefits that would support climate change mitigation and are wholly in accordance with Scottish Government's climate change ambitions. These benefits however must be considered carefully in the context of the negative impacts on the natural environment that would result and whether or not, on balance, they are acceptable.

The Scottish Ministers acknowledge that the proposed Development will have significant adverse landscape and visual effects, including adverse effects on WLA 29. However, the Scottish Ministers find that the negative impacts on the environment are acceptable in the context of the renewable energy benefits, in support of climate change mitigation, and the net economic benefits that would arise if the proposed Development were deployed.

The Scottish Ministers therefore consider that the Application for consent under section 36 of the Electricity Act 1989 for the construction and operation of Kirkan Wind Farm, located within the Strathvaich Estate in the planning authority area of The Highland Council, should be approved.

**The Scottish Ministers' Determination**

As set out above the Scottish Ministers have considered fully the Reporter's findings and their reasoned conclusions, including their reasoned conclusion on the likely significant effects of the proposed Development on the environment, and adopt them for the purposes of their own decision.

The Scottish Ministers agree with the Reporter's recommendation that section 36 consent should be granted for the construction and operation of Kirkan Wind Farm, and that a direction deeming planning permission to be granted should be given for the proposed Development.

Subject to the conditions set out in **Annex 2 - Part 1**, the Scottish Ministers **grant consent** under section 36 of the Electricity Act 1989 for the construction and operation of Kirkan Wind Farm, in The Highland Council planning authority area as described in **Annex 1**.

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

**Section 36 consent and expiry of Planning Permission**

The consent hereby granted will last for a period of 30 years from the earlier of: i) the date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; or ii) the date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.

Section 58(1)(a) of the Town and Country Planning (Scotland) Act 1997 requires where planning permission is deemed to be granted, that it must be granted subject to a condition that the permission will expire if has not begun within a period of 3 years. Section 58(1)(b) of that Act enables the Scottish Ministers to specify that a longer period is allowed before planning permission will lapse. The Scottish Ministers consider that due to the constraints, scale and complexity of constructing such Developments, a 5-year time scale for the Commencement of development is typically appropriate.

The Scottish Ministers consider that 3 years is not to apply with regard to the planning permission granted above, and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction, unless the development to which the permission relates is begun before the expiry of that period. A condition has been imposed stating that development must be begun within 5 years beginning with the date on which the permission is deemed to be granted and if development has not begun at the expiration of that period, the planning permission will lapse in terms of section 58(3) of the Town and Country Planning (Scotland) Act 1997.

In accordance with the EIA Regulations, the Company must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality in which the land to which the application relates is situated.

Copies of this letter have been sent to the public bodies consulted on the Application including the Planning Authority, NatureScot, SEPA and Historic Environment Scotland. This letter has also been published on the Scottish Government Energy Consents website at http://www.energyconsents.scot

Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by

which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts:

https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours faithfully,

PP *Nikki Anderson*

**For Ruth Findlay**
**For and on behalf of the Scottish Ministers**
**A member of the staff of the Scottish Government**

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|---|---|
| Annex 1 | Description of Development; |
| Annex 2 | (Part 1) Conditions attached to section 36 consent and<br>(Part 2) Conditions attached to Deemed Planning Permission; |
| Annex 3 | Site Layout |

**ANNEX 1**

**Description of the Development**

The construction and operation of a wind-powered generating station with an installed capacity of over 50 MW known as Kirkan Wind Farm situated within the Strathvaich Estate, approximately 5.8km northwest of Garve in the administrative area of The Highland Council. The Ordnance Survey grid reference for the Site is 236196E, 867757N. The site of the wind farm and location and layout of the proposed development within the site are shown edged red in Annex 3 of this decision.

The Development includes:

- 17 three-bladed horizontal-axis wind turbines with a maximum blade tip height not exceeding 175 metres;
- Associated turbine foundations, turbine hard-standings and crane pads;
- Up to two permanent meteorological masts and associated hard-standing areas;
- Site tracks;
- Operations-control building;
- Substation compound and modular energy-storage facility;
- Telecommunications equipment;
- 2 borrow working areas;
- Underground electricity cables; and
- Associated works/infrastructure

**ANNEX 2**

**Part 1 - Conditions attached to the Section 36 consent.**

## 1. Notification of Date of First Commissioning and Final Commissioning

(1) Written confirmation of the Date of First Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

(2) Written confirmation of the Date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

***Reason:*** *To allow the Planning Authority and Scottish Ministers to calculate the date of expiry of the consent.*

## 2. Commencement of Development

(1) The Development shall be commenced no later than 5 years from the date of this consent, or such other period as the Scottish Ministers may direct in writing.

(2) Written confirmation of the intended Date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority as soon as is practicable after deciding on such a date and in any event no later than three weeks prior to the Commencement of Development.

***Reason:*** *To ensure that the consent is implemented within a reasonable period and to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

## 3. Assignation

(1) This consent shall not be assigned, alienated or transferred without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignation (with or without conditions) or refuse the assignation.

(2) In the event that the assignation is authorised, the Company shall notify the Planning Authority and Scottish Ministers in writing of principal named contact at the assignee and contact details within fourteen days of the consent being assigned.

(3) The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with this condition.

***Reason:*** *To safeguard the obligations of the consent if transferred to another company.*

## 4. Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Development causing harm to the environment (including harm to humans) during the period of this consent, written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

***Reason:*** *To keep the Scottish Ministers informed of any such incidents which may be in the public interest.*

## 5. Civil Aviation Lighting

(1) No wind turbines shall be erected until a scheme for visible-spectrum aviation lighting has been submitted to and approved in writing by the Scottish Ministers following consultation with the Civil Aviation Authority. The lighting scheme shall:

(a) identify the turbines to be fitted with visible spectrum lighting;
(b) provide the specifications of the visible spectrum lighting;
(c) set out further steps to be taken to seek necessary consents for an aircraft-proximity-activated lighting system; and
(d) in the event of the necessary consents being forthcoming, specify details of any aircraft proximity activated lighting system that may be installed.

(2) The scheme shall be implemented as approved.

***Reason:*** *In the interests of aviation safety.*

## Part 2 - Conditions of Deemed Planning Permission

### 6. Commencement of Development

(1) The Development must be begun not later than the expiration of 5 years beginning with the date of permission.

(2) Written confirmation of the intended date of commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

**Reason:** *To comply with section 58 of the Town and Country Planning (Scotland) Act 1997.*

### 7. Redundant Turbines

(1) If one or more wind turbines fails to generate electricity for a continuous period of 6 months, then unless otherwise approved in writing by the Planning Authority, the Company shall:

(a) Within one month of the expiration of the 6-month period, submit a scheme to the Planning Authority setting out how the relevant wind turbine(s) and associated infrastructure will be removed from the site and the ground restored; and
(b) Implement the approved scheme within 9 months of the date of its approval, all to the satisfaction of the Planning Authority.

***Reason:*** *To ensure that any redundant wind turbine is removed from site, in the interests of safety, amenity and environmental protection.*

### 8. Decommissioning

(1) The Development shall cease to generate electricity by no later than the date falling 30 years from the Date of Final Commissioning and shall be decommissioned. The total period for decommissioning and restoration of the Site in accordance with this condition shall not, without the prior written approval of the Scottish Ministers in consultation with the Planning Authority, exceed three years from the date from which the Development ceases to generate electricity.

(2) No development shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to and approved in writing by the Planning Authority.

(3) Not less than 24 months before the expiry of the operational period, a detailed decommissioning, restoration and aftercare plan, based upon the principles of

the approved decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the Planning Authority. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of works and environment-management provisions.

(4) The Development shall be decommissioned, the site restored, and aftercare undertaken in accordance with the approved plan.

**Reason:** *To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

## 9. Financial Guarantee

(1) No wind turbine foundations shall be put in place until details of the financial provisions to be put in place to cover the full cost of decommissioning and site restoration under condition 8 have been submitted to, and approved in writing by, the Planning Authority. Following such approval, documentary evidence shall be provided to the Planning Authority to confirm these provisions are in place. The provisions must be kept in place until site decommissioning and restoration is complete in accordance with condition 8.

(2) The value of the financial provision shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations approved under the terms of condition 8. The value of the financial provision shall be reviewed by a suitably qualified independent professional every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations.

**Reason:** *To ensure sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.*

## 10. Micrositing tolerance

(1) Subject to this condition, all wind turbines, buildings, masts, borrow pits, areas of hardstanding and tracks shall be constructed in the locations shown on Annex 3 of the decision letter ("the Site Layout Plan"). Wind turbines, buildings, masts, borrow pits, areas of hardstanding and tracks may nevertheless be micro-sited within the Site, though no such elements of the development may be located more than 50 metres from the position shown in the Site Layout Plan. Unless otherwise approved in advance in writing by the Planning

Authority (in consultation with SEPA and NatureScot), micro-siting is subject to the following restrictions:

(a) No micro-siting shall take place with the result that infrastructure (excluding floating tracks or hardstanding) has a greater overall impact on peat volumes than the original location;
(b) No micro-siting shall take place into areas hosting Ground Water Dependent Terrestrial Ecosystems; and
(c) With the exception of water-crossings, no element of the proposed development shall be located within 50 metres of any watercourse.

(2) No later than one month after the date of Final Commissioning, an updated Site Layout Plan shall be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development. The plan shall also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

**Reason:** *to control environmental impacts while taking account of local ground conditions.*

## 11. Construction and Environmental Management Plan

(1) No development shall commence until a Construction and Environmental Management Plan ("CEMP") has been submitted to and approved in writing by the Planning Authority. The required documents shall include the following:

(a) Site Waste Management Plan;
(b) Sustainable drainage system (SuDS) design concept including run-off and sediment control measures; and flood-risk management during both the construction and operational phases of the development;
(c) Dust-management and cleaning arrangements for the site entrance, including wheel-washing facilities to be provided adjacent to the access from the A835(T);
(d) Pollution-prevention and -control measures;
(e) Arrangements for on-site storage of fuel and other chemicals;
(f) Details of foul-drainage arrangements;
(g) Details of temporary site illumination;
(h) Details of any watercourse-engineering works including any stream crossings, which shall include provision of oversized bottomless culverts or single-span bridges designed to accommodate a 1-in-200-year peak flow (plus an allowance for climate change) and allow mammal passage for the nine new water crossings;

(i) Details of the methods to be adopted to reduce the effects of noise occurring during the construction period in accordance with BS5228;
(j) Post-construction restoration/reinstatement of the working areas;
(k) Spoil-management plan, including management of any peat generated from site works;
(l) Peat-Management Plan;
(m) Details of the mineral working areas and restoration proposals;
(n) Details of the construction works, constructions methods and surface treatment for all hard surfaces and tracks;
(o) Method of construction of the crane pads;
(p) Method of construction of the turbine foundations;
(q) Method of working cable trenches;
(r) Method of construction and erection of the wind turbines and meteorological masts;
(s) Details of temporary site compounds including areas designated for offices, welfare facilities, fuel storage and car parking;
(t) Water-Quality Management Plan;
(u) Species-Protection Plan(s);
(v) Habitat-Specific Protection Plans for wet dwarf shrub heath and blanket bog;
(w) Details for the submission of a quarterly report summarising work undertaken at the site and compliance with the conditions imposed under the Deemed Planning Consent during the period of construction and post-construction reinstatement; and
(x) Method for managing surface water through the construction period.

(2) The CEMP shall thereafter be implemented as approved.

**Reason:** *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA Report accompanying the application, or as otherwise agreed, are fully implemented.*

**12. Construction-Traffic Management**

(1) No development shall commence until a Construction-Traffic Management Plan (CTMP) has been submitted to, and approved in writing by, the Planning Authority in consultation with Transport Scotland.

(2) The CTMP shall include arrangements for establishing a community-liaison group to discuss the arrangements for the delivery of all road and construction-traffic mitigation measures required for the development. This should include, but not be limited to, traffic-management arrangements:

(a) to be in place during any roadworks associated with the development;
(b) for the operation of local roads during delivery of abnormal loads; and
(c) identification of contact arrangements between the community-liaison group and the Company/developer during the construction of the development.

(3) Prior to commencement of deliveries to site, the proposed route for any abnormal loads on the local- and trunk-road networks and any accommodation measures required (including the removal of street furniture, junction-widening, and traffic management) must be approved in writing by the relevant road's authority.

(4) During the delivery period of the wind-turbine-construction materials, any additional signing or temporary traffic-control measures necessary due to the size or length of any loads being delivered or removed must be undertaken by a traffic-management consultant whose appointment shall be approved by Transport Scotland and the Planning Authority before delivery commences.

(5) Development shall not be commenced unless the proposed means of access to the trunk road has been submitted to and approved in writing by the Planning Authority. No deliveries shall be made to the site for other purposes until the approved access has been implemented.

(6) Visibility splays shall be provided and maintained on each side of the access to the A835. These splays must be triangles of ground bounded on two sides by the first 4.5 metres of the centre line of the access driveway (the set-back dimension) and the nearside trunk-road carriageway for 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road, unless otherwise agreed in writing with the Planning Authority. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2 metres positioned at the set-back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

(7) The works shall thereafter be carried out in accordance with the approved CTMP.

**Reason:** *To ensure road safety. To ensure that transportation will not have any detrimental effect on the road and structures along the route. To minimise interference with the safety and free flow of the traffic on the local and trunk roads. To minimise adverse impacts on residents and local businesses in the area. To ensure that vehicles entering or exiting the site access an undertake the manoeuvre safely and that the standards of access layout complies with current standards.*

## 13. Ecological Clerk of Works

(1) An ecological clerk of works (ECOW) shall be appointed to supervise all works of construction, decommissioning and restoration within the application site. The identity and terms of appointment of the ECOW shall be submitted to and approved in writing by the Planning Authority. An ECOW shall be employed for the periods of:

(a) The Development's construction, including preparation, micro-siting and post-construction restoration; and
(b) The Development's decommissioning and site restoration.

(2) In relation to (a), the terms of appointment shall be submitted prior to the commencement of the development, and in relation to (b), prior to the commencement of any decommissioning works.

(3) The terms of appointment shall require the ECOW to:

(a) Carry out pre-construction surveys to inform the CEMP required in terms of condition 11; and
(b) Impose a duty to monitor the development's compliance with the ecological and hydrological commitments provided in:-

i. the EIA Report and other information lodged in support of the application,
ii. the CEMP approved in condition 11; and
iii. the Habitat-Management Plan approved in accordance with condition 14 ("the ECOW Works").

(c) Report to the Company's nominated construction project manager any incidences of non-compliance with planning conditions at the earliest practical opportunity;
(d) Submit a monthly report to the Planning Authority summarising works undertaken on site and incidences of micrositing in accordance with Condition 10; and
(e) Report to the Planning Authority at the earliest practical opportunity any incidences of non-compliance with the conditions attached to this deemed planning permission with particular regard to: -

i. the ecological and hydrological aspects of the CEMP required in terms of condition 11;
ii. the Habitat-Management Plan required in terms of condition 14; and

iii. the decommissioning and site-restoration method statement required in terms of condition 8.

**Reason:** *to secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the development.*

**14. Habitat-Management Plan**

(1) No development shall commence until a Habitat-Management Plan ("HMP") following the principles set out in the Outline Habitat-Management Plan submitted as part of the EIA Report at Technical Appendix 6.6 has been submitted to and approved in writing by the Planning Authority.

(2) The HMP shall set out proposed habitat management of the site during the period of construction, operation, decommissioning, restoration and aftercare, and shall provide for the maintenance, monitoring and reporting of habitat on site.

(3) The HMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the habitat plan objectives. In particular, the approved HMP shall be updated to reflect ground-condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted for the written approval of the Planning Authority in consultation with NatureScot and SEPA.

(4) Unless otherwise approved in advance in writing by the Planning Authority, the approved HMP shall be implemented in full.

**Reason:** *In the interests of the protection and improvement of the habitats of those species identified in the EIA Report.*

**15. Construction Hours and Timing**

(1) The hours of operation of the construction phase of the development hereby permitted shall be limited to 0700 hours to 1900 hours on Monday to Friday, and 0800 hours to 1700 hours on Saturdays and Sundays unless previously approved in writing by the Planning Authority.

(2) Outwith these hours, development at the site shall be limited to turbine delivery and erection, commissioning, maintenance and pouring of concrete foundations (provided that the developer notifies the planning authority of any such works within 24 hours if prior notification is not possible). In addition,

access for security reasons, emergency responses or to undertake any necessary environmental controls is permitted outwith these hours.

**Reason:** *In the interests of local amenity.*

**16. Appearance of Turbines**

(1) No turbines shall be erected until details of the external colour and finish of the proposed turbines have been submitted to, and approved in writing by, the Planning Authority. The approved details shall be implemented. The turbines shall be maintained in good condition.

(2) The height of the turbines shall not exceed an overall height from base to blade tip of 175 metres.

**Reason:** *To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbines assessed in the EIA Report and in the interests of the visual amenity of the area.*

**17. Appearance of Ancillary Structures**

(1) No work shall commence on the erection of the control building, substation and or ancillary infrastructure until details of their location, layout, external appearance, dimensions and the surface materials of all buildings, compounds, parking areas, as well as any external lighting (excluding aviation lighting), fencing, walls, paths, surface-water drainage infrastructure (including provision of attenuation volumes for surface water and run-off rates limited to existing greenfield run-off rates) and any other ancillary elements of the development, have been submitted to, and approved in writing by, the Planning Authority.

(2) The approved details shall thereafter be implemented.

**Reason:** *In order to secure an appropriate appearance in the interests of amenity and to assimilate the buildings and other infrastructure into the landscape setting.*

**18. Aviation**

(1) Prior to the erection of the first wind turbine, the developer shall provide written confirmation to the Ministry of Defence of:

(a) the anticipated date of commencement of, and completion of, construction;
(b) the height above ground level of the highest structure in the development; and

(c) the position of each wind turbine in latitude and longitude.

**Reason:** *In the interests of aviation safety.*

**19. Noise**

(1) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions. Furthermore:-

(a) Where there is more than one dwelling at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. In the event of a noise complaint relating to a dwelling which is not identified by name or location in Tables 1 and 2 attached to these conditions, the Company shall submit to the Planning Authority, for written approval, proposed noise limits to be adopted at the complainant's dwelling for compliance checking purposes. The submission of the proposed noise limits to the Planning Authority shall include a written justification of the choice of limits. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the planning authority for the complainant's dwelling.

(b) No electricity shall be exported on a commercial basis to the grid until the Company has submitted to the Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.

(c) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the Company shall, at its expense, employ an independent consultant approved by the Planning Authority to assess the rating level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component:

i. Within 14 days of receipt of a written request from the Planning Authority, the Company shall provide the Planning Authority with the information relevant to the complaint logged in accordance with paragraph (f) of this condition.
ii. The independent consultant's assessment must be undertaken in accordance with the procedures described in the attached Guidance Notes and must relate to the range of conditions which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request from the planning authority and such other conditions as the independent consultant considers necessary to fully assess the noise at the complainant's property.

(d) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions within 2 months of the date of the written request of the Planning Authority, unless the time limit is extended in writing by the Planning Authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the Planning Authority on the request of the Planning Authority. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

(e) Where a further assessment of the rating level of noise immissions from the wind farm is required to assess the complaint, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment to the Planning Authority unless the time limit for the submission of the further assessment has been extended in writing by the Planning Authority.

(f) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). This data shall be retained for a period of not less than 24 months. The Company shall provide this information in the format set out in Guidance Note 1(e) to the Planning Authority on its request, within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a "dwelling" is a building within Use Classes 7 or 9 of the Use Classes Order, which lawfully exists or had planning permission at the date of this consent.

**Reason:** *In the interests of residential amenity*

**20. Advertisement on Infrastructure**

None of the wind turbines, anemometers, power-performance masts, switching stations or transformer buildings / enclosures, ancillary buildings or above-ground fixed plant shall display any name, logo, sign, lighting (with the exception of aviation lighting) or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the Planning Authority.

**Reason:** *In the interests of the visual amenity of the area.*

**21. Access-Management Plan**

(1) There shall be no Commencement of Development until an Access-Management Plan has been submitted to and approved in writing by the Planning Authority. The plan shall detail:
   (a) any areas subject to access restrictions during the construction period;
   (b) alternative access provision during the construction period and associated mitigation; and
   (c) proposals for recreational access during the operational phase of the wind farm.

(2) The plan as approved shall be implemented in full, unless otherwise agreed in writing with the Planning Authority.

**Reason:** *In the interests of ensuring public access and securing access rights throughout the construction and operation of the wind farm.*

**22. Borrow Pits – Scheme of Works**

(1) No borrow pit shall be opened up until a site-specific scheme for the working and restoration of each borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority. The scheme shall include:

   (a) Rock testing undertaken on appropriate samples from the two borrow pits to determine its suitability for unbound track and hardstanding construction;
   (b) A detailed prioritisation plan for all borrow pits on site which shall provide detail on which borrow pits are required or likely to be worked and the sequence in which they will opened up;
   (c) A detailed working method statement based on site survey information and ground investigations;
   (d) Details of the handling of any overburden (including peat, soil and rock);

(e) Drainage, including measures to prevent surrounding areas of peatland, and Groundwater-Dependent Terrestrial Ecosystems (GWDTE) from drying out;
(f) A programme of implementation of the works described in the scheme; and
(g) Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period, to include topographic surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles.

(2) The approved scheme shall thereafter be implemented in full.

**Reason:** *To ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Impact Assessment Report accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit(s) at the end of the construction period.*

**23. Borrow Pits – Blasting**

(1) No blasting shall take place until such time as a blasting method statement has been submitted to and approved in writing by the Planning Authority. The method statement shall include details of measures required to minimise the impact of blasting on residential dwellings in the vicinity of the site. The scheme shall include:

(a) Details on ground vibration limits at agreed blast monitoring locations; and
(b) Limitations on blasting to between the hours of 10.00 to 16.00 Monday to Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on national public holidays, unless otherwise approved in advance in writing by the planning authority.

(2) Thereafter the approved scheme shall be implemented.

**Reason:** *To ensure that blasting activity is carried out within defined timescales to control impact on amenity and in accordance with best current practice.*

**24. Water Quality and Fish Population Monitoring**

(1) There shall be no Commencement of Development until an integrated hydrochemical and macroinvertebrate scheme for water-quality monitoring and monitoring fish populations during construction has been submitted to and approved in writing by the Planning Authority. This shall include, but not necessarily be limited to:

(a) Frequency of monitoring during the construction period, not less than once a month;
(b) Reporting mechanism to the planning authority, Marine Scotland and SEPA being not less than quarterly during the construction period; and
(c) Proposed method for agreeing any mitigation required.

(2) Thereafter, any mitigation identified shall be implemented.

**Reason:** *In the interests of water-quality management and protection and enhancement of the water environment.*

**25. Forestry Impacts Management Plan**

(1) Prior to the commencement of development, a scheme encompassing the commitments made at rows 2.1 to 2.5 of Table 14.1 of the EIA Report must be submitted to and approved in writing by the Planning Authority in consultation with Scottish Forestry.

(2) The Scheme shall apply to all felling associated with the Development and shall be implemented in full, unless otherwise agreed in writing by the Planning Authority and Scottish Forestry.

**Reason:** *To ensure safe and environmentally-sound forestry-management practices and to secure replanting and protect Scotland's woodland resources in accordance with the Scottish Government's policy on the Control of Woodland Removal.*

**26. Radio Network**

Erection of turbines shall not commence until a scheme for microwave-link mitigation, approved in writing by Joint Radio Company on behalf of SSE Networks, has been submitted to the Planning Authority.

**Reason:** *To prevent interference with radio systems.*

**27. Programme of Archaeological Works**

(1) No ground-breaking works shall commence on site unless and until the terms of appointment of an independent Archaeological Clerk of Works ("ACoW") have been submitted to, and approved in writing by, the Planning Authority.

(2) The scope of the ACoW's appointment shall include monitoring compliance with the archaeological scheme of mitigation and programme of works that shall be

submitted to and approved in writing by the planning authority before any works take place on site.

(3) The programme of works shall include, but not be restricted to the measures set out in the Schedule of Mitigation in section 5 of Table 14.1 of the EIA Report.

(4) The ACoW shall be appointed on the approved terms from Commencement of Development, during any period of construction activity and during any period of post-construction restoration works approved under condition 8.

(5) No later than eighteen months prior to decommissioning of the Development or the expiry of the Section 36 consent (whichever is the earlier), details of the terms of appointment of an independent ACoW throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for approval.

**Reason:** *To secure effective monitoring of and compliance with the archaeological mitigation and management measures associated with the development.*

**28. Energy-Storage Facility**

(1) No work shall commence on the erection of the energy-storage facility until details of its layout, dimensions, external appearance, landscaping (including bunding) and drainage (including provision of attenuation volumes for surface water and run-off rates limited to existing greenfield run-off rates) are submitted to and approved in writing by the Planning Authority.

(2) The approved details shall thereafter be implemented.

**Reason:** *To ensure that the environmental impacts of the energy storage facility conform to the impacts assessed in the EIA Report.*

**29. Military Aviation Lighting**

(1) Prior to the erection of any wind turbine generators, or the deployment of any construction equipment or temporary structure(s) 50 metres or more in height (above ground level) the Company must submit an aviation infra-red lighting scheme for the approval of the Planning Authority in consultation with the Ministry of Defence defining how the development will be lit throughout its life to maintain military aviation-safety requirements. This should set out:

(a) Details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed

during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with; and

(b) the locations and heights of all wind turbine generators in the development identifying those that will be fitted with infra-red aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used.

(2) The scheme shall be implemented as approved.

**Reason:** *In the interests of aviation safety.*

**30. Private-Water-Supply Method Statement**

(1) No development shall commence unless and until a private-water-supply method statement and monitoring plan in respect of private water supplies has been submitted to, and approved in writing by, the Planning Authority.

(2) The detail of the private-water-supply method statement must detail all mitigation measures to be taken to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of the section 36 Consent and which may be affected by the Development.

(3) The private-water-supply method statement shall include water-quality sampling methods and shall specify abstraction points.

(4) The approved private-water-supply method statement and monitoring plan shall be implemented in full, unless otherwise agreed in writing by the Planning Authority.

(5) Monitoring results obtained as described in the private-water-supply method statement shall be submitted to the Planning Authority on a quarterly basis or on request during the approved programme of monitoring.

**Reason:** *To maintain a secure and adequate-quality water supply to all properties with private water supplies which may be affected by the Development.*

**Guidance notes for condition 19**

These notes are to be read with and form part of condition 19, the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

**Guidance note 1.**

(a) The LA90,10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the Company shall submit for the written approval of the planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second and wind

direction in degrees from north for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the planning authority, such as direct measurement at a height of 10 metres, this wind speed, averaged across all operating wind turbines, and corrected to be representative of wind speeds measured at a height of 10 metres, shall be used as the basis for the analysis. It is this 10-metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

**Guidance note 2.**

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in paragraph (c) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10-minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90,10\ minute}$ noise measurements and corresponding values of the 10- minute 10- metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the 10- metre height mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

**Guidance note 3.**

(a) Where noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal

component, a tonal penalty is to be calculated and applied using the following rating procedure.

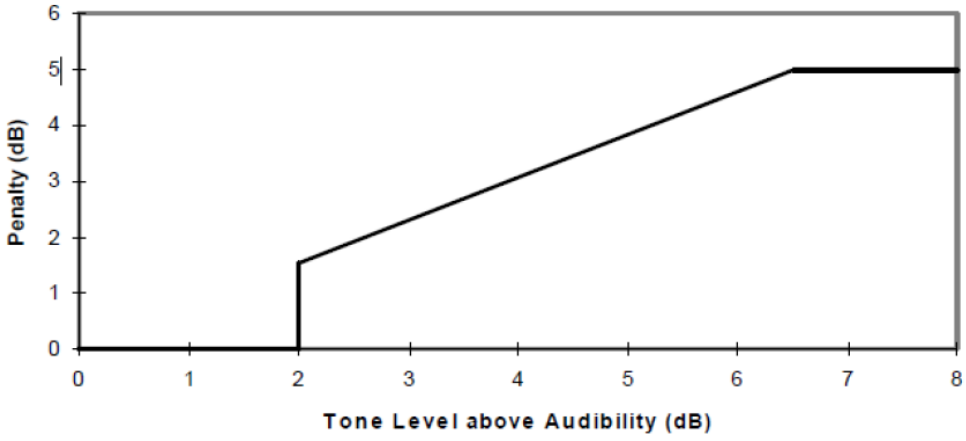
(b) For each 10-minute interval for which LA90,10-minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(c) For each of the 2-minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.

(e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.




**Guidance Note 4**

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of

the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the planning authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (d) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The Company shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the planning authority in its written request under paragraph (c) of the noise condition.

(f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log\left[10^{L_2/10} - 10^{L_3/10}\right]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

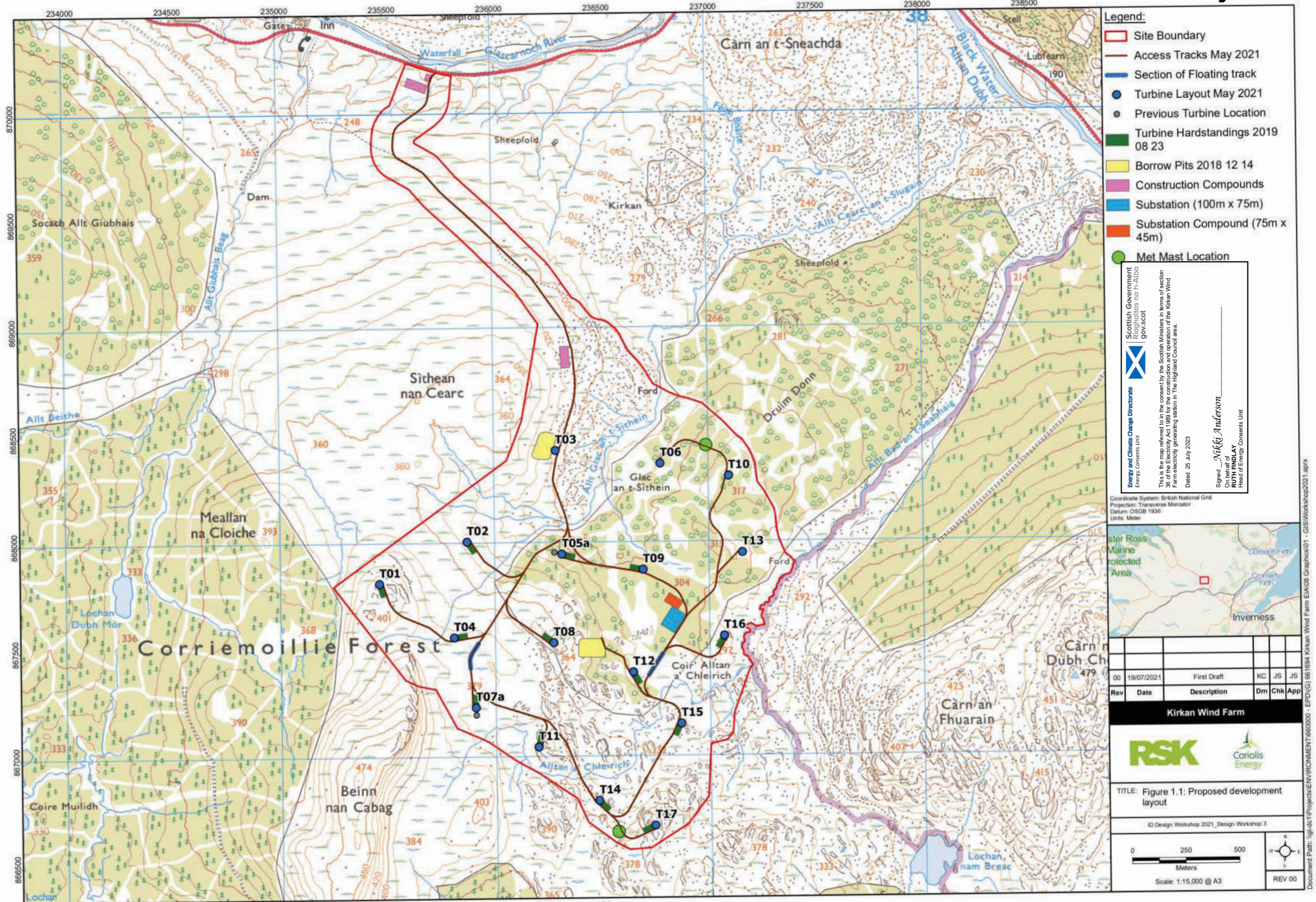
(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (d) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (d) of the noise condition then the Development fails to comply with the conditions.

**Definitions in this consent and deemed planning permission:-**

| Definitions | |
|---|---|
| **Application** | Means the application for section 36 consent made to Scottish Ministers on 29 March 2019. |
| **Consent** | Means the consent granted under section 36 of the Electricity Act 1989 to construct and operate the generating station, which forms part of the Development, and any reference to Consent shall not be taken to include the deemed planning permission unless otherwise stated. |
| **Commencement of Development** | Means the initiation of any development pursuant to the consent and/or the deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997 but excluding the Permitted Preliminary Works. |
| **Company** | Means Kirkan Wind Farm Limited (Company Number 09172025) having its registered office at 22-24 King Street, Maidenhead, Berkshire, SL6 1EF, or in substitution its permitted assignees who are in possession of a letter of authorization from the Scottish Ministers in accordance with Condition 3. |
| **Development** | Means the wind-powered generating station and ancillary development located within the Site as described in Annex 1. |
| **EIA Report** | Means the Environmental Impact Assessment Report in respect of the Development submitted on 29 March 2019. |
| **Final Commissioning** | Means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling thirty six months from the date of Commencement of Development. |
| **First Commissioning** | Means the date on which electricity is first exported to the grid on a commercial basis from any of the wind turbines forming part of the Development. |
| **HES** | Means Historic Environment Scotland |

| | |
|---|---|
| **Permitted Preliminary Works** | Means (i) any site investigation or other preparatory works or surveys which do not involve breaking ground and/or which are required for the purpose of satisfying or discharging any pre-commencement obligations under the planning conditions, and (ii) the provision of any temporary contractors' facilities within the Site which are necessary for (i) above |
| **Planning Authority** | Means the Highland Council or any successor. |
| **Planning Permission** | Means the deemed planning permission for the Development as described in Annex 1 granted by direction under section 57 of the 1997 Act. |
| **Public Holiday** | Means:-<br><br>• New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January.<br>• 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January.<br>• Good Friday.<br>• Easter Monday.<br>• The first Monday in May.<br>• The first Monday in August.<br>• The third Monday in September.<br>• 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day.<br>• Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December.<br>• Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December. |
| **SEPA** | Means the Scottish Environment Protection Agency |
| **Site** | Means the area of land delineated by the outer edge of the red line on the Site Layout Plan provided at Annex 3. |

# Annex 3 - Site Layout



**NOTICE OF DECISION**

**ELECTRICITY ACT 1989**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017**

As directed by regulation 23(4) of the Electricity Works (Environmental Impact Assessment) (Scotland) 2017, Notice is hereby given that **Kirkan Windfarm Limited** has been granted consent by Scottish Ministers to construct and operate **Kirkan Wind Farm**, in the planning authority area of The Highland Council.

Scottish Ministers have also directed, under Section 57 (2) of the Town & Country Planning Act (Scotland) 1997, that planning permission is deemed to be granted for the development described in the decision letter.

Copies of the decision statement and related documentation can be obtained on the Energy Consents website www.energyconsents.scot

The development comprises 17 wind turbines, associated infrastructure and supporting development.

Copies of the decision letter and related documentation have been made available to **The Highland Council** to be made available for public inspection by being placed on the planning register.

**Scottish Government / 25 July 2023**