



Appeal Decision Notice

Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2289
- Site address: land 1185 metres west of Knotty Wood Cottage, Farr, IV2 6XF
- Appeal by Scottish Hydro Electric Transmission plc against the decision by Highland Council
- Application for planning permission 21/04728/FUL dated 5 October 2021 granted subject to conditions by notice dated 29 May 2023
- The development proposed: construction of tracks to access the Knocknagael-Tomatin 275 kV overhead line (in retrospect)
- Application drawings listed in schedule 1
- Date of site visit by Reporter: 12 October 2023

Date of appeal decision: 7 December 2023

Decision

I allow the appeal and grant planning permission subject to the 2 conditions listed in schedule 2 to this decision notice.

Preliminary

The council issued a screening opinion finding that the proposed development, although falling within schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, was not likely to have a significant effect on the environment. I accept that the development as proposed would not be likely to have a significant effect on the environment in terms of those regulations.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Fourth National Planning Framework (“NPF4”), the Highland-Wide Local Development Plan (HWLDP) and the Inner Moray Firth Local Development Plan. No policies in the latter have been drawn to my attention as relevant to the development. The council has found that the development accords with the development plan, though it took that position on the basis of imposition of the conditions that are the subject of dispute in this appeal.

2. The proposal is for retrospective planning permission to be granted for retention of three tracks, numbered 1 to 3. The tracks were established for the construction of the Knocknagael-to-Tomatin 275 kV overhead line. The tracks associated with the construction of the overhead line were described as temporary in the description of development for the overhead line. I understand that the appellant is making the application to retain track 1 beyond the time it was envisaged to be required for the overhead line’s construction. I understand the council’s view to be that tracks 2 and 3 were built outside the limits of

deviation permitted in the deemed planning permission associated with the consent for the overhead line, and that they therefore were not lawful development. The appellant has not disputed the council's position in the present appeal. I proceed on the basis that planning permission is required for their retention.

3. This is an appeal in respect of the conditions imposed on the grant of retrospective permission by the council. The appellant is appealing in respect of the council's conditions 1, 2, 4 and 5. The reasons given for these conditions or their main requirements indicate that they relate to the protection and monitoring of the Blar Buidhe private water supply (PWS) (though protection of the PWS is not the sole reason given for condition 2). Condition 1 requires approval and implementation of a deer-, livestock- and carrion-management plan, including deer fencing to prevent access to the Blar Buidhe private water supply by deer. Condition 2 requires the approval of an access-management plan, including details of a link between the existing track to tower 20 and Strathnairn, and its implementation. Conditions 4 and 5 are intended to require approval and implementation of, respectively, water-quality and water-quantity monitoring strategies, including provision for monitoring of the Blar Buidhe PWS. There is an error in condition 5 which leaves its actual meaning somewhat uncertain, though monitoring of water quantity was evidently intended. Conditions 4 and 5 are stated to be "in the interests of amenity and protection of the water environment."

4. In addition to protection of the Blar Buidhe PWS, condition 2 is said to be in the interests of securing enhanced public access.

5. This appeal is concerned solely with the retrospective grant of permission for tracks 1, 2 and 3. The tracks for which permission was sought do not comprise the entire network of tracks built for the construction of the overhead line, but only a portion of it. The appeal is not concerned with any issue arising from the construction of tracks or other infrastructure for which permission is not being sought in this process. A number of objectors have raised issues that relate or could relate to such other development. Insofar as issues raised arise from development other than that for which the application was made, I have no jurisdiction to address them.

6. Circular 4/1998 on conditions sets out the six policy tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. Circular 4/1998 is a key material consideration in the present appeal.

Evidence of direct impact of the development on the private water supply to Blar Buidhe

7. The impact of proposed development on a private water supply is plainly a material planning consideration. I have not been directed to any development-plan policy that deals expressly with the protection of private water supplies. I agree with the council, though, that the protection of such supplies is an implicit requirement of the design policies in the development plan, including HWLDP policy 28 and NPF4 policy 14.

8. It is accepted by parties that the effect of proposed development on private water supplies is to be assessed in accordance with guidance from the Scottish Environment Protection Agency (SEPA). The guidance is provided in its guidance note 31 on the land-use-planning system (LUPS31). This deals with the assessment of impacts of development proposals on groundwater abstractions. The note requires qualitative and/or quantitative risk assessment to be provided in support of an application that is within 250 metres of a groundwater abstraction if the infrastructure requires an excavation of more than a metre.

The guidance indicates that SEPA does not object to developments involving an excavation of less than a metre if they are more than 100 metres from the abstraction. If the excavation is to be more than a metre, SEPA requires applicants to provide a detailed qualitative and/or quantitative risk assessment. For SEPA not to object, the risk assessment must demonstrate that the proposals will not have a significant impact on the flow and quality of the groundwater feeding the abstraction.

9. Tracks 1 and 2 are far from Blar Buidhe. Track 3 is in two parts. The main part is not within 250 metres of any part of the Blar Buidhe PWS. There is a separate 15-metre section, though, about 230 metres east-northeast of the Blar Buidhe PWS abstraction. The excavation for that section of track is reported in the appellant's environmental report of 4 October 2021 to have been less than a metre deep. If this is so, then it would follow from the LUPS31 guidance that SEPA would not have considered more detailed assessment was required before its construction. The plans provided for the existing track indicate that it would not have required excavation to a depths of more than a metre in the section within 250 metres of the Blar Buidhe PWS. When I visited the site, it did not appear to me at all likely that excavations for this section of track would have been deeper than a metre (or anywhere close to it). It follows that risk assessment of the development's impact on the source would not have been required, had a prospective application been made for it. SEPA was consulted on the application and did not suggest that risk assessment should have been required. In an email dated 13 December 2021, SEPA stated that the relevant buffer had been applied between the track for which permission is sought and the PWS abstraction.

10. Notwithstanding this, Natural Power, the appellants' consultants, provided a desktop assessment in the environmental report of 4 October 2021 and then a further "opinion" on 22 June 2022. These examined the effect on the Blar Buidhe PWS abstraction of the development for which permission is sought. They were similar in their findings, though the opinion addressed the question of whether the PWS abstraction might have been affected by construction of the 15-metre section of track (the desktop assessment only considered the effect the retention of that track could have).

11. The opinion found that the relative acidity of the water and the micro-organisms in the water made it likely that there is limited interaction between the water recharging the spring and the bedrock. It found (as the previous assessment had) that this suggests a quickly recharging surface-water system sustained primarily from upslope areas from rainfall runoff and more gradual shallow groundwater throughflow. Further, it found it likely that the spring supplying the PWS abstraction is formed by the convergence of groundwater and surface-water flows caused by the shape of the catchment. Natural Power's conclusion was that it is likely only groundwater from upgradient areas of the catchment would contribute to the spring's recharge. It concluded that there was no evidence of a deeper bedrock groundwater system that might have been affected by excavation for the track. The opinion's conclusion (like that of the desktop assessment) was that the risk arising from retention of the 15-metre section of track was remote.

12. The opinion indicates that it was unlikely that failures in water quality in the Blar Buidhe PWS could be attributed to "development infrastructure"¹, since there had not been construction in upslope areas of the catchment. The opinion goes on to point out that the

¹ It is not clear whether the opinion here refers to the 15-metre section of track within 250 metres of the PWS abstraction for which retrospective permission is sought, or refers more generally to works carried out by the appellant in association with the overhead line. I understand that objectors dispute whether all elements of infrastructure related to the overhead line was in fact downslope of the PWS abstraction. It is clear, though, that the 15-metre section of track 3 to which the appeal relates is downslope of the PWS abstraction.

failures in water quality from the PWS abstraction are not those that would be expected from construction activities. The effects that might be expected from construction activities include increases in pH from cement and dissolution of crushed rock, turbidity from silt run-off, nitrate from felling, unusual trace metals not present in the local geology, and other increases in chemicals, hydrocarbons and other pollutants. None of these were present in the samples.

13. The opinion went beyond this, to consider the possible cause of the variation in the quantity and quality of water from the spring supplying the PWS. It gave the view that, since rainfall is the primary input, there is a high potential for variations in weather to influence the quantity and quality of water at the abstraction. It suggested that long periods of dry weather in late spring and summer 2018 with intervals of abrasive summer rainfall on dry hardened ground would result in high levels of solute and debris mobilisation. This was consistent with the presence of pathogenic bacteria found in the samples of July and November 2018. The report indicated that microbiological contamination was a specific water-quality issue for water supplies utilising overland flow or recently infiltrated water. Such contamination would typically be filtered out of groundwater naturally.

14. The opinion and previous assessment were accepted by the council's environmental health officer and SEPA, neither of whom objected to retrospective permission being granted.

15. The objectors make a number of points:

- They argue that the track for the overhead line and tower 18 and a ditch associated with tower 18 were established unlawfully and that, had both been built as approved, they would not have been within 250 metres of the PWS abstraction point. Had it been known they would be built within 250 metres of the PWS abstraction point, risk assessment would have been required.
- They point out that the overhead line's construction environment management plan (CEMP) included an error, in stating that no PWS abstraction had been identified within 250 metres of any proposed tower or within 100 metres of any proposed access track.
- They appear to question the finding in the appellant's assessment and opinion that rainfall, rather than groundwater, is the primary source of recharge of the spring.
- They argue that the most accurate and appropriate method of assessing any impact on groundwater flow is a rigorous campaign of pre-construction and post-construction monitoring. They argue that that should have happened according to the overhead line's CEMP, but has not happened.
- They criticise the terms of the Natural Power opinion and previous assessment and also the terms in which the environmental health officer and SEPA commented on those. The criticism is on the basis that the opinion and assessment and the comments made on them were couched in language referring to appearance and probability rather than certainty.

16. As I have set out, I have no basis for considering the effect of any development other than the construction and retention of the tracks for which permission is sought. I therefore have no regard, in considering the effect of the development for which permission is sought, to the effect of the construction of any tower of the overhead line or any associated ditch on the Blar Buidhe PWS. I take this position notwithstanding whether they were established unlawfully (as it appears) or not.

17. It is true that, given the unlawfulness of the construction of track 3, the objectors did not have an opportunity to comment on any effect that the track might have on the Blar Buidhe PWS before it was built. But the fact alone that part of track 3 is within 250 metres of the Blar Buidhe PWS does not mean that risk assessment (including baseline monitoring) would have been required in accordance with SEPA's guidance. As I set out above, it is unlikely that risk assessment was required in terms of the guidance.

18. The apparent error in the CEMP for the overhead line as regards the distance of tower 8 (in its final position) and a related excavation from the Blar Buidhe PWS is not relevant to the present appeal. The CEMP was correct that no access tracks (in their final position) were within 100 metres of the Blar Buidhe PWS. As regards the actions listed in the CEMP in respect of private water supplies identified during works, the CEMP only obliged the appellant to take the listed actions "if required". Evidence has not been produced that any of the actions listed in the CEMP were required. In particular, there is no evidence that baseline testing of the Blar Buidhe PWS abstraction would have been required in respect of the construction of tracks more than 100 metres away. The requirement for baseline testing would only apply for activity "that could affect the water supply". Given that the construction of the tracks was outside the 100-metre buffer, I understand from the CEMP that it would not have fallen into the category of activity that could affect the water supply.

19. As the objectors point out, NaturalPower's assessment and opinion and SEPA's and the environmental health officer's consultation responses are couched in language of probability. They do not state as a matter of absolute certainty that the construction of track 3 was not the direct cause of contamination in the Blar Buidhe PWS or that its retention would not be a source of contamination and do not identify any other cause with any certainty. It is entirely proper for experts to express their opinions in such language, if that is how they understand the matter. That does not make those opinions meaningless or of no value. The standard of proof on which I must determine this case is the balance of probability. I am not required have certainty in some absolute sense about every fact that I rely upon. Where necessary, I can consider if precautions are required to address any uncertainty.

20. The Natural Power assessment and opinion set out cogent reasons for believing that there is no hydraulic connection between the Blar Buidhe PWS abstraction and track 3. The opinion also provided evidence that the kind of pollution found in the PWS is not consistent with pollution from construction works. The objectors have not provided any alternative explanation as to how the development for which permission is sought could be the direct cause of the contamination found in the Blar Buidhe PWS. On the balance of the evidence, I find that the construction of the development for which permission is sought was not the direct source of the pollution of the Blar Buidhe PWS and its retention would not be the direct cause of pollution.

The alleged indirect effect of the development on the Blar Buidhe PWS abstraction

21. Objectors have set out a mechanism by which they argue track 3 could be an indirect cause of contamination of the Blar Buidhe PWS. They state that the removal of trees for the overhead line and its associated infrastructure has resulted in an area in which lush vegetation now grows, and that this attracts deer. They claim that use of the access tracks, including track 3, causes the deer to run up into the clearing where the PWS abstraction is located, and that the deer are the source of faecal contamination in the water supply.

22. The objectors have offered no evidence for this indirect effect – it appears to be simply a supposition. The claim was apparently made in response to the Natural Power opinion (and particularly its finding that there was no direct hydrological connection between the PWS abstraction and track 3). It is not clear from the evidence that the removal of trees has made a difference to the immediate context of the PWS abstraction, which was previously in an open area (although the open area is no longer entirely surrounded by commercial forestry). No evidence has been provided of increased deer activity. The residents' own risk assessment, which I understand was prepared to support their objection, itself makes no mention of contamination of the PWS abstraction by wild animals. The track and overhead line had already been built at the time the objection and objectors' risk assessment were produced. This suggests that, at least up to the time the objection was made, no observation had been made that had led to a conclusion on the part of the objectors that such an effect could arise.

23. Taking the objectors' case at its height, I find the objection to relate primarily to the consented overhead line rather than track 3. It was for the overhead line that the wide swathe of commercial forestry was removed. The track was simply ancillary to the line. If track 3 had been proposed on its own, there would have been no need to remove such a wide swathe of forestry. Even if the track were to be removed, the overhead line and the conditions that the objectors claim attract deer would remain (I acknowledge that there is a dispute over the lawfulness of tower 18, but there is no evidence the planning authority intends to take action for its removal, let alone that it is likely the overhead line will have to be removed).

24. The PWS abstraction is, in any case, in an area of commercial forestry. The objectors have not suggested they have any control over the harvesting of the trees. It would seem inevitable that forestry near the PWS would have been felled at some point. Such felling might itself have created the conditions that the objectors say attract deer. Given that the PWS abstraction has existed in the area for over sixty years, it would seem likely that at some point open conditions have existed in its proximity previously.

25. As regards the claim that deer are frightened by users of the track, this may be so. It does not seem especially likely that, when frightened, they would head directly for the catchment of the PWS abstraction in particular. The wood is not so dense at other points that it would prevent a deer entering it.

26. Even when taking a precautionary approach, some evidence is required to establish that a hazard actually exists. I am not persuaded that there is evidence the continued existence of the access track for which permission is sought presents a greater risk of contamination of the PWS by the mechanism the objectors describe than if the access track did not exist.

27. Objectors have also suggested contamination of the PWS abstraction could be caused directly by users of the track or their dogs leaving the track. Although the objectors claim the appellant has conceded the point that track users are likely to be source of contamination, I do not find that to be so on a proper reading of the environmental assessment. Given the likely level of use of the track, the distance from the track to the abstraction point, and the intervening terrain including a post-and-wire fence between the abstraction and the track, I find it unlikely (to put it no higher) that this could be a significant cause of contamination. Although the objectors complain of possible unauthorised use of the track by vehicles, there is no evidence of contamination of the PWS by hydrocarbons.

28. The objectors state that the source has gradually dried out over time since the construction of the track and ascribe that to the construction of the track. The alleged mechanisms of contamination by deer or by track users do not explain why the source would have gradually dried out. In this respect, the Natural Power opinion's suggestion that change could arise from changes in climate fits better.

The objectors' argument that, in respect of the impact of the development on the Blar Buidhe PWS abstraction, the matter speaks for itself

29. John Campbell KC makes the argument on behalf of the objectors essentially that, even if the mechanism of impact of construction of the overhead line and associated tracks on the Blar Buidhe PWS cannot be identified, the matter speaks for itself. He argues that the source was not previously contaminated, following construction it has been contaminated, and that the only thing that could have caused contamination is the construction.

30. The claim that water from the Blar Buidhe PWS was previously always of good quality is not supported by any submitted baseline data. While it is fair to point out, as Mr Campbell does, that no baseline testing was carried out by the appellant, I have already concluded it is unlikely that the SEPA guidance would have required baseline testing by the appellant before the construction of track 3. It is not clear from the objectors' evidence what testing they carried out of the PWS previously or how frequently or with what precise results. Therefore, although there is no reason to disbelieve that the users of the water supply have noticed a decline in the quality and quantity of the water, the exact degree and nature of the decline as compared with the baseline cannot be identified from the evidence.

31. Even taken at its highest, Mr Campbell's argument cannot separate out the effect of construction of track 3 from the effect of construction of other infrastructure associated with the overhead line for which permission is not sought in this appeal. Indeed, the objectors themselves allege that there could be a hydrological connection with other development associated with the overhead line (such as the apparently mislocated tower 18 and its associated ditch). While I make no positive finding on the point, it seems to me that that provides a less unlikely explanation for contamination of the Blar Buidhe PWS than the argument that the construction or retention of track 3 would be the cause. Given that I have found no hydrological connection between track 3 and the PWS abstraction and have rejected the objectors' claim of effect by an indirect mechanism, I find the claim that track 3's construction has caused an effect by some unidentified means implausible. I reject it.

32. There is simply insufficient evidence for me to make any positive finding on what the cause is of contamination or reduction in flow in the Blar Buidhe PWS. It may be that there have been changes in climate affecting the PWS abstraction's catchment that might explain changes in the water quality or quantity as the Natural Power opinion suggests, but there is no conclusive evidence. I see no substantial evidence that would support a finding that the construction or retention of track 3 is the cause.

Whether it is appropriate to impose "safeguarding conditions" as a precaution

33. The objectors argue that, since there was not a risk assessment carried out before development of the track, it is appropriate to impose "safeguarding conditions".

34. In principle, for a precautionary approach to be taken, the evidence should indicate that an effect could occur that precautionary action will prevent. Given that I have found

there is no hydrological connection between track 3 and the Blar Buidhe PWS, I do not find that there is any basis for precautionary action based on any direct effect.

35. The suggested indirect effect by deer or by track users, even if it exists, would not be addressed by conditions 3 and 4, requiring monitoring of water quality or quantity. The conditions require no action to be taken on the basis of any results obtained.

36. As regards condition 1, I find no evidence before me that either livestock or carrion have an effect on the Blar Buidhe PWS that they would not already have had before construction of the development. I accept that the erection of deer fencing around the catchment of the PWS extraction would be a precautionary measure that would minimise any effect that might arise from the presence of deer by the mechanism described. Given the absence of evidence that such an effect does in fact occur and the remoteness of the possibility that there could be a significant effect, I do not consider that requiring such works as a precaution would be reasonable. Similarly, in respect of condition 2, given how unlikely it is that users of the track would have a significant effect on the quality of water in the PWS, I do not consider it is appropriate to impose a condition requiring an access-management strategy to be approved and implemented for this purpose.

Adverse interactions of access-takers using track 3 with established land uses, landform and structures

37. The access track for the overhead line ends at tower 20. It is a fairly short distance, somewhat less than 100 metres, from the end of the track to the Strathnairn road – the minor public road north of the River Nairn. Walking directly from the end of the track to the public road is hard going though, because there is no path and because of the intervening topography, vegetation and the need to cross several fences (including fences around tower 20, evidently under the control of the appellant). One objector, resident at Crask, states that walkers and other access-takers are attracted by the new tracks, but find themselves at a dead end when they get to tower 20. I accept, as the objector claims, that some will use a route through Crask to reach the public road, since it appears one of the easier routes to the road. This, the objector states, can cause conflict with present land uses, including for raising honeybees, and has resulted in damage from access-takers climbing a stone wall. There also appear to me to be other hazards for access-takers who take a more direct route from the end of the track to the public road, resulting from the landform, land cover and intervening structures.

38. The appellant argues that, if access-takers are merely exercising access rights, then this does not present a problem that requires to be resolved. If they are not, the appellant argues, then they are trespassing, and trespass is unlawful conduct and no condition requires to be imposed to resolve it.

39. I disagree. If land is laid out in such a way that it causes people to get into a situation that involves some particular risk (such as having to scale fences or rockfaces or encounter honeybees) or creates a situation where people are likely to trespass, that is – of course – a material planning consideration. NPF4 policy 14(c) provides that development proposals that are poorly designed, detrimental to the amenity of the area or inconsistent with the six qualities of successful places are not supported. Track 3 is quite far from tower 20, but it does form part of the link by which people travel to tower 20 (and therefore find themselves at a dead end there, short of the Strathnairn road). It seems to me that the development for which permission is sought would be poorly designed contrary to NPF4 policy 14(c) if it does not in some way mitigate the effects arising from its carrying access-takers along a

lengthy dead-end path. It is entirely proper for conditions to be imposed on permission to address such a situation.

40. However, the condition imposed by the council (condition 2) requires the provision of a link across land that is not within the appeal site and that the appellant has no control over. That is not a requirement that can validly be imposed by planning condition – it falls outside the terms of what can be done by condition in accordance with the Town and Country Planning (Scotland) Act 1997 sections 37 and 41. Even if this were not so, this element of the condition is unenforceable, since it may be beyond the appellant's power to comply with it.

41. Nonetheless, I consider that the main requirement imposed by the condition, to prepare an access-management plan for approval and then implement it, is a requirement that can properly be imposed. An access-management plan could include requirements to address the difficulties caused by the lack of connection with the public road, perhaps by provision of signage on the track, or provision of gates in fences that the appellant does control, or a commitment to work with landowners in an attempt to provide a connection to the public road.

Assessment of the conditions against circular 4/1998

42. I have not found evidence that would suggest the provision of a deer fence around the Blar Buidhe PWS abstraction is necessary to address any effect of the development or reasonable even as a precaution. The council's condition 1 therefore fails on these tests. Since I have found no direct or indirect mechanism by which the track 3 could have affected or could affect the abstraction, I find no reason for requiring monitoring of water quality or quantity in the Blar Buidhe PWS. Leaving that aside, conditions 3 and 4 provide no mechanism for remedying any failure of quality or quantity found by monitoring, let alone addressing how such a failure might relate to track 3. Therefore conditions 3 and 4 also fail the test of necessity.

43. As regards condition 2, it is invalid and unenforceable in its present form. I have set out how it ought to be amended. A condition simply requiring an access-management plan meets all six of the circular tests. Since I do not consider that the condition is required to protect the Blar Buidhe PWS, I have amended the related reason.

44. The original conditions 2 and 3 as drafted by the council were limited in their enforceability. They both required a plan or scheme (respectively) to be submitted, but did not state what should happen if no such plan or scheme proposed is found to be satisfactory by the planning authority and so no plan or scheme is approved. In prospective permission, these matters would most likely have been dealt with by suspensive conditions. I have therefore in each condition inserted a clause stating that the development should be removed if no plan or scheme is approved within two years. It appears to me that that is an appropriate arrangement for retrospective permission, and broadly equivalent to imposing a suspensive condition on prospective permission. If the appellant disagrees with a refusal by the council of agreement to a plan or scheme under the condition, it has the option of appealing against refusal under section 47(1) of the Town and Country Planning (Scotland) Act 1997.

45. I have made some other minor adjustments to the forestry condition, including removing the requirement to consult Scottish Forestry. The planning authority is entitled to consult who it wishes and does not need to have a requirement placed on it to do so.

Conclusion

46. Overall, I find that, subject to conditions on replacement tree planting and to the condition described on access, the development complies with the development plan and there are no material considerations that would justify refusing planning permission.

Robert Seaton

Reporter

Schedule 1: approved plans

Document title	Document reference	Dated
Haul road section details, sheet 1	1692_OHL 275kV CMA1-CMA2 DWG 0804 1101-01, revision 3	24/05/2017
Haul road section details, sheet 2	1692_OHL 275kV CMA1-CMA2 DWG 0804 1102-01, revision 4	24/05/2017
Drainage details	1692_OHL 275kV CMA1-CMA2 DWG 0804 1111-01, revision 3	
Figure 1a: location plan	LT19_ENV_030_OHL_AP5_T&C_Fig1a	4/10/2021
Figure 1b: supplementary location plan	LT000019_ENV_030_OHL_AP5_T&C_Retro	12/07/2021
Figure 2a: Track 1 layout plan – sheet 1	LT19_ENV_030_OHL_AP5_T&C_Fig1a	14/07/2021
Figure 2b: Track 1 layout plan – sheet 2	LT19_ENV_030_OHL_AP5_T&C_Fig1a	14/07/2021
Figure 2c: Track 2 layout plan	LT19_ENV_030_OHL_AP5_T&C_Fig1a	04/10/2021
Figure 2d: Track 3 layout plan	LT19_ENV_030_OHL_AP5_T&C_Fig1a	04/10/2021

Schedule 2: Conditions

1. Within three months after the date of grant of this planning permission, an access-management plan must be submitted by the appellant for the approval of the planning authority. The plan must relate to access over track 3 (as shown on the plan entitled “Figure 2d: Track 3 layout plan”) and the track to its south (not itself the subject of this appeal) to which track 3 forms a connection from the north, extending south from track 3 to tower 20 of the overhead line with which the track is associated. The plan shall include, in particular, measures to inform access-takers that there is no path connecting the end of the access track by tower 20 of the overhead line and the public road at Strathnairn (for so long as there is no such connection) and other measures to limit the risks arising from the lack of such a path connection. These latter measures might include, for instance, measures to direct access-takers so that they do not enter land to which access rights do not apply, to direct access-takers away from significant natural hazards or hazards arising from established land uses or existing structures or to improve access between the end of the access track and the public road, for instance by inserting gates in fences on land under the appellant’s control or by the appellant seeking agreement with neighbouring landowners to provide a path or gates in fences to improve access to the public road. The access-management plan shall thereafter be implemented in full.

If, two years after grant of this permission, no access-management plan has been approved (and no appeal is ongoing against refusal of such a plan), track 3 shall be removed and the land restored to its former condition. If an appeal in respect of refusal of such a plan’s approval is ongoing at a date two years from the grant of this permission, the time limit in this condition shall be extended to the date of determination of the appeal.

Reason: to improve access to the public and limit risks and inconvenience to access-takers and landowners arising from the current lack of connection for access-takers passing along the approved track to the public road to the south.

2. Within three months of the date of the grant of this planning permission, a woodland planting scheme to compensate for the removal of 0.23 hectares of existing woodland ("the Replanting Scheme") must be submitted for the written approval of the planning authority.

The Replanting Scheme shall include:

- (a) details of the location of the area to be planted;
- (b) the nature, design and specification of the proposed woodland to be planted;
- (c) the phasing and associated timescales for implementing the Replanting Scheme;
- (d) proposals for reporting to the planning authority on compliance with timescales for obtaining the necessary consents and thereafter implementation of the Replanting Scheme; and
- (e) details demonstrating compliance with the UK Forestry Standard and the Scottish Government's Policy on Control of Woodland Removal (as amended or replaced from time to time).

The approved Replanting Scheme shall be implemented in full, unless otherwise agreed in writing by the planning authority.

If, two years after the grant of this permission, no Replacement Scheme has been approved (and no appeal is ongoing against refusal of such a Replacement Scheme), the development shall be removed and the land restored to its former condition. If an appeal in respect of refusal of a Replacement Scheme's approval is ongoing at a date two years from the grant of this permission, the time limit in this condition shall be extended to the date of determination of the appeal.

Reason: To secure replanting to mitigate effects of deforestation arising from the development.