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23 January 2026

Dear Alastair

**REFUSAL UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION AND OPERATION OF KIRKTON ENERGY PARK, IN THE PLANNING AUTHORITY AREA OF THE HIGHLAND COUNCIL**

**Application**

1. I refer to the application made on 9th November 2022 (“the Application”) under section 36 of the Electricity Act 1989 (“the Electricity Act”) by Kirkton Wind Farm Ltd (“the Company”) for the construction and operation of Kirkton Energy Park.

2. The Company is incorporated under the Companies Act with company number SC662410 having its registered office at c/o Wind 2 Limited, 2 Walker Street, Edinburgh, EH3 7LP.

**This letter contains the Scottish Ministers’ decision to refuse the Application.**

**Background**

3. The Application proposed a wind powered electricity generating station called Kirkton Energy Park comprising of 11 wind turbines, each with a ground to blade tip height up to 149.9 metres a battery storage facility and the ancillary development required to construct and operate the generating station.

4. The Company proposed a 30-year operational period.

5. The wind element of the generating station proposed around 52.8 Megawatts (MW) and the battery storage element around 20MW. The above elements comprise “the proposed Development.”

**Additional Information**

6. To address issues raised in responses to the Application consultation, the Company submitted additional information to the Scottish Ministers in October 2023 (“the AI 2023”).

This reflected minor changes made to the Application and dealt with:

- the relocation of turbine 7 and associated crane pad approximately 53 metres north of its original location
- the relocation of a proposed access track to turbines 5 – 11
- the potential effects of the proposed Development on the Outstanding Universal Value of the Flow Country World Heritage Site (FCWHS), (a candidate site at the time)
- updated cumulative assessments regarding landscape and visual, noise, ornithology, traffic, and transport
- more detailed information and assessment of the effects of the proposed Development on the Caithness and Sutherland Peatlands Special Protection Area (SPA), specifically, the habitat management plan measures

An updated planning statement was also provided with the AI 2023.

### **Description of site location and character**

7. The proposed Development was to be located on the western side of Strath Halladale on land approximately 2.1km south of Melvich in Sutherland, within the administrative area of the Highland Council. Strath Halladale is a valley down which the Halladale River flows to enter the Atlantic Ocean at Melvich Bay. The site of the proposed Development (“the Site”) is comprised predominantly of blanket bog and heathland, with areas of grassland and woodland. Most of the proposed Development is located wholly within the Sweeping Moorland and Flows Landscape Character Type (LCT).

8. In addition, there are two smaller areas of land that form part of the proposed Development, one of which would be used as a turning area for abnormal loads being delivered during construction and maintenance. The more easterly of these areas is in the western part of Melvich, in the Coastal Crofts and Small Farms LCT with the more westerly (potential abnormal load turning area) being in the Sweeping Moorland and Flows LCT.

9. East Halladale Flows Wild Land Area (WLA) lies 1.29km to the east of the proposed Development Site.

10. The proposed Development Site is adjacent to the Caithness and Sutherland Peatlands Special Area of Conservation (SAC) and the Caithness and Sutherland Peatlands SPA. The Caithness and Sutherland Peatlands SAC is designated for its upland habitats, marsh saxifrage and for otters. The Caithness and Sutherland Peatlands SPA is designated for various bird species. The Caithness Lochs SPA, designated for Greenland white-fronted geese, greylag geese and whooper swans, is also within theoretical foraging range for the greylag geese associated with this SPA.

11. The proposed Development lies partly within, and adjacent to, the FCWHS. The Application was submitted a couple of months prior to the FCWHS being formally nominated as a candidate World Heritage Site.

12. The FCWHS was nominated under the criteria as an outstanding example, representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals.

13. The Flow Country in Sutherland was inscribed as a UNESCO World Heritage Site in July 2024. The Inscription document contains a statement of the Outstanding Universal

Value (OUV) of the FCWHS, as adopted by the World Heritage Committee.

14. UNESCO consider the FCWHS to have “the most outstanding example of a blanket bog ecosystem in the world” and “the most outstanding example of an actively accumulating blanket bog landscape.”

## **Legislation and Consultation**

15. On 9 November 2022, in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) the Company submitted an Environmental Impact Assessment Report (“the EIA Report”) describing the proposed Development and giving an analysis of its environmental effects. Supporting documents were also submitted, including a Non-Technical Summary of the EIA Report, a Planning Statement, a Design and Access Statement, and a Pre-Application Consultation Report.

16. Under paragraph 2(1) of Schedule 8 to the Electricity Act, and the Electricity (Application for Consent) Regulations 1990 (“the Consents Regulations”) made under the Electricity Act, the relevant planning authority, the Highland Council in this case, is required to be notified in respect of the Application.

17. In accordance with the Consents Regulations and the EIA Regulations, a notice of the proposed Development was advertised in the local and national press and the opportunity given for those wishing to make representations to do so. In addition to consulting with the Highland Council (“the Planning Authority”), the Scottish Ministers, to comply with the EIA Regulations, were required to consult NatureScot, the Scottish Environment Protection Agency (SEPA), and Historic Environment Scotland (HES). A wide range of other relevant organisations were also notified and consulted (“the Application consultation”). The Application consultation was initiated on 21 November 2022.

18. In accordance with Regulation 20 of the EIA Regulations, the AI 2023 was also made available for public inspection. Further notices were published in the Edinburgh Gazette, the application website and in newspapers circulated in the respective local communities informing the public of the AI 2023 and, if they wished to do so, how representations to the Scottish Ministers could be made. The AI 2023 was also made available to those consultees consulted on the Application via a further consultation, initiated by the Scottish Ministers on 24 October 2023 (“the AI 2023 consultation”).

19. The Scottish Ministers are satisfied that the EIA Report and the AI 2023 were advertised and consulted upon in accordance with the requirements of the EIA Regulations.

20. 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 that the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representations on the proposed Development.

## **Public Inquiry**

21. In accordance with paragraph 2(2) of Schedule 8 of the Electricity Act 1989, where the relevant planning authority objects to an application and the objection is not withdrawn the Scottish Ministers shall 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 the objection of the planning authority.

22. The Planning Authority objected to the Application on the basis there would be significant loss of peatland and bog habitat within the FCWHS. The Scottish Ministers did not consider it possible to accede to the Application subject to modifications or conditions as would give effect to the Planning Authority's objection and consequently, a public inquiry was held.

23. A pre-examination meeting was held on 02 August 2024, and oral hearings took place on 20 and 21 November 2024. An accompanied site visit was also undertaken on 20 and 21 November 2024.

### **Public Inquiry Report (“the PI Report”)**

24. The PI Report and its recommendation was submitted to the Scottish Ministers on 18 March 2025.

25. In the PI Report the Reporter takes account of the precognitions, inquiry statements, hearing statements, hearing sessions, the discussion at the public inquiry and the closing submissions. The Reporter also considers the environmental information included in the EIA Report, the AI 2023, consultation responses, representations and all the other information supplied for the inquiry and hearing sessions.

26. The PI Report provides the following headings:

- background (paragraphs 1-19)
- landscape & visual effects (paragraphs 20 – 45)
- effects on residential amenity and the local community (paragraphs 46 – 67)
- recreation & tourism (paragraphs 68 – 82)
- historic environment (paragraphs 83 – 89)
- birds (paragraphs 90 – 112)
- the Flow Country World Heritage Site (paragraphs 113 – 302)
- other effects on biodiversity (paragraphs 303 – 328)
- renewable energy and other benefits of the development (paragraphs 329 – 331)
- other matters for consideration by the Scottish Ministers (paragraphs 332 – 333)
- proposed conditions (paragraphs 334 – 354)
- conclusions and recommendations (paragraphs 335 – 397)

27. The Reporter's overall conclusion is that despite a number of factors being in favour of the proposed Development, they would not outweigh the significant adverse effects on the OUV of the FCWHS.

### **The Reporter's recommendation**

28. The Reporter's recommendation is that consent under section 36 of the Electricity Act 1989 should be refused by the Scottish Ministers.

### **Summary of consultation responses**

29. A summary of the consultation responses received by the Scottish Ministers is provided below. Full consultation responses are available to view on the Energy Consents Unit website: [www.energyconsents.gov.scot](http://www.energyconsents.gov.scot)

### **Statutory consultees**

30. **The Planning Authority** objected to the proposed Development because of the loss of peatland and bog habitat, impacts on peatland and ecosystem processes within the FCWHS and the significant effects on its OUV.

31. **HES** did not object to the proposed Development. In response to the Application consultation, HES advised that although they had concerns about the effects the proposed Development would have on the setting of the Halladale Bridge hut circles scheduled monument, those concerns did not raise historic environment issues of national significance.

32. **NatureScot** objected to the proposed Development because of the significant effect it would have on the OUV of the FCWHS. NatureScot also objected unless conditions were imposed which would mitigate effects on the Caithness and Sutherland Peatlands SAC and the Caithness and Sutherland Peatlands SPA.

33. **SEPA** did not object to the proposed Development subject to the imposition of several conditions including specific micro-siting in respect of wind turbine 7 and appropriate measures to protect and enhance groundwater dependent terrestrial ecosystems, watercourses, and peat across the site. SEPA also provided advice on the Water Environment and Water Services (Scotland) Act 2003.

#### **Advisors to the Scottish Government**

34. **Ironside Farrar** (advisors to the Scottish Ministers on Peat Landslide and Hazard Risk Assessment (PLHRA)) made a few technical comments on the content of the Company's PLHRA which were resolved following clarifications and further information provided by the Company.

35. **Marine Directorate - Science Evidence Data and Digital (MD – SEDD)** advised that electrofishing surveys would be required to fully assess the potential impact on fish populations and requested a condition to secure delivery of a water quality and fish monitoring programme.

36. **Scottish Forestry** requested a condition requiring the Company to develop a compensatory planting plan in line with Scottish Government's Control of Woodland Removal Policy.

37. **Transport Scotland** required conditions relating to abnormal loads, additional signage, and temporary traffic control measures.

#### **Non-statutory consultees who did not object subject to conditions**

38. **Defence Infrastructure Organisation (the Ministry of Defence)** did not object to the proposed Development, subject to a requirement for conditions relating to aviation lighting and aviation charting and safety management.

39. **RSPB Scotland** initially objected to the proposed Development due to concerns regarding a lack of information and assessment of the effects on the Caithness and Sutherland Peatlands SPA. This objection was subsequently withdrawn following the submission of the AI 2023 and subject to requirements for a condition in respect of a habitat management plan.

40. **Mobile Broadband Network Ltd** did not object to the proposed Development on the proviso that wind turbine 1 was not micro-sited more than 20m.

41. **Virgin Media** did not object to the proposed Development on the proviso that wind turbine 1 would not be moved any further to the west of its current location.

42. **Vodafone** did not object to the proposed Development. They advised that as wind turbines 1 and 2 are located close to one of their fixed radio links, a 100m clearance should be applied.

### **Non-statutory consultees who did not object and do not require conditions**

43. Having been consulted, the following consultees raised no objection to the proposed Development and did not require the imposition of any conditions:

- Atkins (on behalf of the Telecommunications Association of the UK Water Industry)
- BT
- Crown Estate Scotland
- Fisheries Management Scotland
- Highland & Islands Airports Limited
- Joint Radio Company
- NATS Safeguarding
- Northern District Salmon Fisheries Board
- Scottish Water

44. Having been consulted, the following consultees did not respond to the consultation:

- British Horse Society
- Caithness West Community Council
- Civil Aviation Authority
- Farr North Community Development Trust
- Flow Country Rivers Trust
- John Muir Trust
- Melvich Community Council
- Melvich Community Scottish Charitable Incorporated Organisation (SCIO)
- Mountaineering Scotland
- Scottish Rights of Way and Access Society
- Scottish Wild Land Group
- Scottish Wildlife Trust
- Strathly & Armadale Community Council
- Visit Scotland

### **Public representations**

45. All public representations submitted to the Scottish Ministers in respect of the proposed Development are available to view in full on the Energy Consents Unit website [www.energyconsents.gov.scot](http://www.energyconsents.gov.scot).

46. The Scottish Ministers received a total of fourteen public representations, nine objecting to the proposed Development and five in support of it.

47. Reasons stated for objecting were as follows:

- landscape and visual impacts on the north coast and Strath Halladale
- cumulative impacts from wind farms and other infrastructure projects in the area

- landscape and visual effects underassessed in the EIA
- impact on East Halladale Flows Wild Land area
- industrialisation of landscape
- damage to peatland and release of carbon
- impacts on the candidate World Heritage Site
- proximity to areas designated for environmental protection
- impact on ornithology and protected bird species
- risk to river habitats and fish species
- impact on residential amenity for properties located in Strath Halladale and properties near turning area B due to visual effects, shadow flicker, noise, dirt, dust, and pollution
- impact on health and wellbeing of residents
- impact on property values
- impacts from proposed turning area B not properly considered in EIA
- impact on crofting land
- increased traffic impacting road users and causing damage to roads
- negative impacts on tourism including accommodation businesses and the North Coast Café
- negative impacts on recreational route users
- negative impacts on users of fishing beats on River Halladale
- net economic effects not properly considered
- the proposed Development is not supported by planning policy and climate change benefits should be given lower weight in the planning balance
- further wind farms in the north of Scotland are unnecessary
- the proposed Development will make only a minor contribution to renewables targets which does not outweigh the landscape and visual impacts
- transmission infrastructure constraints
- cost of constraint payments

48. The reasons stated for supporting the proposed Development were as follows:

- economic benefits for rural communities
- employment benefits
- diversification opportunities for local farm businesses
- contribution to meeting renewable energy targets
- enhanced recreational access; and
- community benefit fund and potential electricity bill contribution scheme

49. It is noted that although the Reporter refers to a different number of representations being received by the Scottish Ministers (eleven rather than fourteen, seven being objections and four in support), the matters raised in representations have been considered in the PI Report.

## **The Scottish Ministers' Considerations**

### **Environmental Matters**

50. The Scottish Ministers are satisfied that the EIA Report and the AI 2023 have been produced in accordance with the EIA Regulations and that the applicable procedures regarding publicity and consultation requirements, laid down in EIA Regulations, have been followed.

51. The Scottish Ministers have considered fully and carefully the Application, including the EIA report, the AI 2023, consultation responses, representations, and the findings, conclusions, and recommendation of the PI Report. The Scottish Ministers are satisfied that the environmental impacts of the proposed Development have been identified, described, and assessed. The Scottish Ministers have taken the environmental information into account when reaching their decision.

52. In accordance with paragraph 3 of Schedule 9 to the Electricity Act the Scottish Ministers have also had 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. The Scottish Ministers have also had regard to the extent to which the Company has done what it reasonably can to mitigate any effect the proposed Development would have on those matters.

### **Main Determining Issues**

53. Having considered the Application, the EIA report, the AI 2023, accompanying supporting information, responses from consultees, public representations, the PI Report and Scottish Government policies, the Scottish Ministers consider, in line with the Reporter, that the main determining issues in respect of the proposed Development are:

- its effects on the FCWHS
- its landscape and visual effects
- its effects on residential amenity (including visual, noise and shadow flicker effects) and the local community
- the benefits of the proposed Development; and
- the extent to which it accords with Scottish Government policies, the Local Development Plan and other relevant plans and guidance

### **Assessment of the determining issues**

#### **Effects on the Flow Country World Heritage Site**

54. The Flow Country in Sutherland is the most extensive and diverse example of an actively accumulating blanket bog landscape found globally. While other World Heritage Sites have peatlands, the FCWHS is the only World Heritage Site inscribed purely for its qualities as a peatland ecosystem. Inscribed in July 2024, it is the first in Scotland inscribed wholly under natural criteria.

55. The FCWHS is the most outstanding example of an actively accumulating blanket bog landscape in the world. The ongoing peat-forming ecological processes continue to sequester carbon on a large scale. It represents the most extensive, near-continuous, high quality and near-natural blanket bog landscape found globally.

56. The FCWHS comprises seven discrete but adjacent areas, amounting to around 190,000 hectares, which encompass a large expanse of actively accumulating blanket bog ecosystem. The overwhelming majority of the blanket bog within the property boundary is in near-natural condition. The property is of sufficient size to contain all the elements of OUV needed to demonstrate the ecological and biological processes, and the biodiversity that comprise this globally significant ecosystem.

57. Seven of the proposed Development's wind turbines, and their associated tracks and

ancillary development, are located within the boundary of one of the components of the FCWHS.

58. The Company produced an assessment of the effects of the proposed Development on the FCWHS as part of the AI 2023, which concludes that due to the quality, condition, and very small extent of the FCWHS area that would be impacted by the proposed Development, there would be a negligible/minor impact on the OUV and the integrity of the FCWHS would be retained.

59. Both the Planning Authority and NatureScot disagree with the Company's assessment and conclusions. They both object based on the effects the proposed Development would have on the FCWHS. In their assessment of the effects on the FCWHS they advise that "a loss of 6ha of blanket bog cannot be negligible, despite the extent of the FCWHS. Any singular or incremental significant loss to Outstanding Universal Value is unacceptable."

60. The Reporter held a hearing on the effects on the FCWHS on 24 November 2024, attended by the Company, NatureScot, and the Planning Authority. The FCWHS and effects upon it, as well as assessments, consideration of assessments, conducted by the Reporter and participating parties and their conclusions are set out in paragraphs 121 to 302 of the PI Report.

61. On the condition of the habitat at the proposed Development site, the Reporter finds that although parts of the affected blanket bog in the FCWHS "could be reasonably described as being in a modified condition" it is agreed "it should be described as blanket bog." The Reporter also finds that the evidence does not show that the area of affected blanket bog "is not actively peat forming."

62. On the extent of the loss of blanket bog, taking account of the advice in the UNESCO guidance that OUV is irreplaceable, the Reporter considers that although the amount would be small (estimated to be around 6ha) in proportion to the amount of blanket bog within the FCWHS (estimated to be around 16,000ha), the loss would not be "negligible" on the following attributes of the FCWHS:

- Attribute (a) - most extensive near continuous example of natural actively accumulating blanket bog ecosystem found globally
- Attribute (e) - carbon sequestration and storage

63. The Reporter's view is that "the Outstanding Universal Value of the FCWHS would not be protected and preserved if the development were to proceed. This would be a significant adverse environmental effect."

64. The Scottish Ministers have considered the EIA Report and the AI 2023, consultation responses, representations, the findings, conclusions and recommendation of the PI Report. Having considered this information the Scottish Ministers are satisfied that the blanket bog associated with FCWHS on the proposed Development site is not modified to the extent that it does not contribute to the OUV. and agree with the Reporter's overall conclusion that as a consequence of habitat loss and fragmentation as a result of the proposed Development, the OUV of the FCWHS would not be protected and preserved.

65. In agreeing with the Reporter's conclusion, the Scottish Ministers have also taken account of the size of the FCWHS and the comparatively small amount of its habitat that would be affected by the proposed Development.

## Other matters in respect of consideration of the Flow Country WHS

66. The interpretation of National Planning Framework 4 (NPF4) - Policy 7 and its relevance and application in respect of World Heritage Sites inscribed for their natural heritage was a matter of dispute between parties when considering the FCWHS.

67. Policy 7 sets out the intent to “protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places”. Amongst the desired policy outcomes is that the historic environment is valued, protected, and enhanced, that historic buildings are brought back into use and that the value of the historic environment is recognised.

68. Policy 7(l) deals with World Heritage Sites, setting out that development proposals affecting a World Heritage Site or its setting will only be supported where their OUV is protected and preserved. The NPF4 glossary definition of a World Heritage Site states “World Heritage Sites are internationally important cultural and/or natural heritage sites which have been inscribed for their “Outstanding Universal Value”. Though no additional statutory controls result from world heritage designation, the impact of proposed development upon the outstanding universal value, including its authenticity and integrity of a World Heritage Site and its setting, is a material consideration in determining planning applications.”

69. The Planning Authority and NatureScot both take the view that Policy 7(l) is of relevance to the consideration of the effects on the FCWHS. Consequently, they consider that the policy protection afforded means the proposed Development should not be supported due to its effects on the OUV of the FCWHS. Their view is that this is the basis of policy protection that was presented by the Flow Country Partnership to the International Union for Conservation of Nature (IUCN) which was endorsed by both the Scottish Ministers and the UK Government.

70. The Company are of the view that Policy 7 is intended only for historic environment assets and places, not for natural sites. They consider a wider interpretation would be too purposive; therefore Policy 7(l) does not apply. The Company considers the response by the Flow Country Partnership to the IUCN’s request for supplementary information, considering the then newly adopted NPF4, is misleading since it simply quotes the wording of Policy 7(l) without making it clear that Policy 7 applies only to cultural heritage assets.

71. At paragraph 250 of the PI Report, having considered the views and information provided by the relevant parties on the matter, the Reporter reaches the view that Policy 7(l) “is not of direct relevance in this case, albeit that the test it would apply is of relevance, and very important.” The Reporter highlights that despite this conclusion the matter is not clear cut and a more holistic, reading of Policy 7, together with the glossary entry for WHS, might point to a different interpretation which the Scottish Ministers may want to consider. The Reporter goes on to highlight at paragraphs 388 – 389 that the interpretation has consequences on the overall conclusions of the proposed Development’s accordence with the local development plan.

72. The Scottish Ministers consider the interpretation of Policy 7, and the provisions in NPF4 more generally, in respect of natural World Heritage Sites in detail at paragraph 100 to 126 below in the context of the extent to which the proposed Development accords with Scottish Government policies, the Local Development Plan and other relevant plans and guidance.

73. Irrespective of the relevance of Policy 7(l) to the FCWHS, or any other policies in

NPF4, the Scottish Ministers agree with the Reporter that the detrimental impact of the proposed Development on the OUV of the FCWHS is an important material consideration that must be weighed in the balance in reaching a conclusion on the overall acceptability of the proposed Development.

### **Landscape and visual effects**

74. The Company set out the effects of the proposed Development on the landscape and visual amenity in its Landscape and Visual Impact Assessment (LVIA) in Chapter 7 of both the EIA Report and the AI 2023.

75. The assessment in the Company's LVIA concludes there would be significant adverse effects on the Sweeping Moorlands and Flows LCT, experienced out to 8 - 10km, as well as adverse effects on the character of Strath Halladale and some potentially significant effects on the Coastal Crofts and Small Farms LCT at Melvich. No other significant effects are predicted on landscape character. In addition to the identified significant effects on landscape character, it is also predicted that there would be significant effects on the western parts of the East Halladale Flows WLA.

76. In terms of visual effects, both in isolation and cumulatively with other wind farm development, a range of viewpoints (VP) were assessed in respect of the proposed Development. The assessment in the Company's LVIA concludes that there would be significant visual effects at six out of the nineteen VP considered. This would result in significant effects on visual amenity in Strath Halladale, for some residents at Strathy, and in the immediate vicinity of the turning area at Melvich. There would also be significant effects on visual amenity experienced by people travelling along the A836 in the vicinity of Strath Halladale and recurring significant effects for those travelling along the A897 through the strath itself. The LVIA also identified there would be significant effects on visual amenity experienced by walkers on the core path to Melvich Beach (though not at the beach itself) and on the Kirkton to Upper Bighouse Core Path, and on anglers in the River Halladale.

77. In paragraphs 20 to 45 of the PI Report the Reporter considers the landscape and visual effects of the proposed Development. The Reporter's overall conclusions on this topic are set out at paragraphs 30 to 45 of the PI Report.

78. The Reporter has taken account of the information submitted and presented by the Company, by consultees including the Planning Authority and in representations made by other parties.

### Effects on landscape character

79. The Reporter considers the effects of the proposed Development on landscape character, including cumulative, from paragraph 30 to 32 of the PI Report. Having considered the EIA Report and the AI 2023, consultation responses, representations, the findings, conclusions and recommendation of the PI Report, the Scottish Ministers agree with the Reporter's overall conclusions. The Scottish Ministers accept that there would be significant effects on the Sweeping Moorland and Flows LCT and on the landscape of Strath Halladale, with the proposed Development becoming a key characteristic of this area of landscape character, even though the wind turbines would be located outside of it.

80. The Scottish Ministers also agree with the Reporter's conclusion that there would be cumulative landscape effects as a result of operational and consented wind farms to the east and to the west of the proposed Development.

## Effects on Visual Amenity

81. The Reporter considers the effects of the proposed Development on visual amenity, including cumulative, from paragraph 33 to 45 of the PI Report. Having considered the EIA Report and the AI 2023, consultation responses, representations, the findings, conclusions and recommendation of the PI Report, the Scottish Ministers agree with the Reporter's overall conclusions that there would be significant effects from a number of viewpoints, particularly within Strath Halladale.

82. The Scottish Ministers also agree with the Reporter's conclusion that although cumulative effects would add to the significance of the visual effects at some locations, none of the visual effects would change from non-significant to significant because of cumulative effects.

83. Taking account of the predicted landscape and visual effects of the proposed Development, the Scottish Ministers agree with the Reporter's overall conclusions, at paragraph 362 of the PI Report, that the impacts are localised and appropriate design mitigation has been applied.

## **Effects on residential amenity and the local community**

84. The Company's EIA Report and AI 2023 assess the effects of the proposed Development on matters which could affect the local community and residents. Chapter 7 of the EIA Report identifies a number of properties which would experience impacts on residential visual amenity because of the proposed Development. Chapter 12 of the EIA Report and AI 2023 deal with construction effects of the proposed Development on traffic, chapter 13 of both with noise (including construction and operation) and chapter 15 of the EIA Report considers the potential effects from shadow flicker.

85. The various assessments conclude that no property would experience effects such that the 'residential visual amenity threshold' would be breached, nor would impacts from noise be significant. No significant effects are predicted to be caused by shadow flicker and effects on drivers (delays etc.), road safety, community severance, noise and vibration, and vulnerable road users, and from dust and dirt, are also all assessed as 'not significant.'

86. The Reporter considers the effects of the proposed Development on residential amenity and the local community, taking account of the effects on visual amenity and the visual effects from shadow flicker, as well those created by noise and by increased road traffic, at paragraphs 46 to 67 of the PI Report.

87. The Reporter takes account of the information submitted and presented by the Company and by consultees, including the Planning Authority in addition to the representations submitted to the Scottish Ministers on this topic.

88. Having considered the EIA Report and the AI 2023, consultation responses, representations, the findings, conclusions and recommendation of the PI Report, the Scottish Ministers agree with the Reporter's overall conclusion that, with the implementation of appropriate mitigation, effects on residential amenity or on the local community would not be significant.

## **Benefits of the proposed Development and the extent to which it accords with Scottish Government policies, the local development plan and other relevant plans and guidance**

## Contribution to renewable energy policy objectives

89. The seriousness of climate change, its potential effects, and the need to cut carbon dioxide emissions, remain a priority for the Scottish Ministers.

90. Scottish Government are committed to ensuring that an increased proportion of electricity is generated from renewable energy sources to meet carbon emission targets. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2024 introduced a target of net zero greenhouse gas emissions by 2045 at the latest.

91. The Onshore Wind Policy Statement (OWPS), published in December 2022, reaffirms the vital role for onshore wind in meeting Scotland's energy targets within the context of the Scottish Government's 2045 net zero emissions commitment. The OWPS sets out the Scottish Government's position for the ongoing need for more onshore wind development and capacity in locations across Scotland where it can be accommodated in appropriate locations.

92. The proposed Development, having a generating capacity of up to 52.8MW based on current technology and an installed battery storage facility with capacity to store up to 20MW of electricity, will make a valuable contribution towards meeting greenhouse gas emission and renewable electricity targets.

93. The proposed Development would produce an average of approximately 184,280 megawatt hours (MWh) of electricity annually (based on a site derived capacity factor of 39.8%). This equates to the power consumed by approximately 49,167 average UK households, which would be well above the energy requirements of the 3,622 homes in North, West, and Central Sutherland. This represents an annual reduction in CO<sub>2</sub> emissions of approximately 82,839 tonnes, when compared to the amount of CO<sub>2</sub> emitted by fossil fuels to produce the same amount of electricity.

94. The carbon payback time is a measurement indicator to assess the influence of the proposed Development on climate change. The shorter the payback period, the greater the benefit the proposed Development would have in displacing emissions associated with electricity generated by burning fossil fuels. The carbon payback figures for the proposed Development are presented in Technical Appendix 15.1 (Carbon Calculator) of Volume 4b of the EIA Report and then again in Technical Appendix 15.1 (Carbon Calculator) of the AI 2023. According to the AI 2023, the proposed Development would be carbon neutral in 3.5 years when compared to a grid-mix of electricity generation. Whilst noting the limitations of any such calculations, the carbon calculator provides the best available means by which carbon calculations can be provided in a consistent and comparable format.

95. The Reporter's consideration of the proposed Development's contribution to net zero targets are detailed in paragraph 330 of the PI Report.

96. The Scottish Ministers are satisfied that the proposed Development would contribute towards meeting renewable energy and climate-change related objectives and emissions reductions targets.

97. With regards to economic benefits, these are set out Volume 2, chapter 14 (socioeconomics and land use) of the EIA Report and AI 2023. It is anticipated that during its 18-months construction phase the proposed Development could generate GVA (Gross Value Added) worth £12.6 million for the UK, including a total of £5.5 million across Scotland and £1.1 million within in the Highland Council area. During this phase 16 full-time equivalent (FTE) jobs would be created in the Highland Council area, 78 FTE jobs in total for Scotland

and 177 FTE in the UK. Over the 30-year operational period of the proposed Development, it is anticipated that 12 FTE jobs would be created in the Highland Council area. The estimated construction and development costs are expected to be approximately £56.2 million.

98. The Reporter's consideration of the proposed Development's economic benefits is set out at paragraph 329 of the PI Report.

99. Although the figures presented are estimations, the Scottish Ministers consider that the proposed Development has the potential to deliver positive economic benefits both locally and nationally.

## **The Scottish Government Policy Context**

### **National Planning Framework 4**

#### **Part 1 – A national spatial strategy for Scotland**

100. The national spatial strategy acknowledges that meeting climate ambitions 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.

101. Onshore electricity generation development of more than 50 megawatts, such as the proposed Development, is designated as a national development in NPF4. National developments are significant developments of national importance that will help to deliver the spatial strategy.

102. NPF4 gives significant weight to the principle of the proposed Development, by designating it as national development.

#### **Part 2 – National Planning Policy**

103. At paragraphs 357 to 380 of the PI Report the Reporter considers the proposed Development against the following range of relevant NPF4 policies (albeit discounting the relevance of Policy 7 and Policy 4 in the context of the FCWHS):

- Policy 1 (Tackling the climate and nature crises)
- Policy 3 (Biodiversity)
- Policy 4 (Natural places)
- Policy 5 (soils)
- Policy 6 (Forestry, woodland, and trees)
- Policy 7 (Historic assets and places)
- Policy 11 (Energy)

104. The Reporter's considerations of the proposed Development within a policy context are set out in paragraphs 357 to 391 of the PI Report with the overall conclusions set out at paragraph 393.

105. The Reporter reaches the overall view that the effects on the FCWHS are not relevant to NPF4 and that although there is some conflict with Policy 3 and with Policy 6, the proposed Development derives strong support from Policy 11, bolstered by Policy 1. The Reporter finds no conflict with the other NPF4 policies listed above.

106. The Scottish Ministers agree that the range of NPF4 policies considered by the Reporter, as set out above, are relevant to the proposed Development, and that Policy 7, whilst relevant to world heritage sites of cultural value, is not of direct relevance to the proposed Development's effects on the FCWHS.

107. However, contrary to the Reporter, the Scottish Ministers consider that Policy 4 is also relevant in consideration of the effects of the proposed Development on the FCWHS as well as its effects on the Caithness and Sutherland Peatlands SAC and SPA and the East Halladale Flows Wild Land Area.

108. The Scottish Ministers consider that Policy 11 (Energy) is the lead policy in relation to renewable energy developments and part a) gives support to wind farm developments. In principle the proposal gains support from Policy 11. Part e) of Policy 11 requires the design and mitigation of proposals to set out how the impacts on the matters referred to part e) i. – xiii have been addressed.

109. Having considered the factors set out in Policy 11 part e), the Scottish Ministers agree with the Reporter that whilst there are impacts, particularly landscape and visual impacts, the impacts are either acceptable overall, in the context of the significant weight attached to the proposed Development's contribution to meeting targets for renewable energy generation and greenhouse gas emissions reductions, or can be addressed through conditions.

110. NPF4 was developed and adopted before the formal candidacy and inscription of the FCWHS. In this case, because there is no explicit reference to World Heritage Sites in Policy 4, which deals with natural places, the Reporter reaches the view that there is no conflict with national planning policy in respect of the effects on the FCWHS.

111. However, the Scottish Ministers consider that as a consequence of the proposed Development's impacts on the FCWHS, which is a natural place of significant international value, these impacts are relevant for consideration in relation to Policy 4, Part a) of NPF4.

112. In assessing those impacts the Scottish Ministers are of the view that the proposed Development conflicts with Policy 4, part a), in that the proposed Development by virtue of its type, location and scale, would result in an unacceptable impact on the OUV of the FCWHS. These impacts do not accord overall with the intended outcomes of Policy 4, which include that natural places are protected and restored.

113. The Scottish Ministers therefore consider that because of the proposed Development's effects on the OUV of the FCWHS there is an important conflict with Policy 4, in addition to some conflict with Policy 3 and Policy 6 (as identified by the Reporter).

114. Consequently, although the Scottish Ministers acknowledge the weight to be given to the proposed Development's positive contribution to the climate crisis and emission reduction targets, they also acknowledge the weight that requires to be given to the negative effect the proposed Development would have on the OUV of the FCWHS in reaching a determination.

### The Development Plan

115. The Reporter considers the proposed Development's accordance with the local development plan (LDP) and its supplementary guidance at paragraphs 381 to 387 of the PI Report.

116. The Reporter takes the view that the proposed Development would be contrary to Policy 67 of the LDP, which is supportive of renewable energy development that is not significantly detrimental, having regard to significant effects on a variety of listed receptors. Although there is no specific reference to World Heritage Sites as a receptor, “natural, built and cultural heritage features” are. The Reporter considers these receptors encompass effects on the FCWHS and the proposed Development’s significant detrimental effects on the FCWHS require to be balanced against its positive renewable energy and economic benefits in this regard.

117. However, because NPF4 policies have priority over older LDP policies, and having reached the view that the effects on the FCWHS are not relevant to NPF4, the Reporter ultimately concludes that the proposed Development is in accordance with the LDP.

118. At paragraph 389 the Reporter highlights to Scottish Ministers that if they were to consider that the FCWHS was not relevant to Policy 67, because there is no specific reference to World Heritage Sites as a receptor, then his view, that the proposed Development is in accordance with the LDP, would be firmer.

119. The Scottish Ministers agree with the Reporter that NPF4 provides the national spatial strategy and policy framework that local development plans must align with. Where there are inconsistencies between NPF4 and an existing LDP, the later dated document takes precedence. In the interim period before new LDPs are in place, NPF4 policies will have priority over older LDP policies.

120. For the reasons set out at paragraphs 100 to 111 above, the Scottish Ministers disagree that the proposed Development’s effects on the FCWHS are not relevant to NPF4. The Scottish Ministers also note that Policy 4 of NPF4 requires local development plans to “identify and protect locally, regionally, nationally and internationally important natural assets, on land and along coasts”.

121. The Scottish Ministers consider the FCWHS is an internationally important natural asset, therefore it is relevant that the significant detrimental effects of the proposed Development on the OUV of the FCWHS require, in accordance with Policy 67 of the LDP, to be balanced against its positive renewable energy and economic benefits.

#### OWPS, Energy Strategy and draft Energy Strategy and Just Transition Plan

122. The Scottish Government’s Energy Strategy (2017) sets a 2030 target for the equivalent of 50% of Scotland’s heat, transport, and electricity consumption to be supplied from renewable sources (the Draft Energy Strategy and Just Transition Plan (2023) maintains this target).

123. The OWPS reaffirms the vital role for onshore wind in meeting Scotland’s energy targets. The statement sets out the Scottish Government’s position on 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.

124. However the OWPS also makes it clear that whilst onshore wind is mission-critical for meeting our climate targets, as an affordable and reliable source of electricity generation, we must continue to maximise our natural resource and deliver net-zero in a way that is fully aligned with, and continues to protect, our natural heritage and native flora and fauna.

125. The Scottish Ministers consider the proposed Development would have created net economic benefits and delivered renewable energy benefits that would support climate change mitigation and are wholly in accordance with Scottish Government's climate change ambitions. The Scottish Ministers agree with the Reporter that the support afforded by OWPS is a matter to be weighed in the overall planning balance.

126. The Scottish Ministers also consider however that the detrimental effects of the proposed Development on the FCWHS do not align with the OWPS ambitions to deliver net-zero such that our natural heritage and native flora and fauna are protected. This must also be weighed in the overall balance.

### **The Scottish Minister's conclusions**

127. The Scottish Ministers have fully considered the EIA Report, the AI 2023, the consultation responses, representations, the findings, conclusions, and recommendation of the PI Report and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed. The Scottish Ministers have taken the environmental information into account when reaching their decision.

128. Taking the above assessment into account, the Scottish Ministers consider that the proposed Development would have significant effects on landscape character as well as visual amenity, significant effects on residential visual amenity and significant detrimental effects on the OUV of the FCWHS which have not been mitigated. A summary of significant residual environmental effects is provided at paragraph 356 of the inquiry report.

129. 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.

### **The Scottish Ministers' Determination**

130. As set out above, the seriousness of climate change, its potential effects, and the need to cut carbon dioxide emissions, remain a priority for the Scottish Ministers. Scotland's renewable energy and climate change targets, energy policies and planning policies are all relevant considerations when weighing up the proposed Development. NPF4, Scotland's Energy Strategy and the Onshore Wind Policy Statement make it clear that renewable energy deployment remains a priority of the Scottish Government. These are all matters which should be afforded significant weight in favour of the proposed Development.

131. The Scottish Ministers consider that the proposed Development, if deployed, would create net economic benefits and deliver renewable energy benefits that would support climate change mitigation and are wholly in accordance with Scottish Government's climate change ambitions. The proposed Development in these respects would contribute to sustainable development and this has been considered when reaching a decision. These benefits, however, must be considered carefully in the context of the negative impacts on the natural environment and whether, on balance, they are acceptable.

132. The FCWHS was inscribed as a UNESCO World Heritage Site on 26 July 2024 as the most extensive and diverse example of actively accumulating blanket bog ecosystem found globally. Although its designation does not result in additional statutory controls there is a duty on state parties to identify potential sites and to protect and preserve them. As set out previously, irrespective of what planning policies say, the proposed Development's

impacts on the FCWHS are a significant material consideration in determining whether or not consent should be granted.

133. The Scottish Ministers have considered the policies in NPF4, noting that the policies should be read as a whole. It is for the decision maker to determine what weight to attach to policies on a case-by-case basis. Where a policy states that development will be supported, it is in principle, and it is for the decision maker to take into account all other relevant policies.

134. The Scottish Ministers acknowledge, in accordance with both NPF4 and the OWPS, that meeting our climate ambitions will require a rapid transformation across all sectors of our economy and society, however this does not negate the continuing requirement to ensure that the right development happens in the right place. Both NPF4 and the OWPS remain committed to ensuring that our climate ambitions are achieved, however this is not at any cost. It remains important that ongoing consideration is also given to protecting and preserving our valuable natural assets.

135. In this case, although the significant landscape and visual impacts of the proposed Development are localised and largely mitigated by design, there are significant effects on the OUV of the FCWHS which cannot be mitigated. If the proposed Development were to proceed, it would result in habitat loss and fragmentation of the FCWHS habitat. As a consequence of these impacts, a valuable natural asset of global significance would not be protected or preserved. This does not accord with Policy 4(a) of NPF4, nor does it align with the OWPS ambitions to deliver net-zero such that our natural heritage and native flora and fauna are protected.

136. The Scottish Ministers have fully considered the EIA Report, AI 2023, the consultation responses, representations, the findings, conclusions and recommendation of the PI Report and find that although the proposed Development's landscape and visual impacts would be acceptable in the context of the net economic benefits and the renewable energy benefits that would be delivered if the proposed Development were to be deployed, the detrimental impact on the OUV of the FCWHS would not.

137. Ultimately, this leads the Scottish Ministers to the conclusion that despite the factors in favour of the proposed Development, they agree with the Reporter that the overall benefits of the proposed Development do not outweigh the significant adverse effects on the OUV of the FCWHS.

138. The Scottish Ministers therefore consider the Application for consent under section 36 of the Electricity Act 1989 for the construction and operation of Kirkton Energy Park, wholly within the planning authority area of the Highland Council, should be refused.

139. 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 in a newspaper circulating in the locality in which the land to which the application relates is situated.

140. Copies of this letter have been sent to the public bodies consulted on the Application including the Planning Authority, NatureScot, SEPA, and HES. This letter has also been published on the Scottish Government Energy Consents website at Scottish Government - Energy Consents Unit

141. The 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/rules-and-practice/rules-of-court/court-of-session-rules>

142. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely

*pp. Nikki Anderson*

**For and on behalf of the Scottish Ministers  
A member of the staff of the Scottish Government**



## 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)

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Report by David Liddell, a Reporter appointed by the Scottish Ministers

- Case reference: WIN-270-21
- Site address: Kirkton Energy Park, 2.1km South of Melvich, Sutherland, IV24
- Application by Kirkton Wind Farm Limited dated 9 November 2022
- The development proposed: wind powered electricity generating station comprising of 11 wind turbines with a ground to blade tip height of 149.9 metres, with a wind generating capacity of approximately 52.8 MW and an anticipated 20 MW of battery energy storage and associated infrastructure
- Application drawings: EIA Report Volume 3 - Figure 1.1 – Site Locations, Figure 2 – Application Boundary, Figure 3.2A – Western Turning Area (A), Figure 3.2B – Eastern Turning Area (B); SEI Volume 3 - Figure 3.1 – Site Layout
- Reason for inquiry: Objection by The Highland Council
- Dates of procedures: Pre-examination meeting 2 August 2024; accompanied site inspections 20 and 21 November 2024; hearing 20 and 21 November 2024.

Date of report: 18 March 2025

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### **Recommendation**

Refuse to grant Section 36 consent and deemed planning permission.

### **Contents**

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## **Abbreviations**

CIEEM	Chartered Institute of Ecology and Environmental Management
cWHS	candidate World Heritage Site
dB	Decibels
EIA	Environmental Impact Assessment
ETSU-R-97	'The Assessment and Rating of Noise from Wind Farms'
HGV	Heavy Goods Vehicle
IUCN	International Union for Conservation of Nature
km	kilometres
m	metres
ms <sup>-1</sup>	metres per second
NPF4	National Planning Framework 4
NVC	National Vegetation Classification
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SEPA	Scottish Environment Protection Agency
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TA	Technical Appendix
UK	United Kingdom
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VP	Viewpoint
WHS	World Heritage Site

## **Background**

### **Site location and proposal**

1. The application site<sup>1</sup> (including exclaves north of the A836, one of which would be used as a turning area for abnormal roads) has an area of approximately 419 hectares. It is predominantly situated across two farms – Kirkton and Upper Bighouse. It lies on the western side of Strath Halladale, with the nearest turbine to be about 3km south of the village of Melvich. The site is predominantly blanket bog and heathland, with areas of grassland and woodland.

2. The eleven wind turbines would form a linear array in a north-south orientation, running along the side of the strath. The access to the site would be near the cemetery at the end of the minor road from Melvich. A substation compound (which would include the battery energy storage), temporary construction compound and two borrow pits would all be located in the northern part of the site. There would be new and upgraded access tracks, crane pads, turning areas and new and upgraded watercourse crossings. A conifer plantation of 87.75 hectares would be felled, and restored to blanket bog.

### **Environmental Impact Assessment (EIA)**

3. The [application](#) was made on 9 November 2022 and was accompanied by an [EIA Report](#). This was publicised on 2 December 2022.

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<sup>1</sup> [EIA Report Volume 3](#) – see Figures 1.1 Site Location and Figure 2 – Application Boundary and [SEI Report Volume 3](#) - Figure 3.1 – Site Layout

4. The applicant submitted Supplementary Environmental Information ([SEI](#)) in October 2023. This was prepared in response to consultation responses received and to take account of the repositioning of turbine 7 and the access track to turbines 5-11. The chapters in the EIA Report should be read with the equivalent chapters in the SEI. Landscape and visual effects are the only residual effects assessed as significant environmental effects in the EIA Report and the SEI.

### **The objection from The Highland Council**

5. The council [objects](#) because there would be significant loss of peatland and bog habitat within the candidate Flow Country World Heritage Site (WHS). It is not possible to offset any impacts on the WHS in terms of the qualities of its Outstanding Universal Values, which include the peatland and its ecosystem processes. The council received a number of internal consultation responses from its officials. Aside from the terms of its objection, the report to the council's North Planning Applications Committee (also at the above hyperlink) sets out the council's assessment of the planning merits of the development.

### **Consultation**

6. NatureScot submitted consultation responses on [13 April](#), [31 July](#), [8 December](#) and [12 December](#) 2023. Nature Scot objected unless conditions are imposed to mitigate effects on the Caithness and Sutherland Peatlands Special Area of Conservation (SAC) and Special Protection Area (SPA). Other conditions were also recommended.

7. Following the inscribing of the Flow Country WHS in June 2024, NatureScot [updated](#) its position on the application. It now considers that the proposal would have a significant effect on the Outstanding Universal Value of the WHS. This is due to the loss of blanket bog habitat, fragmentation of this habitat and reduction in carbon sequestration. The loss of blanket bog habitat cannot be mitigated by the positive restoration work (including forestry removal) proposed. NatureScot understands that offsetting cannot be applied in a World Heritage context.

8. The Royal Society for the Protection of Birds (RSPB) Scotland [initially objected](#) due to a lack of information on cumulative effects on birds in the SPA. This objection was [withdrawn](#) following submission of the SEI, subject to a condition controlling the proposed Habitat Management Plan for the development. RSPB Scotland is content that, on its own, the development would not have a significant effect on the SPA. RSPB Scotland expressed other concerns and comments. These include concerns about the loss of blanket bog habitat within the WHS and about cumulative/in-combination collision risks to SPA golden eagle, hen harrier and golden plover.

9. Historic Environment Scotland [responded](#) to the application on 26 January 2023. Concern was expressed about the level of effects on the setting of the Halladale Bridge hut circles scheduled monument. These effects could be mitigated by the relocation of turbines 1-3. However the proposal does not raise historic environment issues of national significance, and Historic Environment Scotland does not object to the application.

10. The Scottish Environment Protection Agency (SEPA) responded to the application on [2 February](#), [27 May](#) and [7 November 2023](#). SEPA recommends that a number of conditions be imposed.

11. Scottish Forestry's [consultation response](#) sets out what is required by way of compensatory planting for the loss of woodland proposed. A [further response](#) states that the

detail of the compensatory planting, including its long-term maintenance, should be agreed prior to consent being issued.

12. The Marine Directorate of Scottish Government (responses dated [31 January 2023](#) and [19 December 2023](#)) and [Transport Scotland](#) make comments in respect of the conditions to be imposed on any consent. The [Ministry of Defence](#) requires aviation safety lighting to be installed. [Fisheries Management Scotland](#) states that it is important that the proposal is developed in consultation with the Northern District Salmon Fishery Board, and recommends that its guidance is followed.

13. Telecommunications operators highlight the requirement for micro-siting limits to be applied to turbines 1 and 2.

### **Other representations**

14. A total of eleven representations were received by Ministers, four in [support](#) of the application and seven [objections](#). It is only those representations made directly to Ministers that are taken into account in this report.

15. The letters of support refer to:

- The contribution to meeting renewable energy targets.
- Local economic benefits during the construction stage and then once operational, including the diversification and continuation of the two farm businesses in the context of considerable viability challenges for livestock farming.
- Benefits from the proposed community benefit fund and near-neighbour electricity contribution scheme.
- Enhanced recreational access to the site.
- The minimal visual effects on the north coast and on the A836.

16. The objections raise concerns in relation to:

- Landscape and visual effects, including cumulative effects with other nearby operational and consented wind farms.
- The wind farm is poorly designed. It would dominate the head of Strath Halladale, and create adverse visual and emotional effects for the local community.
- Effects on the East Halladale Flows Wild Land Area.
- The EIA Report under-assesses the landscape and visual effects of the development, including cumulative effects.
- Effects on tourism, including walkers, cyclists and letting of nearby holiday houses.
- Effects on residential amenity including from visual effects, shadow flicker, noise and road traffic.
- Effects on salmon (and therefore on salmon fishery interests) in the River Halladale from the risk of silt deposition and pollution during construction.
- Effects on the tranquillity, the silence and the wider natural landscape enjoyed by anglers.
- Concerns about the ability to access the site safely, damage to roads, and cumulative transport effects with other wind farm development.
- Effects of proposed turning area B on the visual amenity, outlook, living standards, health and well-being of the nearby homes; noise, dust and other disturbance from traffic; and effects on the business of the North Coast Café
- The north Sutherland landscape has reached its capacity for wind farm development. It is already making a significant contribution to renewable energy targets.

- Kirkton’s contribution to these targets would be dwarfed by those from offshore wind farms, and with landscape and visual effects disproportionate to that contribution.
- Effects on peatland. The loss of peatland is premature in advance of the update of the carbon calculator and the planned guidance on supporting both peatland and onshore wind farms.
- Effects on the WHS.
- Effects on birds.
- There is no evidence that the development would provide biodiversity enhancement
- There would be very limited local economic benefits, and no assessment of the net economic effects of the development has been provided.
- Scotland’s renewable electricity targets can be comfortably met without a need to consent any new wind farms. There is no need for the development.
- Current electricity transmission constraints prevent the exporting southwards of renewable energy from Scotland.
- National and local planning policy does not support the development. The climate-change benefits of the development should be given a low weight in the overall planning balance.
- The requirements of Schedule 9 of the Electricity Act would not be met.
- If consented, there should be a planning obligation ensuring sufficient funds are available to decommission the development.

### **The applicant’s position**

17. I summarise below the applicant’s position (and the positions of the other inquiry parties) on some of the main issues. A number of documents from the applicant summarise its overall position (as that developed in response to the evidence of other parties) in particular the following:

- [Design and Access Statement November 2022](#)
- [Applicant planning statement November 2022](#)
- [Supplementary planning statement October 2023](#)
- [Statement of supporting information 11 January 2024](#)
- [Applicant position statement June 2024](#)
- [Planning Policy Topic Paper October 2024](#)

### **Policy context**

18. The key over-arching policy documents relevant to this application are:

- [National Planning Framework 4](#)
- [The Highland-wide Local Development Plan](#)
- [Onshore Wind Policy Statement](#)
- [Draft Energy Strategy and Just Transition Plan](#)
- [Onshore Wind Supplementary Guidance](#)

## The relevant issues for Ministers' consideration

19. Having considered all of the evidence, in my view the main considerations for Ministers in deciding this application are:

- Landscape and visual effects
- Effects on residential amenity and the local community
- Effects on recreation and tourism
- Effects on the historic environment
- Effects on birds
- Effects on the Flow Country World Heritage Site
- Other effects on biodiversity, including biodiversity enhancement
- Renewable energy and economic benefits
- If consent is to be issued, the conditions to be imposed

## Landscape and visual effects

### The EIA Report and SEI

20. Chapter 7 of the EIA Report covers landscape and visual effects. Chapter 7 of the SEI Report updates that assessment. Supporting the SEI are two sets of visualisations to both [The Highland Council](#) and [NatureScot](#) standards. Other relevant parts of the EIA Report include:

[TA7.1 – Landscape and Visual Impact Assessment Methodology](#)

[TA7.2 – Visual Methodology](#)

[TA7.3 – Viewpoint Assessment](#)

[TA7.4 – Residential Visual Amenity Assessment](#)

[TA7.5 – Wild Land Assessment](#)

[TA7.6 – Sequential Route Assessment<sup>2</sup>](#)

21. The visualisations, wireframes and other supporting material in the SEI are based on the currently proposed layout. It is primarily this more recent material that I refer to below in preference to the materials in the earlier EIA Report. In fact, the relatively modest changes to the development which occurred are such that the assessment of the extent of significant landscape and visual effects (arising from the development when considered in isolation) in the SEI is the same as that in the EIA Report. The assessment of cumulative effects is, however, updated somewhat.

22. The turbines would be extensively visible from the area within about 5km distance, though not from the valley of the River Strathy to the west. There would be extensive theoretical visibility down Strath Halladale, and from the western and northwestern facing slopes beyond it. Depending on aspect, there would also be a significant area of visibility from the southwest, out to about 15km distance. Other than when close to the shore, there would be extensive visibility from craft off the north coast.

23. The main application site sits within a large area of landscape character described as sweeping moorland and flows. This area extends northwards to the coast, south-eastwards almost to the coast of Caithness, and south and south-westwards into the heart of

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<sup>2</sup> Paragraphs 7.44-7.53 of the SEI refers to sequential wirelines based on the SEI layout. However the applicant [explained](#) that this was an error. No new wirelines were produced because the visual effects of the changed layout were minimal.

Sutherland. It is however incised by the strath landscape of Strath Halladale, lying immediately to the east of the site. There are small areas coastal crofts and small farms at Melvich and Portskerra; of high cliffs and sheltered bays at Strathy and Melvich; and sandy beaches and dunes at Melvich Bay. After a few kilometres the sweeping moorland and flows transitions into rocky hills and moorland to the west and to the farmed lowland plain of Caithness to the east.

24. The assessment in the SEI is that there would be a significant adverse effect on the sweeping moorland and flows landscape character area out to about 8-10km distance. There would be major, and adverse, effect on the character of Strath Halladale. There would be potentially significant effects on the area of coastal crofts and small farms at Melvich due to the effects of the eastern turning area within it. There are no predicted significant effects on other areas of landscape character. There would be significant effects on the western parts of the East Halladale Flows Wild Land Area. This would arise from effects on its attribute of being a landscape with horizontal emphasis with few foci, and because of the potential for extensive visibility of the tall turbines.

25. The SEI contains an assessment of the visual effects of the proposal from a number of representative viewpoints. The assessment was that there would be significant visual effects from six of these viewpoints – at Achiemore (viewpoint (VP)1), Goval (VP2), the A836 Bighouse junction (VP4), Bighouse (VP5), Beinn Ratha (VP8) and Totegan, near Strathy Point (VP9). There would be significant effects on visual amenity in Strath Halladale, for some residents at Strathy, and in the immediate vicinity of the turning area at Melvich.

26. There would be significant effects on visual amenity for people travelling along the A836 in the vicinity of Strath Halladale and recurring significant effects for those travelling along the A897 through the strath itself. There would also be significant effects on visual amenity for walkers on the core path to Melvich Beach (though not at the beach itself) and on the Kirkton to Upper Bighouse Core Path, and on anglers in the River Halladale.

### **Parties' cases in respect of landscape and visual effects**

27. The applicant's position in respect of landscape and visual effects is set out in the documents I refer to above, and in the EIA Report and SEI. The council's position is as set out in its committee report. The council's objection is not founded on any of these effects.

28. The [Strath Halladale Partnership and Bighouse Estate](#) agrees with the council's assessment of the effects at each of the viewpoints. No additional significant visual effects beyond those identified in the SEI are identified. However it is stressed that the effects at VP5 would be experienced by most of the guests staying at the properties at Bighouse. Effects at VP6 are agreed as not significant, but a more well-frequented location (the car park say, or the beach) for the viewpoint could have been chosen. It is agreed that the effects in longer distance views would generally not be significant, but it is thought that the visualisations do not fully convey the likely effect, for example at VP11 (Forsinard).

29. Although the effects at VP7 (West of Strathy) are agreed not to be significant, it is stated that this stretch of the North Coast 500 long distance route would be at risk of significant sequential effects should all of the current wind farm applications (and known-of wind farms which have not yet been applied for) be consented and then built. At VP8 it is the addition of Kirkton which makes the most important contribution to the intensity and complexity of the cumulative visual effect. The wider context of cumulative effects is also stressed, with other projects including proposed overhead powerlines and substation

upgrades at the “Connagill Cluster” and underground grid connection for the Bettyhill wind farm extension.

## **Reporter’s conclusions**

### Landscape effects

30. No party has sought to dispute in any detail the assessment in the SEI (which draws on the earlier assessment in the EIA report) as to the nature, extent and degree of the effects of the development on landscape character. Based on the written evidence and my unaccompanied site inspections, I am in general agreement with that assessment.

31. Although there would be significant effects on the sweeping moorland and flows landscape, the operational and consented wind farms already located within this landscape demonstrate that it has been considered by Minister to be capable of accommodating such development. In terms of adverse effects (and whilst acknowledging the comparatively limited landscape benefits of the removal of the conifer plantation), I place greater weight on the effects on the landscape of Strath Halladale. It has a distinctive valley landscape, which is relatively intimate even though the strath is fairly wide. The sides of the strath are not high, and the tall turbines would introduce a development which is very different in nature and scale from the present valley landscape. The regular, linear design of the wind farm would respond well to the linear nature of the strath. Conversely, this linear nature would serve to extend the overall reach of the effect along the strath. All told, I agree that the landscape change on this area of landscape character would be major, and adverse. By adopting the linear form of the strath, and due to the extent of the significant effect on landscape character, the wind farm would, in my view, become a key characteristic of this area of landscape character, even though the turbines would be placed outwith it.

32. There would be cumulative landscape effects on both of the above landscape character areas. Kirkton would sit in the gap between the operational and consented Strathy wind farm cluster to the west and Limekiln wind farm to the east, adding to their overall effects on the character of the sweeping moorland and flows.<sup>3</sup> Again, though, I think the more important potential cumulative effects would be on lower Strath Halladale. These would be caused by the close proximity between Kirkton and the proposed Melvich Wind Energy Hub. The differing design approaches taken, with the linear array at Kirkton possibly seeming somewhat discordant with the very different turbine layout at Melvich would exacerbate this cumulative landscape effect (illustrated, for example, by the cumulative wirelines for VPs 2 and 4). However, Melvich remains at application stage at present. Ultimately, it will be for Ministers, when they come to determine the application for Melvich, to fully consider the cumulative effects with Kirkton, if indeed at that time Kirkton has been determined and granted. Given the generally very limited visibility of the consented and proposed offshore wind farms from Strath Halladale, I do not think these would add significantly to any cumulative effects on this landscape. There is no support in guidance or in the detailed evidence for this application for the proposition that the north Sutherland landscape has reached its capacity for wind farm development.

### Visual effects

33. I summarise above the extent of visibility of the wind farm, and I identify those of the representative viewpoints where the visual effects are judged as significant. Obviously, those views are representative. There would be significant visual effects from other locations along the local roads, and from the hills and open countryside. From the written

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<sup>3</sup> I understand that the application for the Armadale wind farm has been withdrawn, therefore I do not consider it further.

evidence and my site inspections, it is clear to me that the greatest adverse visual effects from locations normally visited by people would be within Strath Halladale - in particular along the A897 and in the settlements.

34. Travelling north, the wirelines for the sequential analysis for the A897 in the EIA Report show that, once it becomes visible, the wind farm would remain fairly central in the view ahead up the strath. This would intensify the visual effects. In my view, the effect would start to become significant around Dalhalvaig. That would remain the case until travelling past the wind farm, albeit there are some locations along the road where the view of the turbines would be obscured, for example by roadside vegetation. That said, it is on the approaches to Achiemore and beyond it when the wind farm would start to occupy a very wide part of the view, and where the magnitude of the effect would be the greatest. The wireframes and photomontage for VP1 illustrate this.

35. The materials for VP2, VP4 and cultural heritage viewpoint 4<sup>4</sup> at Halladale Bridge illustrate the visual effects when looking (and traveling) south through the strath. Again, the linear nature of the design would help the wind farm to harmonise (to some degree) with the receiving landscape, but it does mean the array would take up a wide part of the view, and in that sense increasing the magnitude of the visual effect so that it would be very high. From VP2 and VP4, the bases of some of the turbines would be perceived as being within the upper slopes of the strath, in my view somewhat tightening one's association of the wind farm with that landscape. The borrow pits and substations would also be visible from VP2, adding to the visual effect.

36. VP5 at Bighouse looks up the strath from the point where the river Halladale meets the North Sea. The current view is an attractive one, albeit I saw that there is now, fairly central in it, a small industrial plant which was not there when the photograph was taken. Though the effect of the wind farm is assessed as significant, the nature and degree of the effect would be very different to those from other locations in the strath, as I describe them above. The array would be at an oblique angle, greatly reducing its apparent width. An intervening hill means that only the upper parts of the turbines would be visible. For the most part this would be only parts of the blades, although the hubs of the two most distant turbines would be seen. The turbines would tend to become more prominent as one travels out along the minor road to the A836. Nevertheless, I consider the effects here to be much less adverse than those from elsewhere in the strath.

37. VP3 lies a little to the south of Bighouse. Again, the hillside on the western side of the strath intervenes in the view, so that the blades of only four of the turbines would appear, and would overlap. I accept that such overlapping, and also the slightly odd effect of seeing a blade appear and re-appear as a turbine rotates, but without ever seeing its hub, can be distracting. Still, the limited degree of visibility is such that I agree that the effect would not be significant.

38. There are a number of viewpoint locations along the A836 (the North Coast 500 tourist route). Again, based on the evidence and my site inspections, I would generally agree that significant visual effects would be restricted to the stretch of road within and very near the strath itself, either side of VP4. Despite the intermittent visibility elsewhere, I do not think this would result in a significant sequential effect on any part of that route.

39. There are two further representative viewpoints where the visual effect was assessed as significant. VP9 provides a dramatic view from near Strathy Point, back across Strathy Bay and its cliffs towards the site of the wind farm, which is beyond the horizon.

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<sup>4</sup> SEI Fig 11.6d

The wider view takes in the Orkney Islands and Dunnet Head. Ten of the turbines would be visible, in degrees ranging from hub height for two of them down to just blade tip for others. The distance to the nearest turbine is over 9km. However, given the drama of the view and its sensitivity for residents and tourist visitors, I agree with the assessment that the visual effect would be significant. If approved and constructed, the Melvich turbines would in fact be much closer, and in front of Kirkton in the view.

40. I note above that there would of course be large tracts of open land from which the visual effect of the development would be significant. One such location is VP8 on Beinn Ratha. This summit is over 7km to the east of the site, and within the East Halladale Flows Wild Land Area. I did not visit this location. But I can see from the written materials that the array would be seen side on. It would have a regular experience, with evenly spaced turbines at seemingly very similar distances and elevations. Only two of the turbines would (very slightly) breach the background horizon of the hills and mountains further west. However the array would therefore be fairly wide. The turbines would appear much larger than the operational Strathy North wind farm which lies behind. I agree with the assessment that the visual effect from here would be significant.

41. Cumulative effects would add to the significance of the visual effects at several of the above locations. As I note above in relation to landscape effects, it is the proximity yet very differing proposed layouts of the Kirkton and Melvich proposals which would, in my judgement, cause the greatest potential cumulative effect if both schemes were to be viewed together from in or near Strath Halladale.

42. As I note above, there could be cumulative effects with Melvich at VP9, with the latter scheme making much the greater contribution. In the absence of Melvich, the cumulative effect here with other existing and consented wind farms would still be significant.

43. There would clearly be a significant cumulative effect with the wind farms in the operational and consented Strathy cluster from VP8, bringing turbines in this sector of the view closer to the summit of Beinn Ratha. Melvich, if consented and constructed, would extend the cumulative effect in this generally westward direction of view. Such effects would add to the overall cumulative effect on the summit, as there are a number of other operational, consented and proposed wind farms (including offshore) when looking in other directions from this location.

44. The Strath Halladale Partnership and the Bighouse Estate refer to cumulative effects with other projects - overhead lines and substation upgrades at Connagill, an underground grid connection for the Bettyhill Extension wind farm, substations at Dounreay, and other potential wind farm projects. I do not have detailed evidence about the status of these projects or their potential visual effects. I acknowledge the potential for some cumulative visual effects of these projects with Kirkton, though these seem likely to be somewhat limited. But it is difficult at this point to take matters further than that. Ultimately, it will be for subsequent decision makers for these projects to take into account any relevant visual (and indeed landscape) effects with Kirkton, if it has been consented at that time.

45. In no location do I consider that the visual effect would change from non-significant to significant as a result of cumulative effects.

### **Effects on residential amenity and the local community**

46. Concerns expressed about the impacts of the development on local residents and the community include visual effects and those from shadow flicker, noise and road traffic.

This includes concerns about the ability to access the site safely, damage to roads, and cumulative transport effects with other wind farm development. There are also concerns about the effects of proposed turning area B on the visual amenity, living standard and health of people living in the nearby homes.

## **The EIA Report and SEI**

47. Technical Appendix 7.4 of the EIA Report is a Residential Visual Amenity Assessment. It assesses the effects on residential visual amenity from the proposed turbines. All nineteen of the properties covered in the assessment are in Strath Halladale, with the closest being 27 Upper Bighouse, at about 1km distance from the nearest proposed turbine location. The assessment concludes that at no property would the “residential visual amenity threshold” be breached.

48. Chapters 12 of the EIA Report and the SEI deal with site access, traffic and transportation, focussing on the construction phase of the development. Technical Appendix 12.1 is an Abnormal Loads Route Assessment. Technical Appendix 12.2 is the Outline Construction Traffic Management Plan. In response to the internal consultation response from the council’s transportation officials, the applicant prepared a [technical note](#) in March 2023.

49. General construction traffic is expected to utilise Kirkton Farm Road and then the A836 (and a short stretch of the A9) east to Scrabster. Abnormal loads would also travel on the A836 to the west, as far as whichever of the two proposed turning areas would be used. A small percentage of light construction vehicles may also utilise the A836 to the west or the A897 from the south through Strath Halladale. Kirkton Farm Road would be widened to 4.5m in width. There would also be localised temporary works at junctions and pinch-points to accommodate abnormal load deliveries.

50. Traffic counts on the A836 at Melvich between 29 August and 4 September 2023 gave an average 12-hour traffic flow of 1,236 vehicles, 9 of which by HGV. It is acknowledged that the A836 will experience higher flows during the seasonal peak periods for tourism. The design capacity of the A836 is 18,329 vehicles in a 24-hour period.

51. It is estimated that there would require to be 2,903 HGV loads delivered to the site, resulting in 5,806 two-way movements. During the peak months for HGV traffic there would be about 20 two-way movements per day. It is anticipated that 77 abnormal load deliveries would be required, in convoys of three. Including HGVs, abnormal loads and light vehicles, maximum daily construction traffic is expected to be 72 two-way trips. On the A836 to the east of the site, the development would result in an increase in total daily traffic of about 5-6%, but with an increase in HGV traffic (at peak periods) of about 266%.

52. Effects on driver severance and delay, road safety, community severance, noise and vibration, and vulnerable road users, and from dust and dirt, are all assessed as not significant. Since the development site is relatively remote from the public highway, impacts from dust and dirt are anticipated to be of low magnitude. No significant cumulative effects are expected.

53. Abnormal road deliveries would involve rolling road/footway closures causing temporary delay, and perceived effects to pedestrians and vulnerable road users. These effects would, subject to mitigation in the form of traffic management measures, not be significant.

54. Mitigation of effects from construction traffic would be secured through a Construction Traffic Management Plan.

55. Chapters 13 of the EIA Report and the SEI, supported by a number of technical assessments, address noise effects. They follow the advice in 'The Assessment and Rating of Noise from Wind Farms (ETSU-R-97)', and 'A Good Practice Guide to the Application of ETSU-R-97' published by the Institute of Acoustics.

56. Thirteen nearby noise-sensitive receptors (all dwellings) are identified. Background noise surveys were undertaken from four locations in the vicinity of these receptors. Daytime and night-time noise limits are derived from the background noise limits and the application of ETSU-R-97 and the Good Practice Guide.

57. For construction noise, daytime noise limits of 70dB  $L_{Aeq}$  are adopted, based on extant guidance. The maximum predicted noise effect from construction activity at any sensitive receptor is 48dB, and therefore well below this limit. Changes in noise levels due to construction traffic on the A836 are predicted to be 0.6dB. Again, this is well below a change of 3dB which would generally be considered significant.

58. For the operational phase, noise immissions are predicted, at all times and for all sensitive receptors, to be below the derived noise limits. These immissions come closest to the limits at wind speeds of 7-8ms<sup>-1</sup>. At closest to these limits, it is predicted in the SEI that immissions would be within 0.5dB of the daytime limit for wind speeds of 7ms<sup>-1</sup> at Culifearne Croft. Even with the cumulative effects of the Melvich proposal factored in, it is predicted that the derived noise limits would all still be met.

59. Therefore no effects on noise-sensitive receptors are assessed as significant.

60. Chapter 15 of the EIA Report includes consideration of potential effects from shadow flicker. Figure 15.1 shows the potential zone of shadow flicker influence. Five residential properties lie within this zone. Shadow flicker exceeding 30 hours in a year at a property is considered to be a significant effect. The assessment includes a worst-case scenario that the sun is always shining, the rotors are always turning, and the face of the rotor is aligned towards the dwelling. The maximum number of hours per year for any property where shadow flicker could occur (based on the worst-case scenario) is calculated at 15.6 hours at Ar Dachaidh, where the owner of the property is financially involved in the project. For non-involved properties, the greatest worst-case exposure is 9.7 hours at Smigel. No significant effects are therefore predicted. These conclusions are not altered in the SEI.

### **Reporter's conclusions**

61. The applicant's residential visual amenity assessment identifies a major and significant effect on residential visual amenity at most of the properties assessed. I would agree with that assessment. In my view, such effects would generally be greatest for those properties opposite the array (and especially opposite its centre), from where it would appear at its widest and where the properties (which are generally oriented towards the west) tend to face directly toward the wind farm. Whilst, as I note above, there is an understandable design rationale for having the wind farm as a linear feature to align with the strath itself, one consequence of that would be that the wind farm would occupy a very wide proportion of the view across the strath from some properties. As a result, it would tend to dominate that view for some properties. I think this would be an important contributing factor to the significant adverse effect on residential visual amenity. It is perhaps at Tigh Na Breac, given what seems to be a location for this modern house

designed to make the most of the open view across Loch Earacha to the western side of the strath, where the effect on visual amenity would be greatest.

62. In relation to transport-related effects, I note that, subject to the imposition of planning conditions, neither the council's transport officials nor Transport Scotland have any objections to the development. It is standard practice to require a Construction Traffic Management Plan which would control and manage construction traffic. This would include delivery of abnormal loads and would allow management of any potential cumulative effects with construction traffic of any other wind farms where the construction period may overlap.

63. Construction traffic (especially abnormal loads) would be likely to result in some disruption and delay at certain phases of the construction period. However, abnormal load deliveries would be for a relatively short duration and there is no evidence before me that this could not be managed so as to reasonably minimise disruption. Subject to traffic management (and to relatively minor alterations to road geometry, utilities and street furniture) and the widening of the Kirkton Farm road, there is no basis for concluding that the roads to be used would be unsuitable for construction traffic, or would be unsafe.

64. I have carefully considered the amenity and health concerns raised about the proposed use of turning-area B. From a road-safety perspective, I place significant weight on the fact that council transportation officials have no objection to this aspect of the proposal. I note from the [road safety audit](#) at Technical Appendix 3.3 of the EIA Report that all entry and exit manoeuvres by abnormal loads would be supervised. This could be controlled through the Construction Traffic Management Plan. Properly constructed and managed, I see no reason why the formation and then use of the turning area would give rise to excessive or unreasonable effects from noise or dust, in particular noting the relatively short duration during over which such effects would arise. There might perhaps be significant visual effects from the storage of vehicles and turbine components, however these would be very localised, and of short duration. I recognise the health-related concern raised in one representation. However I have no evidential basis for concluding that the construction and use of the turning area would have significant health effects for any local resident.

65. In respect of any effects on residential amenity arising from noise from the wind turbines, basing an assessment on the guidance in ETSU-R-97 and the Good Practice Guide is well-established practice. This guidance appears to me to have been followed in the EIA Report. There is no evidence to the contrary. I also note from the council's committee report that its environmental health officials, subject to the imposition of planning conditions, raise no objection in relation to noise effects. Therefore I see no reason to disagree with that assessment in the EIA Report (and the SEI) that there would be no significant effects on the noise-sensitive receptors.

66. I recognise the potential for shadow flicker to be experienced at some properties. However this would (at worst) occur for only a few hours in a year. Therefore I do not consider that this would be a significant effect on residential amenity.

67. I base much of my findings above on the evidence in the EIA Report, the SEI and the consultation responses. I also take into account the public representations. One of these refers to emotional effects for the local community. There is no doubt that visual amenity in the lower part of Strath Halladale would be adversely affected, and there would be change to its landscape character. Some people could have an emotional response to that, and perhaps to other effects of the development. However, I do not consider that there is any way in which I can reasonably foresee, and taken into account, the nature of any such emotional responses.

## **Recreation and tourism**

### **The EIA Report and SEI**

68. Chapters 14 of the EIA report and the SEI cover effects on economics and land use, including effects on recreation and tourism.

69. There is not understood to be significant levels of public access on the site presently, though the Kirkton Farm road is used by cyclists. The Kirkton-Upper Bighouse core path, on the eastern edge of the site, is used by walkers and cyclists. Effects on these assets during construction, subject to ensuring public safety through the Construction Environment Management Plan, are not expected to be significant. An Access Management Plan is also proposed.

70. Other tourism receptors assessed are the North Coast 500 (and associated National Cycle Route 1) and local businesses with over-night tourist accommodation. It is stated that the experience of using the A836 as a tourism route may be adversely affected during the construction period despite the implementation of traffic management measures, although the duration of effects for individual travellers would be short. Effects are not considered to be significant. Local accommodation and food and drink business might benefit from business from use by construction workers, but this effect is not assessed as significant.

71. During the operational phase, and referencing the findings of chapter 7 of the EIA Report on landscape and visual effects, the effects on recreational routes and other assets are assessed as not significant.

### **Points raised in representations**

72. Concerns which have been expressed include those relating to:

- Effects on tourism, including walkers, cyclists and the letting of nearby holiday houses and the café at turning area B.
- Effects on salmon (and therefore on salmon fishery interests) in the River Halladale from the risk of silt deposition and pollution during construction.
- Effects on the tranquillity, the silence and the wider natural landscape enjoyed by anglers.

73. It is explained in the evidence from the Strath Halladale Partnership and the Bighouse Estate that there are 15 miles of fishable river. On the lower part there are four beats, with up to three rods permitted in each. There is an average 1,377 rod days per year, with beats usually fully booked except at start of the season. The business (fishing and holiday accommodation) employs a number of permanent and seasonal staff, and indirectly supports local businesses such as shops, restaurants and other tourist accommodation. Bighouse Lodge has 12 bedrooms for letting, and is also used for weddings and corporate events. Its main attractions are its shoreline location and the view up the strath.

### **Reporter's conclusions**

74. The properties let for holidays which were referred to by objectors are at various locations in the strath between Dalhalvaig to the south and Bighouse to the north. Some of these appear to be included in the Residential Visual Amenity Assessment which I refer to above. In any event I think it is likely that some holiday lets in the strath could experience the kinds of major and significant effect on residential visual amenity described for some of

the properties included in that Assessment. Aside from the visual effects experienced from the properties themselves, the point is made that, as visitors travel around the general area, they would perceive and experience the landscape and visual effects more generally.

75. I would accept that it is entirely plausible that some prospective visitors might be influenced (perhaps strongly so) by the visual effects of the wind farm and decide not to make a booking. Others might, having stayed in the area, conclude that the presence of the wind farm would be a factor mitigating against a decision not to return. I also agree with the premise that the experience of the landscape and visual effects of the wind farm on the visitor experience as a whole (rather than only the effects experienced at the location a visitor is staying at) may be an important factor in these kinds of decisions. The materials for VPs 1-5 illustrate the likely effects from several locations within the strath.

76. However, it seems to me to be very difficult to make an assessment as to the degree to which there might be an effect on visitor numbers, and therefore the consequent local economic effects. In my view an assessment of the landscape and visual effects in a more general sense (and with reference to the relevant policy tests which flow from that) provides a reasonable proxy for whether the visual effects of the development could have a notably deterring or depressing effect on visitor numbers (and therefore spend) to the area. Even then, it must be kept in mind that different people will each choose to visit (or not to visit) an area based on a number of considerations.

77. I was very helpfully provided with [maps](#) showing the fishing beats on the River Halladale, and given an accompanied site inspection which aided my understanding of the potential effects on the fishing experience. Leaving aside issues of water quality, which I address below, the concerns are that the attractiveness to (and therefore the commercial returns from) anglers in the river would be diminished as a result of the development, principally because of its landscape, visual and noise effects.

78. The evidence from the Strath Halladale Partnership and the Bighouse Estate is that the tranquil and undeveloped nature of the strath is an important part of the angling experience, and much valued by visitors. I have no basis to disagree with that view, and I accept it. It seems likely that many people choosing to visit the strath would, to some degree or other, be attracted by its generally undeveloped rural environment.

79. There would likely be significant visual effects experienced by anglers, as was acknowledged in the SEI. These would perhaps be greatest along the stretch between Achiemore and Culfern, the location of my accompanied site inspection. I acknowledge, however, that this location for the site inspection was proposed as being illustrative of the kinds of effects which would be experienced. Similar visual effects would likely be experienced in other stretches of the river opposite the wind farm site, albeit sometimes the topography on the western sides of the river would intervene. That said, I recognise that, over the course of a multi-day visit, anglers tend to fish in each of (and along the length of) the fishing beats of the river. So most visiting anglers would, on some stretches of the river, experience visual effects which (given what I would accept is a fairly high sensitivity for receptors undertaking a recreational activity like fishing in what is a generally rural and undeveloped setting) I would say would be significant. They would (at least some of the time) likely be able to hear the wind farm, adding somewhat to the overall effect on the recreational experience.

80. I would, however, make the same analogy for effects on angling as I would for effects on prospective visitors to holiday lets. Some people might be put off from visiting (or from returning again) due to the presence of the wind farm. But it is very difficult for me to try to quantify or assess that, and its consequential economic effects.

81. I agree with the applicant's assessment that there would be significant visual effects experienced by walkers on the Upper Bighouse Core Path. The path lies closer to the site than the A897. Therefore the turbines would appear larger, and would appear higher up in the views than as shown in the photomontages and wirelines for VPs 1 and 2. On the other hand, the western slopes of the strath, and sometimes the more immediate topography, would serve to reduce the extent of visibility of turbines. With greater distance to the turbines and a more limited degree and duration of the visual effects, impacts on the core path to Melvich beach would be much less. Effects on the beach itself would be lesser still given the rather limited view of the turbines from there.

82. The A836 is clearly an important tourist route for motorists and cyclists. I find that there would be a significant visual effect on only a small stretch of it as it approaches and passes through the strath. But I do not think that this effect, being so limited, would significantly diminish the enjoyment of this route by tourists. Finally, the limited duration of use of the turning area at Melvich would be such that I do not consider that there would be significant effects on the small café which lies across the road to the west of it, behind the public toilet, bus stop and electric vehicle charging point.

## **Historic environment**

### **The EIA Report and SEI**

83. Chapters 11 of the EIA report and the SEI address Cultural Heritage and Archaeology. There are a number of scheduled monuments and listed buildings within a few kilometres of the site. There are a number of recorded non-designated heritage assets within the site itself (including three hut circles within the proposed footprint of the temporary construction compound), and a further eight within one kilometre of it. The site of the abandoned township of Kirkton lies in the vicinity of the access track to the site. There is some potential for unrecorded archaeological remains within the site.

84. There are potential direct effects on four undesignated assets – the township, two of the hut circles and a mound. None of these effects are assessed as significant. Nor are any effects on the setting of designated assets.

85. In respect of the Halladale Bridge hut circles scheduled monument, these are located adjacent to the A836, about 3km to the northeast of the nearest proposed turbine. All 11 of the turbine tips would be visible from the monument. The EIA report states that the turbines could cause some peripheral distraction in the wider landscape, resulting in a minor adverse effect which is not significant.

### **The evidence from Historic Environment Scotland**

86. Historic Environment Scotland assesses the effect on the setting of the monument as moderate, and therefore significant. It is stated that the wind farm would be a distracting feature on the periphery of the monument's setting, reducing the ability to understand, appreciate and experience it. Historic Environment Scotland highlights that the character and general appearance of the landscape will have changed little since the hut circles were constructed, and that the wider setting of the monument, as part of a system of settlement across the strath, is important. It is suggested that the turbines could be relocated so that they would appear to be sited behind the skyline of the strath.

## **Reporter's conclusions**

87. The turbines would be very large, dynamic structures. Despite that, the generally open nature of the wider landscape around the monument would be maintained. I agree that the wind farm would be a distracting feature when viewed from the monument. However, the turbines would all be located on the upper slopes of the strath. They would all be at generally similar elevations, and in a linear array. Turbines 1-3 would be the closest to the monument. In that sense they would extend more into its setting than would the others.

88. Although it is agreed that the development would have a significant effect on the landscape character of the strath, I do not find that there would be any significant diminishment in the ability to understand and appreciate how the monument may have been part of a wider community extending along the strath (including its higher land). I do not find that the positioning of the nearest turbine bases below the skyline would have a strong bearing on the extent to which people may experience the monument. The more immediate setting of the monument would not be affected. Overall, in my judgement there would not be a significant adverse effect on the setting of the monument. In any event, it is agreed by Historic Environment Scotland that there would not be a significant adverse effect on the integrity of the monument's setting, which is the key test in policy 7 of NPF4.

89. In respect of other designated heritage assets, Historic Environment Scotland agrees with the assessment that there would be no significant environmental effects. I have seen no evidence which would cause me to reach a different conclusion.

## **Birds**

### **The EIA Report and SEI**

90. Chapters 9 of the EIA Report and the SEI address ornithology. Effects on several designated sites were scoped into the detailed assessment, including the Caithness and Sutherland Peatlands SPA and Ramsar site, the North Caithness Cliffs SPA and the Caithness Lochs SPA. Effects on a number of bird species were also scoped in. Subject to the proposed mitigation measures, including a Construction Environment Management Plan and a Habitat Management Plan, no significant effects (including cumulative effects) are identified, either during construction or operation of the development.

[Technical Appendix 9.1](#) – Ornithological Survey Report

Technical Appendices 9.2-9.3 – Confidential Appendices

[Technical Appendix 9.4](#) - Shadow Habitats Regulations Assessment

### **NatureScot's evidence**

91. The proposal would be likely to have a significant effect on red-throated and black-throated divers, dunlin, golden plover and hen harrier of the Caithness and Sutherland Peatlands SPA. This is due to the potential for collision risk and from disturbance/displacement. Therefore Ministers must, before they could consent the development, carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interests.

92. However, the proposal would not adversely affect the integrity of the SPA provided that mitigation includes an appropriate Breeding Bird Protection Plan and that the proposed forest clearance is delayed until the wind farm is operational. This is so that the existing conifer plantation can provide a degree of screening of the construction site (reducing the disturbance to birds from that construction) from SPA red-throated diver.

93. For dunlin, the collision risk of 0.006 birds per year would not, when considered with other developments affecting the SPA, result in adverse effects on the SPA population. An appropriate Breeding Birds Protection Plan would safeguard SPA dunlin from significant disturbance. One dunlin territory could be affected by disturbance/displacement, but this would not result in adverse effects on the SPA population.

94. For golden plover, the collision risk of 0.008 birds per year would not, when considered with other developments affecting the SPA, result in adverse effects on the SPA population of breeding birds. There could be a loss of up to three SPA-related golden plover territories due to displacement, but again this is not considered to result in an adverse effect on the SPA population.

95. For hen harrier, the collision risk of 0.001 birds per year would not, when considered with other developments affecting the SPA, result in adverse effects on the SPA population.

96. The proposal lies within the theoretical foraging range for greylag goose associated with the Caithness Lochs SPA. The proposal would be likely to have a significant effect on the greylag goose of the SPA and again (therefore) an appropriate assessment is required. Based on the evidence presented, the proposal would not adversely affect the integrity of the SPA. This is because of the low risk of SPA goose colliding with a turbine.

97. In relation to wider countryside birds, the proposal would not have an adverse impact on species populations at the Natural Heritage Zone<sup>5</sup> level. The forest clearance would benefit SPA breeding waders (dunlin and golden plover).

### **RSPB Scotland's evidence**

98. RSPB's withdrawal of its objection in respect of the proposed outline Habitat Management Plan<sup>6</sup> was conditional upon on their being a suitably worded condition which included provision for brash removal and re-wetting across the area of conifer plantation which would be felled and restored. Proposed condition 15 addresses this.

99. There are concerning cumulative collision rates in Table 9-3 of the SEI. The combination of all operational, under-construction, consented and in-planning wind farms results in predicted total yearly collision rates (mortalities) of up to 92.479 for golden plover, 1.075 for hen harrier and 1.123 for golden eagle.

100. The findings of a currently unpublished report for the Environmental Research Institute in Thurso calculates that predicted collision risk from all operational, consented and in-planning wind farms could result in a significantly reduced population growth for the hen harrier population of the Caithness and Sutherlands Peatlands SPA. The resulting effect would be an SPA hen harrier population size (after 30 years) 44% of what it would be in the absence of all these wind farms. For Natural Heritage Zone 5, due to the larger population size, the impacted population is predicted to be 74% of the non-impacted population. For golden eagle, the equivalent calculations are 75% and 88%

101. Although there is uncertainty around these figures and further research is needed, until further population and demographic studies are undertaken and additional information from further modelling is available, RSPB Scotland has significant concerns over what these figures indicate.

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<sup>5</sup> Natural Heritage Zone 5 is 'The Peatlands of Caithness and Sutherland'.

<sup>6</sup> CD1.29

102. In terms of cumulative effects with Melvich, there is support for the applicant's proposed "combined approach to management of environmental issues associated with the construction activity" at 9.21 of the SEI. It is strongly recommended that further restoration measures are undertaken. It is recommended that the Habitat Management Plan should propose further forestry removal and blanket bog restoration on deep peat (the forestry blocks west of turbines 10 and 11) and that there be further habitat management for curlew. This is so that the requirement in NPF4 Policy 3 for significant biodiversity enhancement can be met. Without an updated Habitat Management Plan or a Biodiversity Enhancement Plan, it has not been shown that this requirement is met. Ditch blocking and grazing management on currently degraded bog where peatland vegetation has been modified by drainage should also be considered across the site.

### **Reporter's conclusions**

103. The main issue to address is RSPB's concerns about cumulative effects, in particular from collision risk. RSPB Scotland did not elect to participate in the inquiry process. The report for the Environmental Research Institute has not been provided to me.

104. In relation to golden plover, current predicted collision rates from all operational, in-construction and consented wind farms is 41.41 mortalities per year. Since this is based on consented schemes, it must have already been concluded that this level of effect is acceptable. Kirkton is predicted to increase that risk by 0.008. Or to put it another way, to result in a collision once every 125 years, on average. Given that there is (comparatively) a very large estimated Caithness and Sutherland Peatlands SPA population of 1,922 pairs, this extremely small additional risk is, in my view, of negligible magnitude and would not result in a significant cumulative effect with these other wind farms.

105. In relation to hen harrier, current predicted collision rates from all operational, in-construction and consented wind farms is 0.734 mortalities per year. Since this is based on consented schemes, it must have already been concluded that this level of effect is acceptable. Kirkton is predicted to increase that risk by 0.001. Or to put it another way, to result in a collision once every 1000 years, on average. Of all the in-planning schemes, the predicted impacts on hen harrier are the smallest (joint with Armadale) at Kirkton. Given that there is an estimated SPA population of 14 pairs, this very small additional risk is, in my view, of negligible magnitude and would not result in a significant cumulative effect considered with these other wind farms.

106. In relation to golden eagle, current predicted collision rates from all operational, in-construction and consented wind farms is 0.338 mortalities per year. Since this is based on consented schemes, it must have already been concluded that this level of effect is acceptable. Kirkton is predicted to increase that risk by 0.008. Or to put it another way, to result in a collision once every 125 years, on average. Of all the in-planning schemes, the predicted impacts on golden eagle are the smallest at Kirkton. Given that there is an estimated SPA population of 5 pairs, this extremely small additional risk is, in my view, of negligible magnitude and would not result in a significant cumulative effect considered with these other wind farms.

107. I reach the above conclusions on the basis that the additional collision risk from Kirkton is so small. On the basis of these findings, and noting the proposed mitigation of displacement/disturbance effects, I do not consider that there would be an adverse effect on the integrity of the SPA due to cumulative effects with the operational, in-construction and approved windfarms included in the SEI analysis.

108. NatureScot's initial consultation response was based on the materials in the EIA report, where the cumulative collision risks for each species were smaller. Nevertheless, on being consulted on the SEI materials, NatureScot confirmed that its initial advice still held.

109. I note what RSPB has said about the potential cumulative effects from all known wind farms, including those still in the planning system. It is uncertain whether all of these other schemes will ultimately be consented. That said, I do acknowledge the potential additional cumulative effects if other in-planning schemes were to be consented as well as Kirkton. However the cumulative effects of these developments (and whether these would result in an effect on the integrity of the SPA) would fall to be considered if and when they come to be determined and in the light of the updated cumulative position at that time.

110. RSPB Scotland has not objected to the proposal on the basis of cumulative effects. It seems to me that it is expressing wider concerns about the overall potential for all wind farm development to have an effect on the SPA (and on bird populations more generally), rather than the contribution of this proposal to such overall effects. RSPB seems to be advocating more research on such matters. These are not matters for me to address in this report. However I mention them here so that Ministers can be aware of them.

111. RSPB Scotland made a number of detailed observations and recommendations in its initial consultation response. The SEI (table 9-1) provides a detailed response to each of these. Other than where covered above in response to the second RSPB consultation letter (which was in response to the SEI) I think it is reasonable to assume that RSPB Scotland was generally satisfied with the responses to its first objection in the SEI. Many of the points made could be considered more fully in agreeing the details of mitigation measures through the proposed conditions. This includes the merits of taking a combined approach to environmental management should Melvich also be consented.

112. The RSPB Scotland recommendations for additional forestry removal and blanket bog restoration, for further habitat management for curlew and for ditch blocking and grazing management across the wider application site are primarily related to the issues of biodiversity enhancement and net gain, rather than a requirement to mitigate the likely adverse effects of the development. I return to that matter below.

## **The Flow Country World Heritage Site**

113. I held a [hearing](#) on this matter. The applicant, NatureScot and the council participated in this – witnesses are listed in Appendix 2. Those parties collaborated to produce a [Statement of Agreed Matters](#) in relation to the consideration of effects on the World Heritage Site (WHS). Heather Jardine also participated in the hearing.

114. The Inscription document contains a statement of the Outstanding Universal Value of the WHS, as adopted by the World Heritage Committee. It is considered to be the most outstanding example of an actively accumulating blanket bog landscape in the world. The ongoing peat-forming ecological processes continue to sequester carbon on a very large scale. It represents the most extensive, near-continuous, high quality and near-natural blanket bog landscape found globally. The overwhelming majority of the blanket bog within the WHS is in near-natural condition. The remainder includes areas of blanket bog that are undergoing restoration, and areas that are expected to be restored in the near future.

115. The climatic, altitudinal, geological and geomorphological gradients that occur across the Flow Country all contribute to ensuring that the variety of features that make up blanket bogs are represented. The boundaries are largely defined on the basis of the hydrological elements that comprise the blanket bog, and therefore ensure ecosystem integrity and

coherence. Areas of the property have suffered from poor historical management decisions such as drainage and woodland creation, but the boundary has been chosen to include only those areas of deep peat which are in good condition or have the ability to return to a near-natural state within the next 10-25 years.

116. For natural sites, Outstanding Universal Value has three pillars:

- Criteria – the factors for which the WHS is globally outstanding;
- Integrity – the “wholeness” or completeness of the site; an expression of whether all of the component parts of what is being described are present in good condition within the boundary area; and
- Protection and management – the extent to which the area proposed for inscription can be protected and managed effectively.

117. The WHS was ultimately nominated under criterion (ix) of the criteria for selection of World Heritage Sites:

“(ix) to be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals.”

118. It is perhaps helpful at this point to list a number of key documents which are relevant to the assessment of effects on the WHS:

The Flow Country [Nomination Document](#)

Flow Country WHS [Draft Management Plan](#) 2022

The IUCN [Technical Evaluation](#)

[Decisions of the World Heritage Committee](#) – Forty-sixth session

The Flow Country World Heritage Site – [UNESCO Inscription](#)

UNESCO [Operational Guidelines](#) for the Implementation of the World Heritage Convention

UNESCO [Guidance and Toolkit](#) for Impact Assessments in a World Heritage Context

The Highland Council Flow Country WHS [Impact Assessment Toolkit](#)

The Highland Council [Flow Country Candidate World Heritage Site Planning Position Statement](#)

119. The applicant’s written evidence is set out in a number of documents:

[Peat and Hydrology Topic Paper](#)

[Biodiversity and World Heritage Site Topic Paper](#)

[Planning Policy Topic Paper](#)

[Hearing Statement](#)

[Rebuttal statement](#)

[Closing submissions](#)

120. The evidence of NatureScot and the council is set out in a number of documents:

The Highland Council [consultation response – ecology](#)

NatureScot [Expert Report](#)

Highland Council [Hearing Statement](#)

NatureScot [Hearing Statement](#)

[Closing submissions](#)

## **The EIA Report and the SEI**

121. Chapters 2 of the EIA Report and the SEI deal with ecological effects. A [plan](#) shows the relationship between the proposed wind farm layout and the boundary of the WHS. As part of the SEI the applicant also prepared a [Candidate Flow Country World Heritage Site Assessment](#) (“the cWHS Assessment”). It was prepared by Mr Wilson and Ms Bell, who also subsequently submitted topic papers and gave evidence at the hearing.

122. The cWHS Assessment assesses the effects on six attributes under criterion (ix). All six attributes are considered initially, but all are screened out of the need for any further assessment.

123. Attribute (a) is “most extensive near continuous example of natural actively accumulating blanket bog ecosystem found globally”. Effects on this attribute are screened out on the basis that “the proposed development is a small area on the boundary of the cWHS and the scale of this development is too small to have a significant effect on this attribute.”

124. Attribute (e) is carbon sequestration and storage. This is screened out because it is stated that the development would not affect the ability of the Flow Country to sequester carbon. It is also pointed out that, overall, there would be a net carbon benefit from the development.

125. The cWHS Assessment went on to consider effects on birds (now not relevant since there was no inscription under criterion (x)) and on habitats (the M17 and M19 blanket bog communities, and M15 wet heath). These habitats are assessed under criterion (x), but they also have relevance (indeed the loss of blanket bog is the reason for the council and NatureScot objections) for the WHS as now inscribed under criterion (ix) only. Ecological effects on all of these communities (due to direct and indirect loss of habitat) are assessed as minor, with no adverse effects on Outstanding Universal Value.

126. The SEI quantifies the amount of each habitat type which would be affected. This includes direct habitat loss under the footprint of tracks, turbine foundations and other components of the development. It also includes indirect loss of habitat within 5m of the footprint – caused by disturbance and potential changes to hydrology.

127. The statement of agreed matters identifies direct and indirect effects on two types of blanket bog habitat, for the purposes of considering effects on the WHS:

- M17 blanket mire - 3.34ha permanently lost to development, with a further 2.34ha likely subject to indirect impacts or temporary loss.
- M19 blanket mire - 0.09ha permanently lost to development, with a further 0.18ha likely subject to indirect impacts or temporary loss.

It is agreed that the direct and indirect effects together would be “lost” – a total area across both types of blanket mire of 5.95 hectares.

## **The main points for the applicant**

### The cWHS Assessment

128. An appraisal of the effects of the development on the WHS must take into account the condition of the blanket bog habitats affected, since this is important in understanding whether that habitat contributes to Outstanding Universal Value. Although the cWHS

Assessment does not take explicit account of habitat condition, the condition of the habitats on the site was well-known to its authors when preparing it. The scale of the impact on the WHS, with direct and indirect loss of blanket bog representing only a tiny 0.003% of the total area of the WHS, is negligible/minor.

#### Policy 7 of NPF4

129. Policy 7(l) does not apply. It is clear from its Policy Intent and Policy Outcomes that Policy 7 relates to historic environment assets and places only, and does not apply to natural sites. A wider interpretation would be too purposive.

130. The concept of “setting”, as referred to in the policy, would only be relevant to a WHS identified for its cultural heritage. It is not relevant to the attributes of the Flow Country.

131. At the time when NPF4 was adopted there was no WHS in Scotland inscribed solely for natural heritage reasons. Therefore the absence of any provision within NPF4 Policy 4 (which covers natural heritage) comparable to Policy 7(l) (which covers cultural heritage) did not have any consequences. Upon inscription of the Flow Country WHS solely for natural heritage reasons, however, a lacuna was created.

132. The glossary definition in NPF4 is a generic one for all WHS. It shows that effects on the Outstanding Universal Value of a WHS is, in Ministers’ view, a material consideration.

133. The Nomination document and the Flow Country WHS Draft Management Plan relied upon policy in NPF3 and Scottish Planning Policy, despite at that time these having been recently superseded by NPF4. In [responding](#) to the IUCN’s request for supplementary information, the Flow Country Partnership provided an update in light of the adopted NPF4. However, that update is misleading since it merely quotes the wording of Policy 7(l) without making it clear that policy 7 applies only to cultural heritage assets.

#### The Flow Country Candidate World Heritage Site Planning Position Statement

134. The Executive Summary of this document states that it was intended to cover the period between submission of the Nomination document and the anticipated inscription of the WHS in mid-2024. Thus the period of relevance for the position statement is now over. The council undertook no consultation on the position statement, which should reduce the weight that can be placed upon it. It appears to be overly-precautionary, being concerned with the reputational risk of consenting development which could threaten Outstanding Universal Value in the period before the WHS is inscribed. It also omits reference to other relevant policy context, for example the Onshore Wind Policy Statement.

#### The Draft Flow Country WHS Management Plan

135. It is stated in this document that wind farm development would not be precluded within the WHS, albeit it would need to be assessed by reference to Outstanding Universal Value. It confirms that appropriately sited wind farm development can provide an opportunity (and a source of finance) for habitat management and peatland restoration alongside renewable energy benefits. This is entirely consistent with the support for wind farm development and habitat restoration in the Onshore Wind Policy Statement and with the Nomination document, which also recognises the potential for wind farm development to facilitate peatland restoration.

## The process and evidence for setting the WHS boundary

136. The applicant does not seek to challenge the decision made about where the boundary of the WHS should lie. However the process taken (and the evidence used) in making that decision is relevant to consideration of the condition of the part of the WHS affected by the proposal.

137. There is no evidence which establishes exactly why the application site was included within the boundary of the WHS. The fact that any one area is included is not indicative of its condition. The lack of detail available on how the boundary was defined suggests that a detailed understanding of the condition of land within the entire WHS was not known. This supports the view that it cannot be assumed that all land within the WHS boundary contributes to its Outstanding Universal Value.

138. A [letter](#) to the applicant from the Flow Country Partnership advises that the boundary was confirmed only on the basis of aerial imagery, a point confirmed by NatureScot at the hearing. The applicant's witnesses understand that there was no site visit undertaken by the Partnership (despite an invitation from the landowner) to validate the findings from the desk-based assessment. Such a visit may have been beneficial to allow a more detailed understanding of the peatland condition within the WHS at the application site. Reliance on aerial imagery does not give a full understanding of the topography, hydrology and geomorphology of the site.

139. This reliance on aerial imagery only has resulted in areas being included that do not currently contribute to Outstanding Universal Value. This includes, for example, a recently planted woodland on Kirkton Farm, which the above letter indicates should have been excluded. Reliance on aerial imagery may have resulted in erroneous conclusions being reached that the peatlands present were hydrologically connected to the peatlands to the west and that they were of high quality.

140. The IUCN Technical Evaluation<sup>7</sup> recognised that not all aspects of the property met the Outstanding Universal Value of being blanket bog landscape in the most natural condition. It noted that other parts of the property were considered important as hydrological units providing protection to the nominated property values, and that there are other areas that were under restoration, or with an agreed potential to be restored. UNESCO's decision to inscribe the WHS<sup>8</sup> also reflects that not all areas of blanket bog within it were in near-natural condition.

141. The habitats present on the application site and within the WHS are not areas of the "blanket bog landscape that are in the most natural condition" as described in the Nomination document. Nor are they functionally important as part of blanket bog hydrological units, given the lack of hydrological connectivity as described in the applicant's Peat and Hydrology Topic Paper. Nor do they provide protection to the WHS values.

142. Despite the initial concerns raised by the applicant about the basis for deciding upon the proposed WHS boundary, and then the [further information](#) provided following the revised boundary in the Nomination document, the Partnership did not explore these issues further.

143. Even though both are key members of the Partnership, neither NatureScot or the council provided written evidence or led witnesses that could speak to the reasons for

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<sup>7</sup> Page 62

<sup>8</sup> CD7.10. Page 204 of 284 of the PDF document.

inclusion of the application site within the WHS. On a proper understanding of its condition, the only safe conclusion that can be reached is that the application site did not display the attributes of Outstanding Universal Value but was nevertheless included for its buffering function.

#### The condition of the blanket bog on the application site

144. It is agreed by NatureScot that site-based surveys would give a more accurate understanding of the hydrology and of habitat condition on the site compared to aerial surveys. A site survey was undertaken utilising the methodology detailed in the Peatland Rapid Assessment Protocol, which is based on the Peatland Code method.

145. The applicant is not now suggesting that the condition of the site is materially different from that stated in the EIA Report or the SEI. The condition of blanket bog habitats is not commented on in detail within the EIA Report and SEI, as this was not necessary for the purpose of those assessments. The applicant's witnesses undertook the further site assessment for the purpose of preparing their Topic Papers, which provide a more detailed account of the baseline environment.

146. The blanket bog which would be lost is located down hydraulic gradient of already drained conditions further west within the WHS. There is reduced hydrological connectivity between the application site and this blanket bog to the west. The habitats on the application site are different from the continuous expanse of natural, undisturbed and unmodified peatland habitats found further west within the SAC and SSSIs, and which do exhibit Outstanding Universal Value.

147. The development site is a working farm. It shows evidence of disturbance from human activity such as peat cutting, burning, ditch digging and animal grazing. Extensive areas of dendritic drainage, gully erosion and hags are present to the west of the site and are currently draining the main functioning peat bodies located to the west. Mr Huntridge's expert opinion is that construction of the development would not impact the hydrology of functioning peat bodies in near natural condition.

148. Whilst habitat on site is classified as blanket bog, the surveys undertaken by Mr Wilson evidenced that it is experiencing pressure, which is affecting its structure and composition. As a result of that pressure, it is drying out. Mr Wilson at the hearing described the site as "floristically impoverished" in comparison with unmodified blanket bog habitats further to the west, noting that this could be affecting the ability of the habitats to form peat.

149. The area of the WHS located within the application site is not predominantly peat forming, and not sequestering carbon. It will cause a future net loss of carbon due to the lowering of the water table and carbon dioxide loss to the atmosphere. It will continue to dry out.

150. Peat condition is sufficiently degraded that the blanket bog on the application site cannot be considered to be in a near natural condition. These areas do not meet the [Peatland ACTION](#) and [Peatland Code Field Protocol](#) assessment definitions for "near natural" and would fall within the "modified" condition.

151. Ms Rentoul recognised in her Hearing Statement that within the WHS there will be "areas of blanket bog or wet heath which themselves may not be deemed to have Outstanding Universal Value due to their condition (e.g. drained, grazed eroded) but which are sufficiently intact to be considered parts of the same hydrological units as, and/or providing support through their peat mass to the Outstanding Universal Value". Therefore it

is recognised that not all areas within the WHS classified as blanket bog contributes towards the attributes of the Outstanding Universal Value, and that some areas of blanket bog are too damaged to meet the habitat described in the attributes and the description of the Outstanding Universal Value.

152. Ms Rentoul quotes a description from EIA [Technical Appendix 8.1](#) of blanket bog which says “with Sphagnum usually abundant”. Ms Rentoul has failed to take account of the word “usually” in this description, and so her further analysis proceeds from the wrong starting point. While the classification of that habitat as blanket bog suggests to Ms Rentoul that this would mean Sphagnum would be dominant, this is incorrect based on the survey results. Sphagnum was present, and was in some areas abundant. But across much of the site it was not dominant, and its abundance varied. The bryophyte layer consisted of a number of other bryophyte species that suggested the area was drying out.

### Assessment of impacts on the WHS

153. A correct understanding of the condition of the peatlands, and how they fit within the wider WHS, is integral to the assessment of potential impacts on the attributes and hence on the Outstanding Universal value.

154. The UNESCO Guidance and Toolkit is clear (page 57) that an understanding of condition is a necessary starting point for assessment, as noted in its glossary definition of “baseline assessment”:

“A baseline assessment is an adequate description of the affected environment

i) as it is currently,

ii) how it was at the time of World Heritage inscription and

iii) as it could be expected to develop if the project were not to proceed.

This should encompass all dimensions of the environment: physical, biological, resource use, social, cultural, health and economic. The effectiveness of an impact assessment is directly dependent on how well these conditions are understood.”

155. Further, the glossary definition of “impact” is:

“The effects or consequences of a factor on the attributes of the heritage place, both in terms of the attributes’ state of conservation and their ability to convey the heritage/ conservation values. An impact is the difference between a future environmental condition with the implementation of the development project, and the future condition without it”.

156. The toolkit is a generic one. For a site-specific assessment, the attributes of the site have to be considered. For the Flow Country, the condition of the blanket bog is repeatedly identified as a key feature in the nomination documentation, culminating in the wording of attribute a) of the Outstanding Universal Value:

“most extensive near continuous example of natural actively accumulating blanket bog ecosystem found globally”

The terms “natural” and “actively accumulating” indicate that the attribute is describing blanket bog which is not degraded or modified.

157. Similarly, in the Inscription it is stated that:

“The Flow Country therefore represents the most extensive, near-continuous, high quality and near-natural blanket bog landscape found globally.”

158. Condition is also a key factor in the ongoing management of a WHS once inscribed. The Nomination document includes a table of key indicators for the health of blanket bog and associated peatland habitats encompassing the attributes for which the WHS is inscribed. At the hearing, Ms Bell highlighted a passage in this part of the Nomination document:

“The key indicators for measuring the state of conservation relate closely to the Outstanding Universal Value and associated attributes of the nominated property. Those key indicators which relate to the health of the blanket bog and associated peatland habitats encompass all the attributes described for criterion ix. that depend on the condition of the peatlands (attributes a, b, c, d & e).”

This is another pointer to the fact that habitat condition is an important factor. Under “extent” at the top of Table 6.1 in the Nomination document, a decline in the area of the feature would be because the condition of the habitat was declining.

159. Ms Bell also contrasted considering an effect on blanket bog within the WHS, where habitat condition is clearly so important to Outstanding Universal Value, to the effect on a different type of protected area such as a SAC. In the latter case it is the presence of the blanket bog which is the key thing. However, for the Flow Country WHS, the attributes make it clear that quality is an important factor, which elevates this as a consideration compared to other types of protected areas. If the attributes had been intended simply to relate to blanket bog, then they would have been expressed differently. There would have been no mention of the naturalness and the quality of the habitat in the attributes of the WHS and the statement of Outstanding Universal Value.

160. The applicant’s topic papers describe in detail why the part of the Flow Country which would be affected by the development does not meet the criteria for inclusion in the WHS.

161. Following the UNESCO guidance, it is the Outstanding Universal Value and site integrity which must be protected and not subject to significant adverse impacts. The Toolkit in the UNESCO guidance follows a step by step process which involves reviewing and analysing the Statement of Outstanding Universal Value to identify the values and attributes of the WHS and then predicting the impact of the proposed action against the baseline conditions of the WHS. The toolkit in the council’s planning position statement is considered to be too simplistic, so the UNESCO toolkit and guidance is followed.

162. The guidance and toolkit is applicable to all types of WHS, and therefore somewhat generic. The guidance recommends (page 29) that it should be read alongside other guidance on impact assessment. [Guidance](#) from the Chartered Institute of Ecology and Environmental Management (CIEEM) on ecological impact assessment addresses (box 14) WHS as a designated site, suggesting that they should be considered alongside other statutory internationally designated sites such as Special Areas of Conservation.

163. The UNESCO guidance does not define what is meant by “significant”. The CIEEM guidance provides (paragraph 5.29) a definition:

“For designated sites - is the project and associated activities likely to undermine the conservation objectives of the site, or positively or negatively affect the conservation status of species or habitats for which the site is designated, or may it have positive or negative effects on the condition of the site or its interest/qualifying features”.

164. For Natura sites, the CIEEM guidance refers to effects on their conservation objectives, and whether these would result in an adverse effect on site integrity.

165. Therefore the CIEEM guidance is important. The appropriate approach to the assessment is to rely both on CIEEM guidance for the technical aspects of an ecological impact assessment and on the UNESCO guidance for how to apply that to a WHS.

166. A key part of the assessment is determining the level of impact which would cause the attributes not to be maintained such that there would be an adverse effect on the Outstanding Universal Value and/or integrity. This is done by identifying the change which would occur to the attribute as a result of the proposal, when compared with the current baseline.

167. Loss of habitat could affect attribute a). This is due to the reduction in area which would occur, but also the risk of fragmentation which could exacerbate habitat loss.

168. The WHS encompasses an area of 187,026ha. The estimated area of peatlands within it is approximately 160,000ha. The area of impact (about 6ha) is an extremely small proportion of this. An impact on a small area of a WHS can still result in significant adverse effect on its attributes. For example if the area was particularly sensitive or high quality habitat forming part of the attributes where a small change could have a large effect on the baseline conditions.

169. However, in this instance this is not the case. This is because of the condition of the blanket bog habitat on the site, as described in the applicant's evidence. Because of this, the extent of habitat loss which would occur is not considered to represent a loss which would mean the attribute could no longer be maintained. The habitat which would be lost is an area of negligible size and is a modified and floristically impoverished peatland habitat. There are indications that the condition may be worsening due to the drying which is occurring.

170. The location of the application site close to the boundary of the WHS increases the possibility of adverse impacts arising from fragmentation. However, the mitigation measures identified in the EIA Report would reduce the effects and ensure that hydrological connectivity across the infrastructure was maintained. This would reduce the impacts on habitats in the surrounding area, reducing fragmentation effects. In addition, there is already some reduced hydrological connectivity as a result of anthropogenic activity, thereby lessening the potential impacts of the development. Therefore there would not be a significant impact on attribute a) due to habitat and hydrological fragmentation.

171. Therefore overall, since the impact on the attribute is assessed as negligible, there would not be a significant adverse impact on Outstanding Universal Value.

172. The areas of blanket bog that would be affected are not in natural (or near-natural) condition, nor are they actively accumulating. As identified above, those are key aspects of the attributes of Outstanding Universal Value for which the WHS was inscribed. Having regard to the scale of change and the quality of the habitats present, there would be a negligible/minor impact on the Outstanding Universal Value. This negligible/minor impact is not significant and would not undermine the integrity of the WHS.

173. At the hearing, Ms Rentoul was very uncomfortable in seeking to explain the extent to which (if at all) site condition was factored into her assessment. She was unable to explain what extent of lost blanket bog might be considered acceptable to NatureScot. Ultimately, her position seemed to be that blanket bog is an irreplaceable habitat resource,

it is referred to as an attribute in the statement of significance, and therefore any loss undermines Outstanding Universal Value and makes the development unacceptable. Such an approach is inconsistent with the UNESCO guidance, which requires consideration of the extent to which the negative impact would harm the attributes that convey Outstanding Universal Value and the overall integrity of the WHS. Ms Rentoul's view of a "moderate" and therefore significant impact on Outstanding Universal Value clearly overstates the likely impact of the development on the WHS. The position adopted by the council and NatureScot is absolutist and protectionist. It is a *de facto* ban on infrastructure development within the WHS. This is a serious policy issue for the Scottish Government.

174. If the wind farm development does not proceed, the application site would remain part of a working far. The negative pressures on the blanket bog would continue. It is likely that the habitats would continue to slowly deteriorate. While some land is re-vegetating, it is unlikely to re-wet. It is possible that sheep could be returned to graze on the blanket bog, which has not been the case over the last five years. There is little prospect of peatland restoration taking place without the wind farm – in reality, development projects will be the main driver for restoration projects in the future.

175. The forestry plantation is having a negative impact on the WHS. Its felling would remove the negative effects on the hydrology of the WHS within 100 m of the current forestry edge, giving potential for improvement of the peatland habitats in this area. The restoration of blanket bog within the felled area would increase the extent and connectivity of blanket bog in the area, providing additional protection to the WHS and potentially providing suitable habitat for future expansion of the WHS into this area. Given the small area likely to be affected, in comparison to the overall size of the WHS, the restoration of the plantation would be a negligible but positive change.

176. There is proposed restoration of a drain at the access tracks for turbines 5 and 6. Other than that, there are no specific proposals set out for restoration of the habitats in the main part of the application site (beyond the forest to bog restoration). Ms Bell said at the hearing that she would expect such matters to be fleshed out in more detail in the final Habitat Management Plan.

## **The main points for NatureScot and the council**

### The cWHS Assessment

177. The cWHS Assessment does not appear to follow the guidance set out by UNESCO, and appears at odds with the EIA Report. The Ecology chapter of the EIA identifies mire/peatland habitats as meeting the criteria of significant effect. They are identified as Important Ecological Features which need to be included in the full EIA process. The screening process in the cWHS Assessment considered potential negative impacts, which is a much lower evidence requirement than identifying significant effects as required by EIA. The loss of peatland from within the WHS should be classed as a potential negative impact, and a full Outstanding Universal Value assessment evaluating potential impacts is required. The loss of approximately 6 hectares of blanket bog would certainly be significant.

### Policy 7 of NPF4

178. Policy 7(l) is applicable. The policy may be about historic assets and places more generally, but part (l) makes no such qualification when it comes to deal with WHS. NPF4 must be read as a whole. Therefore policy 7 applies to all WHS, as they are described in the glossary.

179. The glossary in NPF4 makes it clear that its reference to WHS includes those inscribed for their natural and/or cultural heritage, and that impacts on a WHS is a material consideration. Since there is no other coverage in NPF4 of WHS, the policy approach for all such sites must reside in Policy 7. It would be very odd if NPF4 was simply silent on WHS inscribed for their natural heritage. The way the policy test is expressed does not cause any difficulties for such an interpretation.

180. This is the basis of policy protection that was presented to the IUCN and upon which the recommendation to the World Heritage Committee to inscribe was made, based on the IUCN Technical Evaluation (Section 4.1) and the decision of the World Heritage Committee in July 2024 (page 204). This position was endorsed by the Scottish Ministers and the UK Government, and reaffirmed in a July 2024 [letter](#) to the applicant from the Minister for Climate Action.

181. If this interpretation is not accepted, the effects on the WHS are still a very important material consideration in this case.

### The Flow Country Candidate World Heritage Site Planning Position Statement

182. The council did not withdraw the planning position statement following inscription of the WHS. It remains relevant and useful. The council's website confirms that it should continue to be used until it is updated. However, there is less need to rely on it now that NPF4 Policy 7(l) is in force.

### The process undertaken in establishing the boundary of the WHS

183. The Technical Evaluation records that the consultation process led to the conclusion to exclude those areas not contributing to Outstanding Universal Value and most vulnerable to future development pressures. The Nomination document states in section 3.2 that "When developing the boundary, the entire 400,000 ha of the wider Flow Country was initially considered, and then the component parts were selected on the basis that they were in a condition that would warrant and sustain Outstanding Universal Value, and maintain integrity".

184. The Draft WHS Management Plan confirms that the rationale for the boundaries are threefold:

1. areas of the blanket bog landscape in the most natural condition;
2. areas adjacent to the blanket bog landscape that are functionally important as part of the bog hydrological units and provide protection to the property's values. This will include areas that are otherwise surrounded by blanket bog and form part of the blanket bog landscape;
3. areas under restoration, or with potential to be restored, as there is sufficient evidence to suggest that over time they would be on a trajectory towards functional blanket bog.

The application site is not in the third category. Therefore it is an integral part of the WHS. There is no "buffer zone" within or around the WHS.

185. The Partnership's letter to Mr Bell, referred to by the applicant, agreed that the boundary should be amended to its current extent, stating that:

"In reviewing this area of the boundary it was recognised that some fragmentation of the mapped peatlands had not previously been fully accounted for. Areas of shallower peat, as

is borne out by the permission given for the establishment of native woodlands, occur down towards the Halladale River, along with areas that have been subject to agricultural improvement.”

The alteration to the boundary:

“will still include areas adjacent to the West Halladale SSSI. This is on the basis of the quality of the peatlands in this area and their hydrological connectivity to those peatlands that lie to the west.”

186. Therefore the WHS boundary at the application site has already been closely considered, and there are sound reasons for its inclusion within the WHS.

187. It is not a requirement that all of the peatland within the WHS has to be of “near-natural” or good condition, as implied by the applicant. The UNESCO [Operational Guidelines](#) for state (paragraph 90) that “For all properties nominated under criteria (vii) - (x) bio-physical processes and landform features should be relatively intact. However, it is recognized that no area is totally pristine and that all natural areas are in a dynamic state”. The guidance continues to state (paragraph 94) that “Properties proposed under criterion (ix) should have sufficient size and contain the necessary elements to demonstrate the key aspects of processes that are essential for the long term conservation of the ecosystems and the biological diversity they contain”.

188. The WHS at Kirkton includes part of the blanket bog which continues to the west. Omission of this area would not be scientifically robust as it would then not include the whole peat body, nor all of its hydrology. It should also be noted that there are examples of locations which are not in good condition (to use the applicant’s wording), including those which are classed as being in unfavourable condition, which have been included within the WHS. For example, the Cnoc an Alaskie SSSI, Skinsdale Peatlands SSSI and West Strathnaver SSSI.

#### The condition of the blanket bog on the application site

189. Not all peatland habitats are nationally important, and not all impacts on areas that are nationally important are deemed to raise issues of “National Interest”. To be able to assess the importance and impacts, usually a site visit is carried out to help assess the areas likely to be affected against the habitat quality elements of the [SSSI Guidelines](#) for Bogs. This assessment against the Guidelines identifies features of near-natural and high-quality blanket bog habitat. This assessment is a well-established and appropriate methodology for assessing the quality of bog habitats.

190. Following such a process, NatureScot’s assessment was that the application site contained nationally important peatland, but that compensatory measures would be able to offset these impacts. This was prior to the WHS being inscribed.

191. The peatland type at this location is a watershed mire, which is ombrotrophic.<sup>9</sup> As such, it is natural that the peat depth at this location would be shallower than at other parts within the main peat body. It is recognised in the bog [SSSI selection guidelines](#) that mire margins can have “relative ecological simplicity [which] should not be mistaken for lack of importance” and that margins “play fundamental parts in the hydrological integrity of a bog”.

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<sup>9</sup> Ombrotrophic mire is one which is dependent on atmospheric moisture and precipitation for its water content and nutrients, rather than from ground-water sources. These are often referred to as ‘rainfed’ mires. [NatureScot]

192. The applicant has stated, in support of its assessment that the blanket bog is in modified condition, that there is “no shallow water table observed at surface”. However, the context of the site and the type of peatland should be taken into account. Peatlands on a slope are typically less wet than those on flatter areas.

193. The location of the site being “down gradient” does not mean that it is less important than the hydrology up gradient. The peatland at this location has hydrology that is sufficient to be able to support peat soil formation and peatland vegetation. This area will be protecting the peatland to the west from greater water loss. Additional damage, loss or increased drainage in this location could result in greater impacts up gradient due to increased drawn down pressure resulting in greater dewatering upslope.

194. Technical Appendix 8.1 identified the Phase 1 habitat within the site as being mainly “Blanket sphagnum bog”. The [Handbook](#) for Phase 1 habitat surveys advises that blanket (Sphagnum) bog “is used for relatively undamaged blanket bog, with Sphagnum usually abundant”. It should be noted that there are other Phase 1 bog habitats. These include wet modified bog and dry modified bog. These other categories of bog “have little or no sphagnum often with bare peat”. These habitats have not been identified in this survey. This suggests that the habitat is in a condition such that it has a dominance of Sphagnum species present, which is therefore capable of peat formation.

195. The Outline Habitat Management Plan and Technical Appendix 8.1 identify that there is *Sphagnum austinii* within the development boundary. This species of Sphagnum is one of the indicators of near natural peatland. This therefore implies that the site is in a condition which is able to maintain this species, which is not tolerant of disturbance. Therefore, the conditions for its existence must prevail to some extent within the development boundary.

196. The detail within the Phase 1 and NVC survey and the habitat management plan suggests that the area surveyed contains good quality peatland. There are also some areas which are showing some signs of degradation, but not to the extent that justifies a modified community to be identified in Phase 1, nor for the majority of the site to be classed as being on dryer peat (e.g. M19) or transitioning to being aligned with wet heath habitats (e.g. M15).

197. The applicant’s Topic Papers appear to have changed the interpretation of the habitat condition compared to the EIA Report. There is nothing in the EIA Report to suggest the blanket bog is in poor condition or non-active. The position has changed towards a greater emphasis on the degraded nature of the site. Now all of the turbine locations are classed as “modified” and a summary included that the “peat condition is sufficiently degraded that the proposed development can be considered already to be in a modified condition”. That position seems to be overstated.

198. Peat condition assessments are used in “informing any changes in management or restoration”. They are not intended for use in determining peatland condition in a development management context, nor for supporting further loss of peatland.

199. The applicant has stated that there is evidence of grazing and trampling, but not the extent of this evidence. Evidence of presence is not the same as there being impacts from herbivores. The photographic evidence of bare peat from grazing and trampling is very limited, although there is some micro-erosion that should be included in the bare peat category. There is evidence of the site being used by deer, and there were some impacts observed at the NatureScot site visit. This was not at a level that suggests that the peatland at this location had lost its value nor its ability to sequester carbon and be an active bog.

200. Photographic evidence from the applicant shows a peat hagg, but this is vegetated and appears to be recovering on its own, so potentially improving.

201. There are signs of peat cutting within the development boundary. But this is historic, small scale cutting for domestic use, of which there are many examples at Kirkton. The area which has been cut in the past is in the process of recovering, with bog species being present and the cut edge is recovering and revegetating in many locations, as seen on the NatureScot site visit. The peat depth is lower than would have occurred if the area hadn't been cut, but this does not mean that it should not be considered as part of the peat body.

202. The drains near turbine 5 appear to be naturally recovering by becoming vegetated and slowing water movement. As such they could be classed as being or becoming inactive.

203. The evidence is not sufficient to justify the loss of peatland to construction. Stating that the site is already modified is not relevant other than to identify scope for restoration. The suggestion that the peatland is modified and therefore can be lost is an oversimplification of the habitat and does not take into account its value at this location.

204. The [definition](#) of "active" peatland in the habitat management plan is from the Joint Nature Conservation Council, which specifies that active bog is an area of vegetation that is normally peat-forming, then lists typical peat-forming species. These species are present within and across much of the site. The evidence in the habitat survey is sufficient to demonstrate that much of the site is normally peat forming.

205. There might be net loss of carbon occurring due to the lowering of the water table, but only on some parts of the site. The development would result in greater carbon loss due to removal of peat and peatland vegetation, fragmentation and poorer peatland condition.

#### Assessment of impacts on the WHS

206. The proposal would significantly impact the Outstanding Universal Value of the WHS. This is due to the loss of blanket bog habitat, fragmentation of this habitat, and reduction in carbon sequestration. These impacts cannot be mitigated.

207. NatureScot followed the guidance set out in the UNESCO guidance and toolkit. Assessment is made of the significance of the effect on each attribute using the impact characteristics, and then considering overall effect on Outstanding Universal Value.

208. The guidance states that moderate and major impacts results in some or large changes to the attribute. The NatureScot assessment found that there would be moderate impacts to attributes a) and e). Only minor impacts are assessed for the remaining attributes.

209. In respect of attribute a), effects arise from the loss of blanket bog habitat and the effects of the development bisecting this habitat. In respect of attribute e) the loss of blanket bog would result in a reduced ability to sequester carbon. Changes to hydrology could also affect this attribute.

210. As damage to one part of the site is considered as damage to the whole, and since there is no scope for offsetting within the UNESCO assessment process, it is assessed that there would be a significant impact on Outstanding Universal Value as a result of the development.

211. The guidance for Habitats Regulation Appraisal and the CIEEM guidelines are not appropriate for determining impacts on the Outstanding Universal Value of a WHS, which should be solely based on the UNESCO guidance and toolkit.

212. NatureScot does not agree with Ms Bell's suggestion that habitat condition is particularly important in the assessment of effects on the WHS compared to, say, an assessment of effects on a SAC. The WHS provides a higher level of protection than any other type of protected area. The first attribute of the WHS is looking at the presence of blanket bog. That is what it is fundamentally trying to protect.

213. The description of the quality and condition of the blanket bog in the Flow Country was relevant to the decision to inscribe it as a WHS. That was used to determine whether this should be a WHS or not. It's been inscribed, so that attribute stands as part of that justification. Within the WHS, 13 of the SSSIs are classed as unfavourable. The applicant is not suggesting that less value should therefore be placed on those protected areas. So it seems odd to do so for the WHS.

214. The condition of the site is of limited relevance to the assessment of effects on the WHS. Condition could be relevant in determining whether or not the blanket bog is active. The primary consideration is the presence of active blanket bog. In Tool 3 of the UNESCO Toolkit, none of the impact characteristics specifically looks at condition. That is only considered at the initial consideration of the attribute – is it actively accumulating?

215. The key indicators for measuring the state of conservation of the WHS are about the future monitoring and understanding of the condition of the WHS for reporting purposes. This is a fairly standard approach to monitoring of condition. The aim would be to meet these key indicators. But not meeting them would not indicate that loss of habitat would be appropriate.

216. A loss of 6ha of blanket bog cannot be negligible, despite the large size of the WHS. Any singular or incremental significant loss to Outstanding Universal Value is unacceptable.

217. It is difficult to predict the fate of the application site if the development does not proceed. There could be support for future management of the site to benefit habitats.

### **The main points made by other parties**

218. [Heather Jardine](#) and the [Strath Halladale Partnership and Bighouse Estate](#) made written submissions on effects on the World Heritage Site.

219. The Strath Halladale Partnership and Bighouse Estate supports the position adopted by the council and NatureScot. The proposed wind farm is incompatible with the WHS designation. There are also cumulative effects with other wind farm proposals and other types of development. The harm to the WHS should be considered in the context of an absence of any need for the development. Ms Jardine's concerns relate more to effects on the tourist economy, which I address above.

### **Reporter's conclusions**

220. The Inscription for the Flow Country WHS describes it as a peatland ecosystem which has a diversity of habitats and displays a remarkable diversity of features not found anywhere else on earth. The WHS is of sufficient size to contain all of the elements of Outstanding Universal Value needed to demonstrate the ecological and biological processes, and the biodiversity of this ecosystem. These include the blanket bog itself, the

wider peatland landscape in which it lies and finer elements, including pool systems, diverse surface patterning, fens, and the range of flora and fauna that all of these systems support. The climatic, altitudinal, geological and geomorphological gradients that occur across the Flow Country all contribute to ensuring that the variety of features that make up blanket bogs are represented.

221. The main parties agree that, at heart, it is only the effects (in this case at least) on two NVC communities which comprise blanket bog which are important for an assessment of the effects on the WHS. I initially found that surprising, since descriptions such as those in the preceding paragraph had suggested to me that the WHS may be best conceived as a diverse, landscape-scale system, with a range of habitats of which many might contribute to its Outstanding Universal Value. In part 6 of the Nomination document, the first aspect of the WHS identified for monitoring is “Blanket bog and associated peatland habitats” (my underline). I am also conscious that different ecologists can reach different conclusions (quite legitimately, on the basis of differing professional judgements) when surveying and then mapping a network of different habits (or NVC communities) across a site.

222. However, at the hearing Ms Bell advised that a focus on particular NVC communities is a well-established approach when considering effects on habitat types. Since NatureScot and the council (both members of the Flow Country Partnership, having important roles in the future management of the WHS and the monitoring of its condition) agree on that approach, I will accept it.

223. Despite what is contained in the Statement of Agreed Matters, some of Ms Rentoul’s subsequent evidence seemed to call into question the adequacy of adopting only a 5m wide buffer zone around the wind farm footprint in calculating the extent of its indirect effects. RSPB Scotland made a similar point in its representations. However, at the hearing NatureScot confirmed that its assessment of effects was based on the loss of habitat as quantified in the Statement of Agreed Matters. I don’t have detailed evidence as to why a 5m buffer should not be adopted in this case. In its initial consultation response, NatureScot did not challenge the adequacy of such an approach. Given the agreement between the parties at the hearing, I consider that it is reasonable to proceed on the basis of that agreed approach.

### The cWHS Assessment

224. I do not find the cWHS Assessment to be the most helpful evidence in informing an assessment of the effects of the proposal on the WHS.

225. Firstly, it takes a simple approach of screening out consideration of the effects on blanket bog because the proposed development “is a small area on the boundary of the cWHS and the scale of the development is too small to have a significant effect on this attribute”. I find this to be a rather blunt assertion, which is not backed up by any further explanation or analysis which shows how such a conclusion was reached.

226. Moreover, the applicant’s case is that an assessment of the effects on the WHS must factor in the condition of the blanket bog which would be lost, and the extent to which it currently contributes to Outstanding Universal Value. Accepting that, the lack of reference to habitat condition in the cWHS Assessment appears to me to be an omission. I note Ms Bell’s evidence at the hearing that the authors of the Assessment were at the time cognisant of the condition of the habitats on site. However, in that event, and if that condition informed the Assessment, I would have expected this to have been rehearsed in the document.

227. For a similar reason, I consider that the cWHS Assessment takes too simplistic an approach in screening out effects on carbon sequestration and storage (attribute (e)) on the basis that the development “would not affect the ability of the Flow Country to contribute to sequester carbon.” Reaching that conclusion would, it seems to me, require to be supported by some form of assessment of whether (and if so to what extent) the part of the application site within the WHS currently sequesters carbon, and of what would be the position after the development had been constructed. The fact that, due to the calculations of how much fossil fuel electricity generation the wind farm would be expected to displace, there is predicted to be a net carbon benefit associated with the development, does not seem to me to be directly relevant to an assessment of this attribute.

228. For these reasons, my conclusions on the effects on the WHS draw on the other evidence put before me, including the evidence as to the condition of the blanket bog habitats on the site.

#### Policy 7 of NPF4

229. Before going on below to consider the condition of the blanket bog habitat which would be lost, and an assessment of the effects on the WHS, there are some policy-related matters and some contextual matters which it is helpful at this stage to address.

230. Policy 7 sits under the sub-heading of “Historic assets and places”. Under this sub-heading, the policy intent is:

“To protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.”

231. Amongst the desired policy outcomes are that the historic environment is valued, protected and enhanced, that historic buildings are brought back into use and that the value of the historic environment is recognised. There are specific policy provisions for listed buildings, conservation areas, scheduled monuments, gardens and designed landscapes, historic battlefields, historic marine protected areas, buildings at risk, and non-designated historic environment assets (including archaeological remains).

232. Part (l) of the policy deals with WHS. It states that:

“Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.”

233. The counterpart policy to Policy 7 in NPF4 is Policy 4, under the sub-heading of “Natural Places”. Its policy intent covers “natural assets”. The kinds of assets covered in the policy include Special Areas of Conservation, Special Protection Areas, National Parks, National Scenic Areas, Sites of Special Scientific Interest, National Nature Reserves and Wild Land Areas.

234. The glossary entry for World Heritage Sites in NPF4 includes the follows:

“World Heritage Sites are internationally important cultural and/or natural heritage sites which have been inscribed for their “Outstanding Universal Value”. Though no additional statutory controls result from world heritage designation, the impact of proposed development upon the outstanding universal value, including its authenticity and integrity of a World Heritage Site and its setting, is a material consideration in determining planning applications.”

235. The Flow Country WHS is inscribed for its natural heritage, not for its cultural heritage. At the time NPF4 was being drafted and when it was adopted by Ministers, all of the WHS in Scotland were inscribed for their cultural heritage (St Kilda being inscribed for both cultural and natural heritage). It seems clear to me that Policy 7 is intended to deal with the historic environment, or (to adopt the term used by UNESCO for WHS) with cultural heritage. Policy 4 is intended to deal with natural heritage. Or at least predominantly so – National Parks are not identified solely for their natural heritage; and the concepts of landscape, scenic value and wildness have cultural components as well as natural ones.

236. Given the sub-heading, the policy intent and the policy outcomes under which Policy 7 sits, to me the most straightforward reading is that the policy, including part (l), only applies to historic assets and places (or to “cultural heritage”). That does not include the Flow Country.

237. The glossary definition is a faithful rendering of what a WHS site is, or may be. It does not, in my view, have the force of putting a different interpretation on the intended scope of Policy 7, which deals only with historic assets and places.

238. The applicant points to the reference to effects on “setting”, which is a concept more usually applied to cultural heritage assets rather than natural heritage, in support of the proposition that NPF4 covers only WHS inscribed for their cultural heritage. However I do not think that, on its own, that is a telling point. A policy could encompass consideration of effects on the setting of WHS even if that would only be a consideration for some of those sites. In this case though, I agree that the concept of “setting” is not a relevant one.

239. Likewise, the reference in the glossary to effects on WHS being a “material consideration” does not, in my view, further the applicant’s case. Section 25 of the 1997 Act refers to the development plan and then to “other material considerations” (my underline). The development plan is itself a material consideration under that Act, albeit the primary one. Also, Policy 7 clearly includes consideration of (at least some) WHS as part of NPF4, and therefore of the development plan. Therefore the argument that the glossary definition in NPF4 puts WHS, in general terms, outwith the scope of the development plan is wrong.

240. The Flow Country WHS is not a historic asset or place. It is a natural one, which would in my view therefore have fallen under Policy 4, but doesn’t. It may be the case that, since there were at that time no WHS inscribed purely for natural heritage, the drafters of NPF4 decided that the “historic assets and places” policy was the natural home for WHS. That said, the dual interest of St Kilda might call into question that assumption. It might be that there was simply an oversight. In any event, I think it departs too much from a plain reading of policy 7 to assert that a policy dealing with cultural assets and places covers a WHS which is inscribed for its natural, not cultural, heritage assets.

241. Ultimately, I do not think this policy interpretation should have a significant bearing on the outcome of this application. It has had no real bearing on my ultimate recommendation. This is because Ministers have, in framing Policy 7, set out a clear policy test for considering the effects of proposals on WHS. Albeit that test is, in my view, only directly applicable (when applying NPF4) to a WHS inscribed for its cultural heritage, it is a test which is generic. If Ministers consider that it should be applied to one type of WHS (those inscribed for cultural heritage), I make the assumption that they would wish it to be applied to all WHS. All the more so if indeed the placing of WHS in the silo of Policy 7 was an oversight, or at best failed to take account of the potential inscription of the Flow Country on the basis of its natural heritage. Therefore, I would apply that policy test in this case.

242. As regards the weight to be afforded to this issue, I do not think there should be any significant diminution on the basis that such a test is not applied through the development plan. In the first instance, the development plan is not of primary importance, in the same way as it is in making a determination of an application for express planning permission. In addition, there is no basis for thinking (especially if indeed the placing of WHS in a seeming policy silo was inadvertent) that Ministers would wish to treat natural heritage WHS as worthy of less protection (or that they would be valued less) than cultural WHS in the overall planning balance.

243. In reaching the view that Policy 7 is not directly applicable (although also that the policy approach it expresses is applicable, and with no less importance attached to it), I am conscious that I seem to go against the position which has been expressed previously.

244. Following receipt of the Nomination document, the IUCN [wrote](#) to the Flow Country Partnership asking for further information related to the nomination. This included seeking reassurance that, for the 27% of the WHS not covered by designations such as SSSIs and Natura sites, legal protection would guarantee protection of Outstanding Universal Value in the long-term. In responding, as referred to above, the Partnership pointed to the protection which would be offered to the site through NPF4, including with reference to Policy 7.

245. The subsequent IUCN Technical Evaluation describes NPF4 as “legally binding”. It refers to the test from part (I) of Policy 7. It goes on to state that this would ensure an appropriate protection status for the WHS.

246. Scottish Renewables [wrote](#) to the Partnership in June 2024, seemingly expressing the view that Policy 7(I) would apply to the Flow Country WHS.

247. Again as noted above, in July 2024 the Minister for Climate Action wrote to the applicant, in response to its concerns about the IUCN Technical Evaluation. That letter seems to take some comfort from the reliance the Technical Evaluation places on NPF4.

248. UNESCO inscribed the Flow Country on the World Heritage List in August 2024. In the process of doing so, the World Heritage Committee noted that:

“There are specific planning policies at national level in relation to both World Heritage properties and areas of peatland that afford effective protection from development proposals that might impact upon Outstanding Universal Value.”

249. The Highland Council’s Flow Country Candidate World Heritage Site Planning Position Statement also anticipates that part (I) of Policy 7 would apply.

250. None of the above statements cause me to revise my conclusion that Policy 7(I) is not of direct relevance in this case, albeit that the test it would apply is of relevance, and very important. However I record them here so that Ministers are aware that, as the process for inscribing the WHS progressed, others seem to have taken a different view (and the council and NatureScot still take a different view) to my own as to the correct interpretation of Policy 7. Despite my own conclusion, I do not think that this point of interpretation is clear cut. A more benevolent, perhaps more holistic, reading of Policy 7, together with the glossary entry for WHS, might point to a different interpretation. Ministers should therefore consider this point of interpretation carefully, since they could disagree with me on it.

## The process of Inscription of the WHS

251. There is another aspect of the nomination and inscription process for the WHS which merits reference at this point. It does not have a bearing on my findings and recommendation. However I cover it here so that Ministers are made aware of it.

252. The IUCN information request which I refer to above also asked for a map detailing (a) all existing and planned wind farms, (b) all areas within which turbines could potentially be planned in the future and (c) all areas in which wind turbines are not permitted in the future, all in relation to the proposed boundaries of the WHS.

253. The map provided by the Partnership in response to (a) above appears to show that all existing, under-construction and consented turbines lay outwith the proposed boundary of the WHS. At the hearing, Mr Cowie advised that existing and consented wind farms were excluded from the boundary (as were other items of large-scale infrastructure), but schemes in planning were not excluded. The only “in-planning” wind farms within the proposed boundary at that time were Kirkton and Melvich, both of which are currently live applications before Ministers. The Partnership rightly replied to the effect that it was impossible to second guess the result of any potential future applications for wind farms, and so (b) and (c) could not be answered.

254. In its Technical Evaluation, the IUCN stated that it considered that any approval of wind turbines within the boundaries of the WHS would constitute a clear threat to its Outstanding Universal Value. At that time, it requested (“recommendation 5”) to the State Party (the UK Government) that no wind turbines be consented within the WHS.

255. In [response](#) the Partnership suggested that this request be re-written so as not to single out wind turbine development but rather to emphasise that any proposed development (of any nature) that may affect Outstanding Universal Value should be properly assessed in line with the UNESCO guidance and toolkit.

256. [Commenting](#) on the above response, the IUCN agreed that all proposed developments that may impact on the Outstanding Universal Value must be properly assessed. In approving the Inscription of the Flow Country WHS in July 2024, the World Heritage Committee<sup>10</sup> repeated recommendation 5. It also requested (recommendation 6) that the UK Government submit a report to the World Heritage Centre by 1 December 2025 providing an update on the status of the proposed wind farm developments within the WHS.

257. Following notification of the Inscription of the Flow Country into the World Heritage List, the Partnership issued an [explainer](#) aiming to clarify the impact of that Inscription in respect of future wind farm development. This states that the IUCN confirmed that it was not its intention to expressly deter wind farm development, and that recommendation 5 referred only to the two in-planning wind farm developments at that time (Kirkton and Melvich). The explainer goes on to state that the request that these applications be refused is not within the gift of the IUCN nor indeed of the State Party, but is rather a consenting decision to be made by the Scottish Government, following due process.

258. As I state above, these exchanges do not inform my assessment of the merits of the proposed development. I recount them so that Ministers are aware of this wider context. I was informed at the hearing that the intention is for the requested report to be prepared by the Partnership, to be then submitted to UNESCO by the UK Government.

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<sup>10</sup> CD7.10. Page 206 of 284 of the PDF document.

## The Flow Country Candidate World Heritage Site Planning Position Statement

259. I would tend to agree with the proposition that the lack of consultation on this document, its non-statutory nature and the expressed intention that it would be applicable only until the WHS was inscribed serve to reduce the weight that should be attached to it. Since there is (notwithstanding what I say about its direct applicability as part of the development plan) a clear policy approach set out in NPF4 and well-established guidance from UNESCO, the planning position statement provides informative background information but it does not (given the other detailed evidence before me) strongly influence my assessment of the effects on the WHS and the policy-related conclusions which flow from that assessment.

## The draft Flow Country WHS Management Plan

260. The applicant refers to the commentary on wind farms in section 6.7 of the draft Management Plan, and we discussed this at the hearing. I do not find that section of the draft Plan to be of much utility in assessing the merits of the proposal.

261. It notes that there are no existing wind farms within the WHS boundary, and seems, at least initially, to be considering the potential effects from wind farm development outwith, but close to, the boundary. It does, though, then state that siting and design of wind farms has to be mindful of peatland resources, which vary in quality. Also that wind farm development can facilitate peatland restoration.

262. The draft Management Plan states that wind farms constructed on peatland or bog in good condition would still cause a negative impact. It states that wind farm development within the WHS was not precluded by the former Scottish Planning Policy, albeit that policy was replaced by NPF4 in February 2023. It goes on to say that

“the challenges from new wind turbine arrays for the WHS are low, even if a development were proposed to replace commercial woodland. However, whilst the blanket bog itself will be largely unthreatened, there are potential negative impacts to the bird populations that inhabit the peatlands from wind farms adjacent to the WHS.”

263. I take that to have been intended to mean that the prospect of wind farm development being proposed (or perhaps being consented) on blanket bog within the WHS is low. I would note though, the draft Management Plan is dated December 2022 on the front page, but also that each page has a footer saying “proofed February 2023”. The Kirkton application was made in November 2022, having been in scoping beforehand. The Melvich application was made in March 2023, again having been in scoping.

264. Although this kind of commentary in the draft Management Plan does not really help an assessment of the merits of the proposal, I agree with point made by Mr Bell (in written evidence and at the hearing) which is that it is consistent with national policy and guidance insofar as it does not preclude the development of wind farms on peatland, and indeed highlights that such development can provide the opportunity for peatland restoration.

## The process and evidence for setting the WHS boundary

265. There was little written evidence put before me as to what survey work was carried out to determine where the boundaries of the WHS should be drawn. Though it is no criticism of them, the NatureScot and council witnesses at the hearing were not intimately involved in that process, and so could not address it in detail.

266. It seems that aerial photographs rather than (in the case of the Kirkton application site at least) on-the-ground surveys were relied upon. I think the applicant is correct to point out that the reliance on aerial surveys limits the extent to which conclusions can be drawn about the condition of the blanket bog across the site simply on the basis of its inclusion within the World Heritage Site.

267. The Inscription document says that areas of the WHS have suffered from poor historical management decisions such as drainage and woodland creation, but that the boundary was chosen to include only those areas of deep peat which are in good condition or have the ability to return to a near-natural state within the next 10-25 years. It is expected that, in time, it will be possible to integrate some of the bog of the wider Flow Country into the WHS. It was agreed at the hearing that there is no definition of “good condition”.

268. The document goes on to state that there is no buffer zone around the WHS. But it does state that its integrity is ensured thanks to its large size and by the inclusion of areas that provide a buffering function within the boundaries

269. The draft Management Plan gives three reasons for why land might be included within the boundary, and these reasons (albeit differently worded) are repeated in other evidence. I have not been provided with any mapping (or other evidence) which confirms what land within the WHS was considered to fall within which category. On the face of it, that may appear surprising given that the three reasons seem to have been carefully expressed, and each has a different rationale. Perhaps it is simply that the vast size of the WHS made it unrealistic to map it in such a way. In any event, the lack of evidence makes it difficult to make any confident conclusions about why the land at Kirkton was indeed included. I do note though, the clear view on behalf of NatureScot and the council that the application site was not included for any restoration potential.

270. Perhaps the best contemporary evidence to refer to is the letter from the Partnership to the applicant, referred to in paragraph 138 above. This seems to point to fragmentation of peatland, the shallowness of the peat and agricultural improvements as being behind the decision to revise the boundary at Kirkton so as to move it further west. The land still included within that revised boundary is stated to be “on the basis of the quality of the peatlands in this area and their hydrological connectivity to those peatlands that lie to the west.” I think it is difficult to directly link that explanation to any of the three reasons given for inclusion in the WHS. It refers to “peatland”, not to “blanket bog”. So it is not an express statement that it is an area of blanket bog landscape in the most natural condition, although the reference to “quality” might suggest that is what it was intended to mean. The reference to “hydrological connectivity” might suggest the second of the reasons for including land, but I would put it no stronger than that. Other than agreeing that it does not seem to have been included for any restoration potential, the precise reason for inclusion (with reference either of the other two potential reasons) is not clear to me.

271. The applicant states that it is not challenging the decision as to the where the WHS boundary should be at Kirkton. However, it seems to me that the thrust of the applicant’s evidence is to the effect that the boundary is in the wrong place. It had indeed made that point during the consultation on the boundary, and suggested it be further to the west, excluding all the turbines from the WHS. It’s evidence is that the affected blanket bog at Kirkton within the WHS satisfies none of the three reasons for inclusion, and does not contribute to its Outstanding Universal Value. It is not in “near natural” or in “good” condition.

272. I consider those points below when addressing the evidence as to the condition of the blanket bog habitats which would be affected by the development. However, the size of

the WHS and the lack of detailed information as to habitat condition across it does raise a concern for me in respect of proceeding on the basis of a very limited understanding of the condition of the blanket bog across the wider WHS. I have no detailed evidence to compare the condition (notwithstanding the existence of site monitoring reporting of protected areas within the WHS) of the blanket bog at the application site against the condition of other blanket bog elsewhere within the WHS.

273. I would in general terms accept the logic of the applicant's point that the location of the application site at the edge of the peatland mass and on a working farm within the settled strath means that the blanket bog is likely to show more signs of modification than the blanket bog away from the edge and in areas with less signs of human influence. Nevertheless, it seems to me to be less than ideal, if the condition of the blanket bog is such an important factor, to assess effects of development on the WHS informed by case by case assessments of condition rather than being informed by a more comprehensive understanding of the condition of blanket bog across the WHS, and of the contribution that it makes to Outstanding Universal Value and to integrity.

#### The condition of the blanket bog on the application site

274. It seems to be the case that the decision as to where the boundary of the WHS should be drawn in the vicinity of the application site was based primarily on aerial photography. At any rate, there is no evidence of any fieldwork having informed that decision. The final Inscription of the WHS came after the EIA Report and the SEI had been prepared. Therefore I think it is quite natural that the applicant wished to undertake further survey and assessment to better understand how condition of the habitats on the site relate to the stated attributes of the WHS. I acknowledge the applicant's confirmation that, notwithstanding this additional work, it considers that the findings of the NVC survey in the EIA Report still hold good.

275. It is evident that the application site generally drains from the west to the east. There are some local topographic highs between the site and the larger expanses of peatland further to the west. I accept the point that this intervening high ground means that there may be limited (or perhaps no) hydrological connectivity between the peatland on the development site and the larger areas of peatland further west.

276. However this does not, to me, lead to the need to place less value on the blanket bog on the application site. As Ms Rentoul explained, there are different forms of blanket bog. Inherently, I see no basis for placing less value on an area of blanket bog which may not be directly connected to larger areas of blanket bog further west. The WHS extends eastwards of turbines 7-9 towards the River Halladale. The NVC survey identifies much of this land as blanket bog – as M17b, M19 or as a matrix of M17/M19. There is also land mapped as a matrix of M17/M15 wet heath. Much of the surveyed land to the west of turbines 8-9 (and extending west beyond the application site) is mapped as M17b. Likewise the M17a/M17b matrix at turbines 3-7 extends west beyond the application site. Therefore there are notable expanses of blanket bog within the WHS both westwards and eastwards of the blanket bog proposed to be lost under the wind farm footprint.

277. In terms of the condition of the blanket bog being “modified” rather than “near natural”, the applicant's evidence identifies a number reasons for this, and indicators of it. In particular I note the evidence in Mr Huntridge's Topic Paper detailing examples of peat cutting, anthropogenic drainage, dendritic drainage, grazing, trampling and burning in the vicinities of the proposed tracks and hard-standings for turbines 3-9. To the extent that these examples may be affecting the condition of parts of the blanket bog, I accept Mr Huntridge's characterisation of the habitat being “modified” as a reasonable one.

278. However, it can be seen from the photographs in section 2.5 of the Paper that not all of these features overlap directly on the proposed wind farm footprint. The photographs in the appendix do not demonstrate such overlap in each case. I accept that these features are components of the current condition of the blanket bog identified by the NVC survey in this part of the application site. Ms Rentoul's evidence also indicates to me that there are areas of the blanket bog not in the kind of modified condition as characterised in the applicant's evidence. Ultimately, therefore, I do not consider that the applicant's evidence is sufficiently comprehensive to support the findings in Table 2 of Mr Huntridge's Topic Paper that the areas of blanket bog which would be replaced by the hard-standings and tracks for turbines 3-9 are all (or that the blanket bog is, as a whole) in modified condition.

279. There was a discussion at the hearing about the extent to which the blanket bog habitats on the site contained the main peat-forming Sphagnum species of bryophytes. The blanket bog around and between turbines 3-7 is mapped in the NVC survey as a matrix of blanket bog communities M17a and M17b. The former is typically the wetter community, containing more Sphagnum and present in hollows, with the latter the dryer of the two communities, and typically present in hummocks. The blanket bog around turbines 8-9 is mapped as M17b.

280. Technical Appendix 8.1 provides the detail of the NVC survey. At the hearing, Mr Wilson advised that it is only when its commentary goes on to cover the M17a and M17b sub-communities that it becomes site-specific. Even then, these passages seem to me to be quite generic descriptions. I do not consider that these commentaries can be taken as a detailed or definitive account of the distribution of plant species as they occur across the areas of blanket bog on the site with which we are concerned.

281. However, the applicant's evidence is the most detailed as to the abundance of different plant species across the site. I therefore accept Mr Wilson's assessment that the peat-forming species of Sphagnum are generally less abundant than would normally be expected in the blanket bog communities which the NVC survey has identified as being present. That would seem to be consistent with the evidence from Mr Huntridge that the blanket bog is deemed to be somewhat dryer, and more compact, than might otherwise be expected of a habitat in a more "natural" condition.

282. However, as Ms Rentoul indicated, there can be different combinations of aspect, topography, elevation, hydrology and climate under which blanket bog can form. Therefore a variation in attributes such as wetness and plant composition is to be expected. The generic and varied descriptions of the NVC communities in Technical Appendix 8.1 illustrate this potential for variety.

283. It is the NVC mapping which is agreed to be determinative of the extent of habitats which exist across the site. Blanket bog is a habitat which is typically peat forming. The applicant's evidence is agreed not to challenge the results of the NVC mapping. Therefore, notwithstanding Mr Wilson's observations about the relative lack of peat-forming Sphagnum species within the blanket bog, I do not consider that that can be reliably taken to demonstrate that what is agreed to be blanket bog habitat is not peat forming, or is a net emitter of carbon.

#### Assessment of impacts on the WHS

284. According to the UNESCO guidance, evaluation of impacts on a WHS should result in a clear conclusion about whether the likely impacts of a proposed action on Outstanding

Universal Value overall are acceptable or not. If the proposed action would have negative impacts on Outstanding Universal Value, the report should give one of three conclusions:

- The negative impact would be negligible and raises no concerns
- The negative impact would be significant, but with avoidance and mitigation measures it could be eliminated or minimized to an acceptable level
- The negative impact would be significant and could not be avoided or mitigated, so the proposed action should not proceed.

285. While avoiding negative impacts is at the heart of impact assessments, the aim should be not only to “do no harm”, but to seek to actively “do good” while not compromising Outstanding Universal Value.” World Heritage should always be considered as a highly sensitive environment. Significant negative impacts on Outstanding Universal Value will always be unacceptable. Conclusions should address both positive and negative impacts, but these should not be balanced against each other. Outstanding Universal Value is irreplaceable and cannot be “offset”.

286. Insofar as the UNESCO guidance and toolkit is applicable to all impact assessments on all type of WHS, it is to that extent generic in nature, as the applicant points out. It also states that it should be read alongside other guidance on impact assessment. In that context, I see nothing inappropriate in the applicant’s advisors wishing to have regard to guidance from CIEEM in order to inform an assessment of the impacts of the development on the WHS. I do, however, consider that the applicant’s evidence overstates the importance of habitat condition.

287. As noted above, the Nomination document, in Part 6: Monitoring, provides key indicators for measuring the state of conservation of the WHS. Under “blanket bog and associated peatland habitats”, the first indicator is:

“Extent

-No measurable decline in the area of the feature”

288. Leaving aside my observation above about the inclusion here of “associated peatland habitats”, it seems to me that what would be measured under “extent” is the area of blanket bog habitat. So in this case the loss of around 6 hectares at Kirkton (at least as classified under the NVC survey for this application) would be a negative under this indicator.

289. I recognise that it is stated that:

“Those key indicators which relate to the health of the blanket bog and associated peatland habitats encompass all the attributes described for criterion ix. that depend on the condition of the peatlands (attributes a, b, c, d & e).”

290. There would be measurement of the condition of the blanket bog and associated peatland habitats. But I do not think it can be concluded that the intention is that the measurement of the “extent” of these habitats would include the type of qualitative element so that it would be intended that a loss of blanket bog would not be recorded and reported if that blanket bog had already been determined, as a result of its condition, not to be contributing to Outstanding Universal Value. Or that a reduction in the condition of parts of the blanket bog between one reporting period and the next would likely be recorded as an equivalent reduction in the “extent” of the feature.

291. I am not convinced by the applicant’s evidence that, on the basis of the description of the attributes and the Outstanding Universal Value of the Flow Country WHS, habitat

condition is a much more important consideration than it would be in considering effects on, say, a SAC or SSSI. I think that tends to conflate the reasons why the WHS was inscribed with an assessment of the effects of a proposal on the WHS. I have not seen any basis in policy or guidance which, in my view, demonstrates that such an approach ought to be adopted here.

292. In any event, on the basis of my findings above on habitat condition, I am not persuaded by the applicant's evidence that the condition of the blanket bog on the application site is such that it does not contribute to Outstanding Universal Value, or that in any event that is a consideration pointing strongly towards approving the application. I consider that the applicant's assessment shows that parts of the blanket bog could be reasonably described as being in a modified condition. But it is still agreed that it should be classified as blanket bog. I do not think the evidence clearly shows that, across the area of blanket bog which would be affected, that it is not actively peat forming.

293. Even had I agreed that the whole area of blanket bog was "modified", it seems to me that, with an agreed focus based on calculating the amount of blanket bog (as characterised in the NVC survey) which would be affected, it is probably too nuanced an approach to then rely heavily on the further qualitative survey and assessment evidence from the applicant as to the condition of that blanket bog to show that it does not, despite how it has been classified, contribute to Outstanding Universal Value. To take such an approach on a case by case basis would bring the prospect of fine judgements having to be made each time on the degree of naturalness (or of modification) of the blanket bog, and the resultant implications of that for its contribution to Outstanding Universal Value. Whilst I recognise that the system of NVC classification is not infallible (it depends on professional judgement), it seems to me to provide a much clearer and more objective indicator of the nature of the habitat (and in this case of its importance to the WHS) than a further and more refined assessment of the condition of that habitat.

294. In reaching this view, I do not rule out any consideration of habitat condition as being irrelevant. The UNESCO guidance, as the applicant points out, brings in the notion of "condition" in its definitions of "baseline assessment" and of "impact". But in this case, on the evidence before me, I consider that categorisation of the habitat as blanket bog in the NVC survey is the more important factor.

295. In addition to habitat loss, I also take account of the fragmentation of habitat caused by the linear nature of the development. I fully accept that there would be drainage infrastructure put in place so that there would remain hydrological connectivity under the tracks. However, that would still result in some disruption to the hydrology of the site. Aside from this effect on hydrological connectivity, the wind farm tracks would physically dissect the blanket bog, leading to fragmentation of that habitat.

296. I am conscious of the very large size of the WHS. Section 3.2 of the Nomination document estimates the extent of "the best near-natural blanket mire" (blanket bog) within the WHS at around 160,000ha. Considered simply as a proportion of that overall size, the loss of blanket bog habitat at Kirkton would be very small. I am also conscious that the notion of wholeness is a component of site integrity. The extent of blanket bog (and associated) habitat seems to be identified as a key indicator of the state of conservation of the WHS. Whilst I think it is a reasonable proposition that a small loss of blanket bog habitat could be considered to be negligible, I also take note of the advice in the UNESCO guidance that Outstanding Universal Value is irreplaceable, and that the aim should be to avoid adverse impacts upon it. The extent of habitat loss coupled with the effects of habitat fragmentation are such that I would deem, notwithstanding the large amount of blanket bog present within the WHS, the effect on attribute (a) of the WHS to be moderate.

297. In respect of attribute (e), on the basis that about 6 hectares of blanket bog would be lost, then I conclude that there would be an effect on the carbon sequestration and storage function of the WHS. The carbon currently stored in the blanket bog (and indeed in the other peatland habitats) which would be removed to make way for the wind farm would be lost. The area of wind farm footprint would lose any ability to sequester carbon in the future. The habitats within 5m of the infrastructure would be indirectly affected. Albeit this is also considered to be “loss” in terms of the habitat, the stored carbon in the peatlands in these areas would not be immediately lost. But, by indirect effects, it seems likely that the ability of these areas to further sequester carbon would at least be impaired. Therefore I would reach the same conclusion as to a moderate effect on this attribute also, albeit I think this is secondary to, and consequential of, the loss of habitat.

298. I am also mindful of the statement in the UNESCO guidance that the aim should be to do good, as well as to avoid harm. I appreciate that the wider application site is a working farm. Also that, within the WHS, the development involves an element of drain blocking near the tracks for turbines 5 and 6. However, given the applicant’s view that there is modified (and likely further declining) condition of habitat within the WHS, I am surprised that there are no further proposals for improving the condition of the habitats on this part of the application site. Ms Bell said at the hearing that perhaps the application could have been more explicit about proposals for habitat improvement on this part of the site. However, as far as I can see from the evidence (and apart from the drain blocking I refer to, and the mitigation of adverse effects), there are none, though I do recognise that changes to deer management on the site could have some potential benefit. In the context of the guidance and a policy approach in NPF4 which seeks biodiversity enhancement, this seems to me to be at best a missed opportunity, or at worst an omission.

299. As the applicant points out, the fate of the application site in the event that the development does not proceed is a relevant consideration. I would tend to agree with Mr Huntridge that no real weight can be placed on the prospect that funding or some other mechanism might provide for the improvement of habitats on the site or for the forest to bog restoration which is proposed as part of the development. Therefore without the wind farm the most likely future for the site as a working farm is a continuation of the current habitat conditions, or perhaps further slow decline. In terms of the WHS itself, however, the proposed development involves habitat loss and fragmentation, proposes limited restoration, and limited explicit proposals for habitat improvement. As far as I am aware, with the wind farm in place it would still likely remain a working farm.

300. Therefore, adopting the wording from NPF4 Policy 7, in my view the Outstanding Universal Value of the WHS would not be protected and preserved if the development were to proceed. This would be a significant adverse environmental effect.

301. That is my policy conclusion. However, Ministers might take a different view. I return again to the vast size of the WHS and the relatively small size of the blanket bog habitat which would be affected in this case. If the estimate of 160,000 hectares of “the best near-natural blanket mires” is an apt comparison, then the habitat which would be lost is a very small proportion of that. That blanket bog on the application site is closer to the edge of the WHS, in a more settled area, and likely subject to more anthropogenic influence than the larger expanses of blanket bog in the interior of the WHS. The applicant’s assessment of the beneficial effects for the WHS of the 88ha of forest to bog restoration of land just outside the WHS is “negligible”, which by comparison may justify a view that there would be a similar magnitude of effect for the loss of only 6 hectares of blanket bog within (and near the edge of) the WHS. The applicant’s evidence for the condition of the habitat on the site (and which informs its conclusions on the effects on Outstanding Universal Value) is the

most detailed. The evidence relied upon by the Partnership in including the land at Kirkton within the WHS was, on the face of it, only aerial surveys which provide much less detailed evidence than the applicant's on-the-ground surveys and assessment. The precise reason for including the land at Kirkton within the WHS is not clear to me. Should Ministers place greater weight on these factors then they might consider that the adverse effects on the WHS from the loss of blanket bog (and from its fragmentation) is negligible. That would lead to a different policy finding.

302. The UNESCO guidance states that beneficial effects on a WHS should not be used to offset adverse effects, in effect to "hide" or square-off identified significant adverse effects on Outstanding Universal Value before reaching an overall view on the "acceptability" (as referred to in the guidance) of effects on the WHS. I assume Ministers would want to follow that guidance – certainly no party argues that it should be departed from. The benefits for the WHS of the forest to bog restoration are assessed by the applicant as negligible in respect of the WHS, though it would also have benefits for species and to the adjacent SAC and SPA. I take them into account in the overall planning balance, as I do the limited drain blocking proposed within the main site and the potential for improved deer management.

### **Other effects on biodiversity**

303. Chapters 8 of the EIA Report and the SEI address ecology. Subject to the proposed mitigation measures, no significant ecological effects (including cumulative effects) are identified. I take no issue with those conclusions.

#### **Biodiversity enhancement**

304. Given the requirement under Policy 3 of NPF4 to consider biodiversity enhancement, I asked the applicant to prepare its assessment of how all the biodiversity effects (positive and negative, significant or not) of the development should come to be assessed under the terms of that policy. The applicant's [assessment](#) refers to draft guidance on this matter from [the Scottish Government](#), and to guidance from [NatureScot](#) and the [council](#). There is also a Chief Planner [letter](#) on this subject. In addition, it seems that the Scottish Government's Energy Consents Unit [wrote](#) to the applicant seeming to state that its position was that it was not necessary for an application to meet that requirement in the council's guidance.

305. The council's guidance seems to require a minimum 10% biodiversity enhancement. It recommends that, to calculate the enhancement in the absence of a Scottish metric for doing so, the existing English metric might be used, although other methodologies may also be considered. The Scottish Government guidance does not set a minimum threshold, and advocates a case by case approach. The applicant states that the council guidance does not accord with the stated position of the Scottish Government and should be given limited weight.

306. The council and NatureScot submitted a brief [response](#) to the applicant's assessment. It is submitted that it is for the decision maker to assign what weight to attach to the different policies and guidance, and to decide whether the proposal would deliver sufficient biodiversity net gain.

307. In terms of biodiversity enhancement, the applicant's assessment points to:

- Clearance of the 87.75ha of conifer plantation and its managed restoration to blanket bog, including blocking ditches which are hydrologically linked to this area;
- Habitat enhancement for golden plover and hen harrier;

- Monitoring the effects of the proposed development;
- Management and restoration of peat disturbed by the development;
- Removal of the man-made drain near the access track at turbines 5 and 6; and
- Compensatory woodland planting.

308. Given that the mitigation measures to be applied mean that potential effects on biodiversity are not significant, it is stated that the measures referred to above would achieve a net positive biodiversity effect. The approach taken, it is said, aligns with the best practice advice in the NatureScot guidance.

309. In particular, the benefits to the adjacent SAC of the forest to blanket bog restoration are highlighted. There are likely to be some currently negative hydrological effects and some edge effects for SPA golden plover. The aim is to restore the peatland to near natural condition. If that is successful, it could perhaps be considered for future inclusion in the WHS. The peatland restoration would leave the site in demonstrably better state than without intervention.

310. The applicant has not adopted a quantitative approach to the assessment of biodiversity net gain such as would allow an assessment of whether a 10% improvement would be achieved. Neither has the council (I do not mean this as a criticism) made such an assessment. There is no evidential basis on which I could base a recommendation on whether or not such an improvement would be likely. In that context, and because there is nothing in the Scottish Government or NatureScot guidance which requires a quantitative assessment, I am satisfied that a qualitative assessment is appropriate.

311. Given the size of the conifer plantation, its current adverse effects and the potential benefits from clearance and blanket bog habitat restoration, I agree that this restoration proposal is the most important (and potentially a very beneficial) biodiversity enhancement measure. The blocking of a drain on the wind farm site would also be of benefit, though likely delivering much more limited benefits.

312. I think it is very difficult to characterise the monitoring of the effects of the development as a measure for biodiversity enhancement. It also seems to me that neither restoring disturbed peat nor compensatory tree planting for the loss of native woodland plantations are biodiversity enhancement measures.

313. The applicant's assessment focusses for the most part on what it sees as the biodiversity enhancement measures. However, it seems to me that, in considering whether the development would enhance biodiversity overall (whether it would deliver "biodiversity net gain") then the negative effects (significant or not) of the development must be balanced against the positives.

314. From my reading of the EIA Report and the SEI, and my own conclusions above, it seems to me that the following adverse effects should be taken into account in such a balancing exercise:

- During construction, the potential for some limited displacement of greylag goose, pink-footed goose, whooper swan, golden eagle, merlin and peregrine;
- During construction, possible loss of one breeding pair of curlew;
- During construction, potential loss of territory for up to two breeding pair of dunlin;
- The loss of M6 mire in mosaic – 0.27ha of direct loss, with indirect effects on a further 0.55ha;

- The loss of M15 wet heath, some in mosaic – 4.53ha of direct loss, with indirect effects on a further 3.41ha;
- The loss of M17 blanket mire – 3.34ha of direct loss, with indirect effects on a further 2.34ha;
- The loss of M19 blanket mire – 0.09ha of direct lost, with indirect effects on a further 0.18ha;
- Loss of other habitats evaluated as being of “less than local” value and therefore scoped out of full assessment in the SEI;
- Effects on connectivity of blanket bog habitat;
- The loss of native woodland plantations (albeit compensatory planting is proposed);
- Displacement and disturbance to some bird species during operation;
- Collision risks for a range of bird species, though these are generally at very low levels (greatest predicted risk is one greylag goose mortality every five years, with the next highest risk being one pink-footed goose mortality every 50 years).

315. I describe above the forest to bog restoration as being potentially very beneficial. The evidence indicates that woodland cover can depress breeding of waders like dunlin and golden plover due to fear of predation from the woodland. So removal of this edge effect would seem likely to benefit these species. More directly, the restoration of blanket bog would provide further habitat suitable for breeding. Therefore, in respect of these species, the proposed restoration would clearly be a potentially positive effect. There would be benefits in the creation (or restoration) of the blanket bog habitat itself.

316. I do not consider that there has been any demonstrated biodiversity enhancement associated with the loss (and subsequent replacement) of native woodland forestry. That overall effect would, given the time taken for replacement woodland to become established, seem more likely to be negative.

317. In considering whether there would be biodiversity net gain, I do not take into account my conclusions in respect of the WHS. This is because the presence of the WHS does not alter the types of habitat which would be affected.

318. I am not convinced, considered in the round, that it has been shown that biodiversity (including nature networks) would be in a demonstrably better state than without intervention, as required by part b) of NPF4 Policy 3. I say that for two reasons. Firstly, it does not seem to me that the written submission I requested from the applicant seeks to meaningfully take into account the various adverse effects on biodiversity which I list in paragraph 314 above. Even where these have been mitigated so that they are not significant in EIA terms (and I acknowledge that some of these effects will be very minor), they still require to be given due account in an assessment of the net effect.

319. Secondly, I find that the currently outline nature of the Habitat Management Plan reduces the reliance I can place on the degree of benefits it would deliver. In principle, it seems to me that the benefits of the forest to bog restoration could potentially be strongly positive. But there is no detailed information to indicate, for example, when the real benefits for nature of this restoration would start to be delivered. That seems to me to be a relevant consideration. As I note above, there are limited ecological improvements proposed (blocking of a drain and deer management) on the main part of the wind farm site. The Outline Heads of Terms of the Habitat Management Plan aims for “no net less of biodiversity” (my underline). The details of any habitat enhancement for golden plover and hen harrier are absent. A habitat suitability study for these species, to better understand the value of the existing habitats and the potential for enhancement, has yet to be undertaken. So it is very difficult at this stage to assess when the level of resultant benefits would be.

320. Taking all of this together, I do not consider that the requirements of Policy 3 have been met. I reach this conclusion despite the wording of condition 15, including the potentially wide scope of part d) covering biodiversity enhancement.

#### Effects on water quality and wild salmon

321. Finally, I consider the potential for effects on water quality in the River Halladale, and on its fish stocks. There is no objection from the Marine Directorate of Scottish Government. Nor is there an objection from the Northern District Salmon Fishery Board. Chapter 10 of the EIA Report and the SEI deal with hydrology, and no significant effects are predicted.

322. There are proposed measures aimed at mitigating the risk of pollution of the water environment. Other than watercourse crossings, the micro-siting allowance maintains a 50m buffer to all watercourses. The Construction Environment Management Plan (Condition 13) would give consideration to the risk of harm to water quality. It would include a Waste Management Plan, a Pollution Prevention Plan, a Drainage and Surface Water Management Plan and a Water Quality Management Plan. Condition 20 is a Water Quality and Fish Monitoring Plan, which applies the measures in the Marine Directorate's proposed planning condition.

323. In light of the above, there is no evidential basis for concluding that there are likely to be significant effects on (or risks to) water quality or wild salmon populations.

324. Comments on the proposed conditions were received from the Strath Halladale Partnership and the Bighouse Estate, covering matters related to water quality in the River Halladale.

325. In condition 4, it is suggested that all relevant agencies (not just the Scottish Ministers, as specified in the condition) should be contacted in the event of a serious incident. The condition, as currently worded, is a standard condition applicable to Section 36 consents. Since any consent issued in respect of this application would be issued by Ministers, it seems natural to me that they, as the consenting body, would wish to be made aware of any such incidents. The reason I have been given for the condition would seem to confirm that. If there are other regulatory requirements for other agencies to be notified of an incident, I would expect that to occur regardless. I do not consider that the wording of the condition needs to be amended.

326. Condition 11 lists the obligations of the Environmental Clerk of Works. Oversight of the Construction Environment Management Plan, as is provided for, should be sufficient to ensure that the Environmental Clerk of Works has sufficient oversight of works that could potentially affect water quality (and therefore potentially affect wild salmonids).

327. In respect of Condition 20, it is suggested that a minimum of three years of electrofishing surveys would be required to allow any meaningful analysis of trends in fish populations. It seems to me that, generally speaking, a longer survey period would be likely to give more robust data. However, Condition 20 is based on the advice of the Marine Directorate, with monitoring for 12 months before construction, during construction, and for 12 months after construction has ended. This is presumably a standard approach. That would be a period of longer than three years, albeit only one of these years providing a pre-construction baseline. In any event, the evidence does not suggest to me that there is any particular risk or exceptional circumstances which would justify a different approach in this case.

328. Finally, since the final details of surveys and other measures in the conditions relevant to water quality and fish stocks in the river would be agreed at a later date, it is suggested that the council undertake, in discharging these conditions, to consult with the Strath Halladale Partnership and the Bighouse Estate and to take on board their responses. It is common practice for planning conditions to defer the agreement of the final details until after the initial consent is given, especially when dealing with what are fairly common and standard means of mitigating environmental effects. As an *aide memoire*, conditions will sometimes identify which public agencies (and sometimes specialist environmental bodies like RSPB Scotland) the planning authority is expected to consult with when discharging a condition. Albeit I recognise the commercial interest in the water quality and fish stocks in the river, I do not think it would be appropriate for a group of private interests to be referenced in the same way.

### **Renewable energy and other benefits of the development**

329. Chapters 14 of the EIA report and the SEI cover socio-economic effects. Development costs up to commissioning are estimated at around £57 million. During the construction phase it is estimated that overall net value added would be £1.1 million locally, £6.7 million across Scotland and £14 million across the UK. In terms of net employment it is estimated that the gains (full-time equivalent) would be 11 jobs locally, 63 jobs across Scotland and 132 jobs across the UK during the 18-month construction period. These positive effects are assessed as not significant. The same conclusion is reached for the economic benefits during the operational phase, when it is anticipated there would be a total of three direct and nine indirect full-time jobs created. I acknowledge that the new tracks could facilitate public access to the site.

330. Chapter 15 of the EIA Report contains an assessment of climate and carbon balance. This takes into account carbon emissions from construction of the wind farm and from the loss of peat on site, and is based on the Scottish Government's carbon calculator for wind farm developments. The carbon payback time is 2.7 years compared against a grid-mix of electricity generation, or as short as 0.7 years compared against coal-fired electricity. Based again on a grid-mix, the potential savings in emissions (over a 30-year life for the wind farm) would be 1.4 million tonnes of CO<sup>2</sup>, with significantly greater savings compared to coal-fired or fossil fuel-mix generation.

331. The SEI makes no changes to the above assessments from the EIA Report.

### **Other matters for Ministers' consideration**

332. Technical appendix 10.2 is the draft Peat Management Plan. One objector takes the view that the loss of peatland is premature in advance of planned new guidance and an update to the Scottish Government's carbon calculator. However, I am not aware of the need for any moratorium on wind farm developments affecting peatland until such times as these actions may be complete. I must deal with the application on its merits, on the basis of the current evidence base.

333. Chapter 15 of the EIA Report deals with a range of other matters – the risk of accidents and disasters, population and human health, air quality, aviation, telecommunications and other infrastructure, television reception, and waste and environmental management. No further significant environmental effects are predicted.

## **Proposed conditions**<sup>11</sup>

334. I have made some changes to the proposed conditions as a consequence of my findings above. I also make other minor changes in the interests of clarity. I explain below my other substantive consideration of the conditions.

### **Compensatory woodland planting**

335. Some areas of the native woodland plantations on the site (planted in 2007) would require to be felled to allow the development to proceed. In addition, part of the conifer plantation which is to be felled is beyond the “holdback” area where the deforestation would benefit waders in the adjacent SPA. In total all this amounts to 13.28 of woodland for which compensatory planting is proposed to be planted on-site.

336. RSPB Scotland had questioned why any of the conifer plantation to be lost would require to be compensated. Current guidance is that a distance of 800m should be applied, which would encompass all of the plantation. However, [Technical Appendix 3.2 - Forestry](#) describes the bespoke approach taken in this case. The applicant consulted with NatureScot and Scottish Forestry. Modelling was then undertaken, taking into account the topography of the site, which indicated that holdbacks of 450m to 750m would be sufficient. This leaves a strip of woodland on the eastern edge of the plantation which is outwith the holdback, leading to the need for compensatory planting.

337. Citing the Scottish Government’s Control of Woodland Policy, Forest and Land Scotland takes the view that this compensatory planting needs to be fully detailed before consent is granted. That policy states that the details of compensatory planting must be agreed prior to felling licence approval. For compensatory planting stipulated as a requirement of deemed planning permission under the Electricity Act 1989, the policy goes on to state that the specification of the planting will be determined by Scottish Ministers. Forest and Land Scotland’s guidance on the implementation of the policy says that the prospect of on-site compensatory planting must be considered and fully assessed in the EIA Report. The applicant responded to Scottish Forestry’s consultation on [20 January 2023](#) and again on [23 March 2023](#).

338. In my experience, it is not uncommon for planning conditions for wind farm development to specify the minimum requirements for compensatory planting, but to defer the final details of such planting for agreement after consent has been granted. Figure 3.13 of the SEI shows an indicative layout for compensatory planting. This shows four areas of potential new planting. These would all be adjacent to the areas of new planting from 2011 and would aim to increase connectivity between some of the existing blocks. The areas shown as new planting would be on similar depths of peat to that earlier planting. There is no evidence which indicates that the areas for new planting would not be suitable. In this context, my recommendation is that it would suffice to impose a suspensive condition, which would ensure that the development could not proceed until full details of the compensatory planting had been agreed by the planning authority.

339. In respect of the calculation of a holdback area related to waders in the SPA, I accept the applicant’s approach, as described in the technical appendix. However, it is my understanding that the whole of the conifer plantation is on peatland and that the restoration of all of this land to active peat bog would represent a biodiversity enhancement. That

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<sup>11</sup> [Proposed conditions](#) as at 2 October 2024  
[Covering email](#) with [Applicant’s comments on proposed conditions](#)

would seem potentially capable of justifying the felling of the plantation and the subsequent restoration to blanket bog without the need for any compensatory planting.

340. Since the final location of the areas of compensatory planting have not been identified, it is conceivable that the better outcome for biodiversity in some areas might be the retention of the current habitat rather than new woodland planting. I have therefore amended the relevant condition to provide some flexibility, and the ability for the final extent of compensatory planting to be determined on the basis of optimising the outcome for biodiversity, and informed by the evidence available at that time.

### Biodiversity

341. In condition 13 (Construction Environment Management Plan), in response to NatureScot's consultation response I have made it clear that the protection plan for otter includes the area of conifer plantation which is to be felled and restored to blanket bog. In condition 16 (Breeding Birds Protection Plan), and again in response to NatureScot, I have included a requirement to provide details of how a watching brief will be implemented during construction.

342. In condition 15 (Habitat Management Plan), in response to RSPB Scotland's submissions, I have added predator control to the list of measures to be included. This condition already includes measures for further protected species surveys in the area covered by the Plan – a requirement highlighted in NatureScot's consultation response.

### Planning Monitoring Officer

343. The council proposes a condition requiring the appointment of a Planning Monitoring Officer. The applicant considers this to be unnecessary since there is a condition requiring the appointment of an Environmental Clerk of Works. I agree that there would seem to be the potential for some overlap between these roles. However the Planning Monitoring Officer's role would seem to be somewhat broader in scope, covering all aspects of the implementation of the development and compliance with its conditions. I am also aware that the Scottish Ministers have previously consented wind farm developments with conditions requiring the appointment of both an Environmental Clerk of Works and a Planning Monitoring Officer. I have therefore retained this condition in the expectation that Ministers would wish to impose such a requirement in this case.

### Socio-economic benefits

344. The council proposes a planning condition under the heading "socio-economic benefit". This would require the submission of a "local employment scheme" for the construction of the wind farm. It would aim to maximise opportunities for local people to be employed in the project, detail the training to be provided and provide criteria for matching candidates to vacancies. This would be to maximise local socio-economic benefit in line with Policy 11 c) of NPF4.

345. The appellant considers that the proposed condition is not necessary, is vague about what is meant by "local", and is unreasonable.

346. I am not convinced that the proposed condition is too vague. It requires a scheme to be submitted for the approval of the council. The general thrust of what is being sought is clear enough. However, as drafted, I do have concerns that the matters the council seeks to control through the condition go beyond matters relating to the development and use of land. Having the council needing to approve the training opportunities to be offered to staff

and (it would appear) to approve aspects of how staff are recruited to the construction project does not appear to me to be within the proper role of the planning authority. I therefore omit this proposed condition.

### Community Ownership

347. The council proposed a condition covering community ownership. The applicant would, prior to final commissioning, submit a scheme for offering up to 10% community ownership of the wind farm. Again, Policy 11 c) is cited. The applicant considers such a condition to be inappropriate. It is also stated that the details of community ownership are most likely to come forward after final commissioning, when there is final certainty.

348. It is generally held that community benefits are not a material consideration to be taken into account in determining applications for wind farm development. In that context, I find it difficult to conceive of how community ownership in of itself (without having any knowledge of what that would mean in reality, and what benefits to the community might flow from it) could nevertheless be a material consideration and therefore something to be controlled through a planning condition. Consequently, I also omit this condition.

### Other conditions

349. One consultation response on behalf of a mobile phone microwave network operator stated that moving turbine 1 20m eastwards could create an issue with an existing microwave link. Another operator also refers to a microwave link (which I assume to be the same one) to the east of this turbine. I have therefore slightly reduced the micro-siting allowance for this turbine in Condition 9, in the eastward direction, from 25m to 20m. Turbine 2 is also referred to in another consultation response, but this is further from the microwave link/links, and so no further limitation on micro-siting appears to be necessary.

350. In condition 20 (Water Quality and Fish Monitoring Plan), in response to the consultation response from the Marine Directorate, I have noted that it should also be consulted by the planning authority in discharging this condition.

351. The proposed conditions incorporate all of the items requested in the consultation responses from SEPA and the Ministry of Defence. Proposed condition 18 is an appropriate response to Transport Scotland's suggested conditions relating to routing and deliveries of abnormal loads.

352. After the hearing, the council proposed two further conditions which would control drainage design and the management of fire risk and the emergency response procedures in the event of fire. In respect of drainage, I agree with the applicant that condition 13 g) appears to deal adequately with this matter, since the final details of drainage design require to be approved by the council.

353. In respect of fire risk, the applicant highlights the 22 October 2024 decision of Scottish Ministers approving the Loch Fergus Solar and Battery Energy Storage System development. This states that

“The carrying out of a fire risk assessment, the implementation of any practical measures to ensure safety, and the creation of a plan to deal with any emergency is a legal duty of responsible persons under Scottish fire safety legislation. Furthermore, generators of electricity are subject to safety regulations under the Electricity Act 1989 which require that equipment is constructed, installed, protected, used, and maintained so as to prevent

danger so far as is reasonably practicable. These are non-planning controls. Scottish Ministers consider that the planning condition proposed by the Planning Authority for an Emergency Action Plan including Fire Safety Management Plan does not meet the six tests of Scottish Government Planning Circular 4/1998 as it duplicates the effect of these other non-planning controls.”

On that basis, I conclude that Ministers would not consider it appropriate to include the council’s proposed condition.

354. I am satisfied that the conditions as set out in Appendix 1 are necessary and reasonable to be imposed if the consent is granted, having regard to the likely impacts and the mitigation required to offset these.

## **Conclusions and recommendations**

### **The Electricity Act 1989**

355. In accordance with Schedule 9 of the 1989 Act, in preparing my advice and recommendations to Ministers (and as related in this report) I have had 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. I have also had regard to the requirement to avoid, as far as possible, causing injuries to fisheries or to the stock of fish in any waters.

### **Environmental Impact Assessment and significant effects**

356. My conclusions on the significant effects of the development are up to date. The table below provides a summary of the relevant matters:

<b>EIA/SEI Report Chapter</b>	<b>Significant Residual Environmental Effects</b>
7 – Landscape and Visual	Landscape character effects on parts of the Sweeping Moorland and Flows, Strath Halladale and the Coastal Crofts and Small Farms. Effects on the western parts of the East Halladale Flows Wild Land Area. Visual effects at viewpoints 1,2,4,5,8 and 9. Effects on visual amenity for <ul style="list-style-type: none"> <li>• people travelling along the A836 in the vicinity of Strath Halladale;</li> <li>• people travelling along the A897 through Strath Halladale;</li> <li>• walkers on the core path to Melvich Beach;</li> <li>• walkers on the Kirkton to Upper Bighouse Core Path;</li> <li>• anglers in the River Halladale (with, in my view, noise effects adding to the overall effect on recreational experience).</li> </ul>
Technical Appendix 7.4 Residential Visual Amenity Assessment	Significant effect on residential visual amenity for most properties assessed.
SEI candidate World Heritage Site Assessment	Effects on the Outstanding Universal Value of the Flow Country World Heritage Site (my finding).

## National Planning Framework 4

357. National Development 3 in NPF4 is Strategic Renewable Electricity Generation and Transmission Infrastructure. This national development includes support for renewable electricity generation. Any renewable electricity generation project exceeding 50 megawatts in capacity is designated as a national development. Thus the need for this renewable energy development in the national interest is established. It would support the national spatial strategy in NPF4.

358. Policy 11 of NPF4 deals with energy. The outcome sought includes the expansion of renewable energy. Part (a) of the policy supports all forms of renewable energy development, including wind farms and battery energy storage. Therefore the principle of the development is clearly supported by Policy 11.

359. Part c) of the policy states that proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits. I have noted above the anticipated economic benefits in terms of the amount of investment, net value added and employment creation. I consider above effects on tourism, including on the use of holiday lets in the strath and angling on the River Halladale. However I have no real evidence on which to make an assessment as to the degree to which there might be a depressing effect on visitor numbers, and what the economic effects of that (if it did occur) might be. I have no evidential basis for concluding that there would be significant adverse economic effects. The applicant stated in its initial planning statement that it is committed to good practice measures to try and maximise local procurement and skills development. Although I recommend that the council's condition covering local socio-economic benefits is omitted, I am satisfied that the proposal is generally consistent with this part of Policy 11.

360. Part (e) of the policy identifies a number of impacts which are to be addressed by project design and mitigation. I have covered the most relevant of these above.

361. Impacts on communities and individual dwellings, including residential amenity, visual impact (including on recreational receptors), noise, shadow flicker and impacts from construction traffic are covered in paragraphs 46 to 67, with my findings from paragraph 61. There would be significant effects on residential visual amenity from a number of residential properties. For some properties the wind farm would tend to dominate the view across the strath. That effect arises because of the linear nature of the array, which is itself a design approach taken so as to follow the linear nature of the strath and to simplify the appearance of the wind farm. Albeit the effects on residential visual amenity would be very significant for some properties, I do not consider that the overall effects on residential would be at an unacceptable level. Otherwise, I find no significant adverse effects would arise.

362. Landscape and visual impacts are covered in paragraphs 20 to 45, with my findings from paragraph 30. There are a number of significant landscape and visual effects identified. This is, as Policy 11 seems to anticipate, almost inevitable for a wind farm which is of sufficient size to be a national development. The wind farm would become a key characteristic of part of Strath Halladale. However, I recognise that this effect arises from a design decision which adopts a linear form for the development to better align with the character of the strath itself. In accordance with the requirements of Policy 11, significant landscape and visual impacts are localised, and in my view appropriate design mitigation has been applied.

363. Effects on historic environment are covered in paragraphs 83 to 89, with my conclusions from paragraph 87. I do not find that there would be any significant effects on the historic environment.

364. Effects on water quality and fish stocks in the River Halladale are covered in paragraphs 321 to 328. I find that there is no evidential basis for concluding that there are likely to be significant effects on (or risks to) water quality or wild salmon populations.
365. Effects on birds are covered in paragraphs 90 to 112, with my findings from paragraph 103. I find that there would be no significant effect on birds, and no effect on the integrity of the Caithness and Sutherland Peatlands SPA or the Caithness Lochs SPA.
366. Other effects on biodiversity are covered in paragraphs 303 to 328. I find (other than effects on the WHS, which I return to below) that there would be no significant ecological effects. I deal with the issue of biodiversity enhancement under Policy 3 below.
367. Other potential effects identified in part e) of Policy 11 are not relevant or are addressed through the proposed conditions.
368. In considering these impacts, significant weight is to be placed on the contribution of the development to meeting targets for renewable energy generation and greenhouse gas emissions reductions. Doing so, and in the light of my findings above, overall I consider that the development is supported by Policy 11.
369. In terms of effects on international and national designations, Policy 11 defers to the terms of Policy 4 Natural Places. There would be no significant effects on any SSSI, and no adverse effect on the integrity of any Natura site. There would be adverse effects on the East Halladale Flows Wild Land Area. However it is stated in Policy 4 that effects on wild land from development outwith wild land areas will not be a significant consideration. Therefore there is no conflict with Policy 4.
370. Policy 3 Biodiversity states that proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.
371. Development proposals for national or major development, or for development that requires an Environmental Impact Assessment, will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. A number of criteria are to be met. I find above that the requirements of part b) of this policy would not be met.
372. Policy 5 Soils identifies the limited circumstances on which development on peatland will be supported. One of these is the generation of renewable sources that optimises the contribution of the area to greenhouse gas emissions reductions targets. Therefore there is no conflict with this aspect of the policy.
373. Where development is proposed on peatland, a site-specific assessment must identify the baseline conditions of the peatland, the likely effects on peatland, and the likely net effects on climate emissions and loss of carbon. This has been done.
374. The policy goes on to state that this assessment must ensure that adverse impacts are first avoided, and then minimised through best practice. A peat management plan will be required to demonstrate that this approach has been followed, alongside other appropriate plans required for restoring and/or enhancing the site into a functioning peatland system capable of achieving carbon sequestration.

375. Prior to the Inscription of the WHS, and having been reconsulted following preparation of the SEI, NatureScot had no objection to the loss of peatland habitat, and supported the forest to bog restoration. The council's objection was not on the basis of any conflict with Policy 5. The proposals for the main application site aim to mitigate effects on peatland, but there is only a limited amount of drain blocking proposed as enhancement. I note above, that, in the context of the WHS, this seems to be an omission, or at best a lost opportunity. However, there is the proposal for the 88ha forest to bog restoration, with proposed peatland and habitat management plans and an objective of returning this area to functioning peatland habitat. Therefore, leaving aside any consideration of the WHS, I do not consider there to be significant conflict with Policy 5.

376. Policy 6 Forestry, woodland and trees says that development proposals will not be supported where they will result in adverse impacts on native woodlands. Proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal.

377. The development would result in the loss of 3.58 hectares of native woodland. The applicant states that the development has been designed to minimise its effects on woodland. However this is still a loss of woodland which is contrary to the policy, albeit it is relatively recently planted and will be replaced with compensatory planting. Therefore I consider that there is an element of conflict with Policy 6.

378. I cover the issue of the felling of the conifer plantation and compensatory planting at paragraphs 335-340. It is agreed that the removal of the conifer plantation is in line with Scottish Government policy on woodland removal.

379. Policy 7 covers historic assets and places. There are, in my view, no significant effects on the historic environment, and no conflict with this policy.

380. Policy 1 Tackling the climate and nature crises says that, when considering all development proposals, significant weight is to be given to the global climate and nature crises. The renewable energy and climate change benefits of the development weigh strongly in this regard. Leaving out of account the effects on the WHS, I find that a failure to demonstrate biodiversity enhancement in this case should attach less weight. Therefore overall I find that Policy 1 gives support to the development.

#### The Local Development Plan and its supplementary guidance

381. The council's objection refers to conflict with policies 67 and 57 of the Highland Wide Local Development Plan, as a result of the loss of blanket bog in the (then) candidate WHS.

382. Neither the council's committee report or its objection, or its subsequent evidence, states what provisions in these policies the development is contrary to. Neither policy makes reference to World Heritage Sites (no doubt because there were none within the Highlands when the Plan was adopted).

383. Policy 57 Natural, Built and Cultural Heritage applies criteria to be applied to consideration of effects on features of local, regional, national and international importance. On the face of it, the WHS might fit into the latter category. However, it is clear from reading the detail of the policy tests applied that these relate specifically to the legal requirements for Natura sites. They are not applicable to a WHS. The text preceding the policy identifies

that this part of the policy applies to Natura sites (and to Ramsar sites). Therefore I do not consider that Policy 57 can be applied to the WHS.

384. Policy 67 Renewable Energy Developments incorporates consideration of the contribution of development towards meeting renewable energy generation targets, and its economic effects. The policy is supportive of development that is not significantly detrimental, having particular regard to significant effects on a number of listed receptors. The first of these are “natural, built and cultural heritage features”. In the absence of any other specific provisions in the Plan relating to WHS, on a fair reading I think that these could encompass effects on the WHS.

385. Policy 67 requires a balancing exercise to be had. The contribution of the proposal towards renewable energy targets is of course a positive factor, as are its economic benefits. On the other side of the equation is any significantly detrimental effects. Allowing that to include the WHS, in my view the failure to protect and preserve Outstanding Universal Value would be significant, and highly detrimental. In my view the importance of this effect is such that, overall, the proposal would be contrary to Policy 67.

386. The other receptors and effects listed in policy 67 match fairly well with those identified in Policy 11 of NPF4, including landscape and visual effects, amenity, noise, shadow flicker, the water environment, recreation and tourism. I address these aspects of the proposal above. Even where they result in significant environmental effects, I do not consider that they would, in the absence of the effect on the WHS, have resulted in a failure to comply with Policy 67.

387. I have also reviewed the council’s onshore wind supplementary guidance. I see nothing in it which would cause me to depart from the findings I reach above.

#### Overall conclusions on the development plan

388. Because of the particular circumstances of this case, the overall development plan position is, regrettably, complex. I do not find that the effects on the WHS are directly relevant to NPF4. There is some conflict with policies 3 and 6 of NPF4 but in my view there is stronger support in Policy 11, bolstered by Policy 1. The proposal is, however, in my view contrary to the terms of Policy 67 of the Highland-wide Local Development Plan. It has not been put to me that policies 67 and 11 are incompatible. NPF4 however is much the more recent expression of policy, and I would be inclined to give it greater weight in the overall balance. Overall, I would reach the conclusion that (effects on the WHS not being relevant to NPF4), the proposal is in accordance with the development plan.

389. If Ministers were to consider that the WHS was not relevant to Policy 67, then that conclusion would become firmer. On the other hand, if Ministers were to consider that the effects on the WHS are within the scope of Policy 7 of NPF4 then that conclusion ought, in my view, to be reversed.

#### Onshore Wind Policy Statement

390. The Onshore Wind Policy Statement provides support for onshore wind farms which is consistent with the policy approach in NPF4. Onshore wind is “mission-critical” to meeting Scotland’s climate change targets. There is an ambition of a minimum of 20 gigawatts of installed onshore wind capacity by 2030. The Statement gives strong in-principle support for onshore wind energy development. As I note above, it specifically recognises the potential for wind farm development to facilitate peatland restoration.

## Draft Energy Strategy and Just Transition Plan

391. This was published as a draft in January 2023, and I am not aware of any further development of it. As one would expect, it is consistent with NPF4 and the Onshore Wind Policy Statement in its support for increasing the deployment of renewable energy infrastructure, including onshore wind and battery storage. At the time of its publication, almost 10 gigawatts of onshore wind were operational or under construction, with around 4.5 gigawatts consented, and other schemes in planning. Albeit these figures will have moved on, at that time only about half of the 2030 ambition of 20 gigawatts could be considered to have been delivered. Therefore the proposal has the potential to contribute towards meeting that ambition.

## Effects on the Flow Country World Heritage Site

392. My finding above is that the Outstanding Universal Value of the Flow Country World Heritage Site would not be protected or preserved.

## Overall conclusions

393. In balancing the factors for and against the proposal, I recognise the contribution that the proposal would make towards meeting renewable energy and climate change-related objectives, and its economic effects. I also take into account the significant adverse environmental effects, in particular the adverse landscape and visual effects, effects on residential visual amenity, and effects on the Flow Country World Heritage Site. Given the importance of the latter of these effects, and even taking into account the policy support for the development otherwise, in my judgement the application should be refused.

## Recommendation

394. Consent should not be granted under section 36 of the Electricity Act 1989.

395. My conclusion in respect of the adverse effects of the development on the WHS is pivotal to my overall recommendation. If Ministers disagree with my findings on those effects (if they consider that Universal Outstanding Value would be protected and preserved) then the other remaining significant adverse effects which I identify above would not, in my view, outweigh the benefits of the proposal. In that scenario I consider that the overall planning balance would be in favour of granting the application.

396. In any event, if Ministers are minded to grant consent, this should be subject to the conditions listed in Appendix 1.

397. If Ministers are indeed minded to grant consent, this cannot be done without the satisfactory completion of an appropriate assessment in relation to the effects of the proposal on the Caithness and Sutherland Peatlands SPA and the Caithness Lochs SPA. In my view Ministers can conclude that there would be no adverse effect on the integrity of these sites. In support of that view I would point to NatureScot's first consultation response and to the contents of paragraphs 91-97 and 103-110 above. Technical Appendix 9.4 of the EIA Report may also be helpful in this respect.

*David Liddell*

Assistant Chief Reporter

## **Appendix 1: Recommended conditions**

### **Conditions to be attached to the Section 36 consent**

#### **1. Notification of Date of First Commissioning**

(1) 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.

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

*Reason: To allow the planning authority and the Scottish Ministers to calculate the date of expiry of the consent.*

#### **2. Commencement of Development**

(1) The Commencement of Development shall be 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 practicable after deciding on such a date and no later than one calendar month before that date.

*Reason: To ensure that the consent is implemented within a reasonable period. And to allow the planning authority and the Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

#### **3. Non-Assignment**

(1) This consent may not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent (with or without conditions) or refuse assignment 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.

(2) 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 assignment 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 serious 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 Scottish Ministers, including confirmation of remedial measures taken and/or to be taken to rectify the breach, within 24 hours of the incident occurring or first becoming known to the Company.

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

## **Conditions to be attached to deemed planning permission**

### **5. Commencement of Development**

(1) The Development must be begun not later than the expiration of 5 years beginning with the date of permission, 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 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.*

### **6. Site Enabling Works**

The Site Enabling Works shall not commence until a detailed scheme of all Site Enabling Works (including off-site and on-site works) has been submitted to and approved by the planning authority. This shall include a timetable for all Site Enabling Works and shall be submitted a minimum of 1 month in advance of the proposed date of commencement of any Site Enabling Works.

*Reason: To ensure the final details of the Site Enabling Works have regard to the rural setting of the Development site and the potential impact of such works on the infrastructure of the area.*

### **7. Design and Operation of Wind Turbines**

(1) No development, with the exception of the Site Enabling Works, shall commence until full details of the proposed wind turbines have been submitted to and approved in writing by the planning authority. These details shall include:

- a) The make, model, design, direction of rotation, power rating, sound power level and dimensions of the turbines to be installed which shall have internal transformers; and
- b) The external colour and/or finish of the wind turbines to be used (including towers, nacelles and blades) which shall be non-reflective, pale grey semi-matte.

(2) All wind turbine blades shall rotate in the same direction.

(3) No text, sign or logo shall be displayed on any external surface of the wind turbines, save those required by law under other legislation.

(4) Thereafter, the wind turbines shall be installed and shall operate in accordance with these approved details and, with reference to part (1)(b) above, the wind turbines shall be maintained in the approved colour, free from rust, staining or discolouration until such time as the wind farm is decommissioned.

(5) All cables between the turbines and between the turbines and the control building on site shall be installed and kept underground.

*Reason: To ensure the planning authority is aware of the wind turbine details and to protect the visual amenity of the area.*

## **8. Appearance and Design of Sub-station, Ancillary Buildings and other Ancillary Development**

(1) No development, with the exception of the Site Enabling Works, shall commence on the sub-station unless and until final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, construction compound boundary fencing, external lighting and parking areas have been submitted to, and approved in writing by, the planning authority.

(2) The substation building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the details approved under paragraph (1).

(3) No anemometer, power performance mast, switching station, transformer building, enclosure, ancillary building or above ground fixed plant shall display any name, logo, sign or advertisement (other than health and safety signage) unless and until otherwise approved in writing by the planning authority.

*Reason: To safeguard the visual amenity of the area.*

## **9. Micro-siting**

(1) All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location shown on SEI Figure 3.1 – Site Layout. Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the site. Micro-siting permissible under this condition must be approved in writing in advance by the Environmental Clerk of Works (“EcoW”) and, unless otherwise approved in advance in writing by the planning authority in consultation with NatureScot, SEPA and the EcoW, is subject to the following restrictions:

a) No wind turbine or other infrastructure and tracks may be moved more than 25 metres from their locations on SEI Figure 3.1 – Site Layout;

b) No substation may be moved more than 100 metres from its location on SEI Figure 3.1 – Site Layout;

c) No proposed infrastructure may be positioned less than 50 metres from any watercourse feature, with the exception of watercourse crossings and associated track;

d) No proposed infrastructure may be positioned into areas hosting groundwater dependent terrestrial ecosystems, unless it is demonstrated that direct and indirect impacts of the groundwater dependent M6 and W4 habitats shown at Table 8-7 of Chapter 8 of the EIA Report have been minimised to the satisfaction of the planning authority in consultation with SEPA. Demonstration of suitable protection requires:

i) either:

1) a more detailed qualitative and quantitative assessment to be undertaken to demonstrate that the W4 and M6 habitats on the track to Turbine 1 and Turbine 2 are not groundwater dependent; or

2) a method statement including track construction details and a scheme of groundwater monitoring is agreed with the planning authority in consultation with SEPA for those habitats to ensure that the works do not result in a statistically significantly change in the groundwater feeding them, all in line with SEPA guidance on Groundwater Dependent Terrestrial Ecosystems (currently LUPS-GU31). If as a result of monitoring it is found that

there is a statistically significant change in the groundwater feeding these habitats, remedial works must be undertaken to allow recovery of the groundwater; and

ii) Turbine 7 shall be micro-sited to avoid direct impacts on M6 habitat.

e) No proposed infrastructure may be positioned into areas of peat deeper than currently shown for the relevant infrastructure on SEI Figures 10.1.5, 10.1.6 and 10.2.3; and

f) No wind turbine foundation shall be positioned higher, when measured in metres Above Ordnance Datum (AOD), than 5m above the position shown on SEI Figure 3.1 – Site Layout.

g) Turbine 1 shall not be micro-sited by more than 20m to the east.

(2) A plan showing the final position of all wind turbines, buildings, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development shall be submitted to the planning authority within one month of the completion of the development works. The plan shall also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the EcoW and/or planning authority's approval, as applicable.

*Reason: To enable necessary minor adjustments to the position of the wind turbines and other infrastructure to allow for site-specific conditions while maintaining control of environmental impacts and taking account of local ground conditions.*

## **10. Borrow Pit Scheme of Works and Blasting**

(1) No development including Site Enabling Works shall commence until a site-specific scheme for the working and restoration of each relevant borrow pit has been submitted to and approved in writing by the planning authority, in consultation with SEPA. The scheme shall include:

a) Details of the characteristics and suitability of the rock to be extracted from each relevant borrow pit including an assessment of the calcium content of the rock;

b) Detailed working method statement based on site survey information and ground investigations;

c) Details of the handling of any overburden (including peat, soil and rock);

d) Drainage measures, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and groundwater dependent terrestrial ecosystems from drying out;

e) A programme of implementation of the works described in the scheme; and

f) Details of the reinstatement, restoration and aftercare of each borrow pit to be undertaken at the end of the construction period, including 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 be implemented in full.

(3) Blasting shall only take place on the site between the hours of 10:00 to 16:00 on Monday to Friday inclusive and 10:00 to 12:00 on Saturdays, with no blasting taking place on a Sunday or on a Bank or National Public Holiday, unless otherwise approved in advance in writing by the planning authority.

*Reason: To ensure that excavation of materials from the borrow pits is carried out in a manner that minimises the impact on road safety, amenity and the environment, and to secure the restoration of borrow pits at the end of the construction period. To ensure that blasting activity is carried out within defined timescales to control impact on amenity.*

## **11. Environmental Clerk of Works (EcoW)**

(1) No development including Site Enabling Works shall commence unless and until the terms of appointment of an independent Environmental Clerk of Works (“EcoW”) by the Company have been submitted to, and approved in writing by, the planning authority (in consultation with NatureScot and SEPA) and the EcoW has been appointed by the Company on the approved terms. The terms of appointment shall:

a) Impose a duty to monitor compliance with the environmental commitments provided in the EIA Report as well as the following (the EcoW Works):

- i) any micro-siting under Condition 9;
- ii) the Pre-Construction Ecological Survey under Condition 12;
- iii) the Breeding Bird Protection Plan under Condition 16;
- iv) the Construction Environmental Management Plan under Condition 13;
- v) the Peat Management Plan under Condition 14;
- vi) the Habitat Management Plan approved under Condition 15;
- vii) the Construction Traffic Management Plan under Condition 18; and
- viii) the Deer Management Plan under Condition 19.

b) Require the EcoW to report to the nominated construction project manager, developer and planning authority any incidences of non-compliance with the EcoW works at the earliest practical opportunity;

c) Require the EcoW to submit a monthly report to the construction project manager, developer and planning authority summarising works undertaken on site; and

d) Require a statement that the EcoW shall be engaged by the planning authority but funded by the Company. The EcoW shall be appointed on the approved terms throughout the period from Commencement of Development to completion of construction works and post-construction site reinstatement works.

(2) No later than 18 months prior to the Date of Final Generation or the expiry of this consent (whichever is the earlier), details of the terms of appointment of an EcoW by the Company throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the planning authority for written approval. The EcoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

*Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development during the decommissioning, restoration and aftercare phases.*

## **12. Pre-Construction Ecological Survey**

(1) No development including Site Enabling Works shall commence until a pre-construction ecological survey undertaken no more than 6 months prior to works commencing and a report of the survey has been submitted to, and approved in writing by, the planning authority. The survey shall cover both the application site and an appropriate buffer, to be agreed prior to the commencement of the survey, from the boundary of the application site

or developable area, with the report including mitigation measures where any impact, or potential impact, on protected species or their habitat has been identified.

(2) Development and work shall progress in accordance with any mitigation measures contained within the approved report of survey and the timescales contain therein.

*Reason: In the interest of protecting ecology, protected species and habitats.*

### **13. Construction Environmental Management Plan (CEMP)**

(1) No development including Site Enabling Works shall commence until a works-specific CEMP related to the phase or phases of works or development to be undertaken has been submitted to and approved in writing by the planning authority, in consultation with Transport Scotland for part (2)(p) below. The CEMP shall outline site specific details of all on-site construction works, post- construction reinstatement, drainage and mitigation, together with details of their timetabling.

(2) The CEMP for each phase of works or development shall include (but is not limited to):

- a) an updated Schedule of Commitments highlighting amendments made to the existing schedule of commitments set out in Chapter 16 of the EIA Report and SEI, and the conditions of this consent;
- b) details and timetable for phasing of construction works;
- c) risk assessment of potentially damaging construction-type activities on the environment;
- d) a finalised Peat Landslide Hazard Risk Assessment, incorporating the recommendations set out within the Stage 2 Checking Report, prepared by Ironside Farrar, April 2023;
- e) a Site Waste Management Plan (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
- f) a Pollution Prevention Plan, including a surface water and groundwater management and treatment plan with mitigation measures demonstrating how all surface water run-off and waste water arising during and after development is to be managed and prevented from polluting any watercourses or sources;
- g) a Drainage and Surface Water Management Plan, including details of site drainage and management of sediment and surface waters;
- h) a Water Quality Management Plan, including details for the monitoring of any presently undiscovered private water supplies, as well as, surface watercourses down gradient of work areas (including watercourse crossings, access tracks, turbine foundation and borrow bits);
- i) a Species and Habitat Protection Plan for otter, including the forest felling and blanket bog restoration;
- j) a Breeding Bird Protection Plan;
- k) a Construction Method Statement, which must include details of tree felling and peatland restoration works adjacent to the Caithness and Sutherland Peatlands SAC;
- l) Details of any water-crossings outlined in the locations shown in Appendix 10.4 of the EIA Report, which shall include provision of oversized bottomless culverts or traditional-style bridges designed to accommodate a 1-in-200-year peak flow (plus an allowance for climate change) unless otherwise agreed with the planning authority in consultation with SEPA;
- m) details of the proposed temporary site compound, storage of materials, including fuel and other chemicals, machinery, and designated car parking;
- n) details of on-site storage and off-site disposal of all imported or excavated material, including maximum stockpile heights and locations;
- o) details of all internal access tracks and turning areas, including accesses from the public road and hardstanding areas;

p) details of the construction of the access into the site and the creation and maintenance of associated visibility splays;

q) details of the cleaning of the site entrance, site tracks and the adjacent public road and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the public road;

r) details of archaeological supervision to oversee the protection/fencing off of all known heritage assets, including all areas to be used by construction vehicles;

s) details of the management of noise and vibration during construction;

t) a dust management plan;

u) details of temporary site illumination;

v) the method of construction of the crane pads, wind turbine foundations, working cable trenches, and the method of construction and erection of the wind turbines and any meteorological masts;

w) details for the provision of the submission of a quarterly report summarising work undertaken at the site and compliance with the conditions imposed under the Deemed Planning Permission during the period of construction and post-construction reinstatement;

x) details of post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas, all of which are to be provided no later than 6 months prior to the date of first commissioning, unless otherwise agreed in writing by the planning authority. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation.

*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 (November 2022) and SEI (October 2023) which accompanied the application, or as otherwise agreed, are fully implemented.*

#### **14. Peat Management Plan (PMP)**

(1) No development including Site Enabling Works shall commence until a works specific finalised PMP, related to the phase or phases of works or development to be undertaken, has been submitted to and approved in writing by the planning authority in consultation with SEPA. The PMP shall include:

- a) taking account of site and ground investigations to minimise the loss of peatlands and reduce carbon loss;
- b) include details of vegetated turf stripping and storage;
- c) include actions (including micro-siting) to minimise excavated peat volumes and reuse peat in an appropriate manner, with the inclusion of a specific section outlining measures such as micro-siting, limiting the footprint, and use of floating track where ground conditions are considered suitable following review and assessment of site specific ground investigation data for all areas of consistent peat depths greater than 1m; and
- d) follow SEPA's good practice for handling, storing and reinstating peat materials.

(2) The PMP shall thereafter be implemented as approved.

*Reason: To minimise effects on peat and to ensure that a plan is in place to deal with the storage and reuse of peat within the development site.*

#### **15. Habitat Management Plan (HMP)**

(1) No development, with the exception of the Site Enabling Works, shall commence

unless and until a finalised Habitat Management Plan (HMP) has been submitted to, and approved in writing by the planning authority, in consultation with NatureScot. The finalised HMP shall provide measurable benefits for biodiversity and shall contain enhanced peatland restoration building upon the outline HMP contained within the EIAR, Volume 4a – Technical Appendix 8.5, delivering restoration works to, as a minimum, the areas shown on Figure 8.5.4 of Technical Appendix 8.5. The information shall include:

a) the 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; this shall include:

- i) forest removal of the mature plantation block in the north west corner of the Site;
- ii) a system of blocking in ditches which are hydrologically linked to the management area to increase water retention of the area;
- iii) Proposals for brush removal and re-wetting across the area shown on Figure 8.5.4 of Technical Appendix 8.5;
- iv) details of methods of enhancement for at least 87 ha of blanket bog;
- v) monitoring blanket bog peatland restoration areas on a regular basis;
- vi) monitoring to assess suitability of management practice to aid golden plover and hen harrier colonisation;
- vii) a deer management plan in accordance with condition 19;
- viii) pre-construction surveys for otter in accordance with condition 13;
- ix) post-construction breeding bird surveys;
- x) post-construction breeding raptor surveys;
- xi) post-construction habitat monitoring to document bog restoration in the north west corner of the Site; and
- xii) predator control.

b) a scheme of works for peatland restoration works to deliver peatlands commensurate with the quality of the habitat that will be lost directly and indirectly and to take advantage of the opportunity for peatland restoration across the site; this scheme shall:

- i) consider any opportunities for habitat restoration in areas of permeant tree felling;
- ii) comply with SEPA Management of Forest Waste guidance;
- iii) ensure that the excavated peat is fit for the purpose it is being used for; and
- iv) include the provision of GIS Shapefiles for the compensation and enhancement areas.

c) the 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 habitat management plan 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; and

d) a scheme for the delivery of biodiversity enhancement, on site/within the wider estate and/or via contributing towards a strategic Highland-wide scheme. The development shall not be carried out other than in accordance with approved details.

(2) Unless and until otherwise agreed in advance in writing with the planning authority, the approved HMP (as amended from time to time) shall be implemented in full through the construction, operation and decommissioning of the Development.

*Reason: In the interests of protecting ecological features and species and to ensure that the development secures positive effects for biodiversity.*

## **16. Breeding Birds Protection Plan (BBPP)**

(1) No development including Site Enabling Works shall commence unless and until a BBPP has been submitted and approved in writing by the planning authority in consultation with NatureScot. This shall include:

a) details of checks or surveys which have been carried out, and/or are proposed pre-construction to be carried out, at an appropriate time of year for the species concerned, by a suitably qualified person, to provide records of breeding or foraging Annex I/Schedule 1 birds within disturbance distance of the site; and appropriate mitigation to avoid the risk of disturbance and/or displacement occurring;

b) details of the forest clearance to the North West of the Site, ensuring that these will take place once the Development is in operation to provide screening for SPA red-throated diver;

c) a plan and process for nesting bird surveys to be undertaken no more than 24 hours prior to the commencement of development if this coincides within the main bird breeding season (March-August inclusive) and throughout the breeding bird season if new areas are being developed or there has been a break of more than one week in construction;

d) details of how a watching brief will be implemented during construction.

(2) The BBPP shall thereafter be implemented as approved.

*Reason: To ensure all wild bird nests are protected from damage, destruction, interference and obstruction under the Wildlife and Countryside Act 1981 (as amended).*

## **17. Archaeology**

No development (including site clearance) shall commence until a programme of work for the survey, evaluation, preservation and recording of any archaeological and historic features affected by the proposed development/work, including a timetable for investigation, has been submitted to, and approved in writing by, the planning authority. The approved programme shall be implemented in accordance with the agreed timetable for investigation.

*Reason: In order to protect the archaeological and historic interest of the site.*

## **18. Construction Traffic Management Plan (CTMP)**

(1) No development including Site Enabling Works shall commence until a Phase 1 CTMP has been submitted to, and approved by, the planning authority in consultation with the relevant roads authority(s), Police Scotland, affected community councils and Transport Scotland. The Phase 1 CTMP shall be implemented as approved during all periods of construction and decommissioning, and shall include measures for routing of construction traffic. The Phase 1 CTMP shall be submitted no later than 2 months prior to commencement of this phase and shall include (but not be limited to):

a) A description of all measures to be implemented by the developer in order to manage traffic during the construction phase (including routing strategies with no abnormal load vehicles to travel on the A897 or on the A836 to the west of the proposed turning area located to the west of Kirkton Farm Road), with measures to enforce these restrictions, including any additional or temporary signage and traffic control undertaken by a recognised suitably qualified traffic management consultant;

- b) The identification and delivery of all upgrades to the public road network required by Condition 22.
- c) A high-level review of the Abnormal Indivisible Loads route from the preferred Port of Entry;
- d) An initial route assessment report for abnormal loads, including swept path analysis and details of the movement of any street furniture, any traffic management measures and any upgrades and mitigation measures as necessary;
- e) Procedure for the regular monitoring of road conditions and the implementation of any remedial works required during the construction and decommissioning periods;
- f) Details of appropriate traffic management which shall be established and maintained at the site access for the duration of the construction period. Full details shall be submitted for the prior approval of the planning authority, in consultation with the roads authority;
- g) Wheel washing measures to ensure water and debris are prevented from discharging from the site onto the public road;
- h) Appropriate reinstatement works shall be carried out, as required by the planning authority, at the end of the turbine delivery and erection period;
- i) Measures to ensure that construction traffic adheres to the agreed routes;
- j) A concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 under which the developer is responsible for the repair of any damage to the local road network that can reasonably be attributed to construction related traffic. As part of this agreement, pre-start and post-construction road condition surveys must be carried out by the developer, to the satisfaction of the roads authority(s). It will also require the submission of an appropriate financial bond acceptable to the Council in respect of the risk of any road reconstruction works.

(2) No Abnormal Indivisible Load(s) deliveries shall commence until Phase 2 of the Construction Management Plan for Abnormal Indivisible Loads has been submitted to and approved by the planning authority (in consultation with the roads authority, Police Scotland, affected community councils and Transport Scotland) at least two months in advance of the first anticipated abnormal load delivery to the site, the date of which shall be notified to the planning authority prior to commencement of any development on the site. This shall include a Construction Traffic Management Plan for the routing of Abnormal Indivisible Loads, the arrangements to be made for any Highways Act Agreement that may be required, and the reinstatement of off-site works not needed to be retained after the construction phase. The Phase 2 Construction Traffic Management Plan shall include (but not be limited to):

- a) A videoed trial run to confirm the ability of the local road network to cater for turbine delivery. Three weeks' notice of this trial run must be made to the local roads authority who must be invited;
- b) No deliveries by abnormal indivisible loads shall take place until a final assessment of the capacity of existing bridges and structures along the abnormal indivisible load delivery route is carried out and submitted to and approved by the planning authority and full engineering details and drawings of any works required to such structures to accommodate the passage of abnormal indivisible loads have been submitted to and approved by the planning

authority; thereafter the approved works shall be completed prior to the abnormal indivisible load deliveries to the site;

c) A risk assessment for the transportation of abnormal loads to site during daylight hours and hours of darkness;

d) A contingency plan prepared by the abnormal load haulier in consultation with Police Scotland and the respective roads authorities. It shall include measures to deal with any haulage incidents that may result in public roads becoming temporarily closed or restricted;

e) A detailed protocol for the delivery of abnormal loads/vehicles, prepared in consultation with interested parties. The protocol shall identify any requirement for convoy working and/or escorting of vehicles and include arrangements to provide advance notice of abnormal load movements in the local media. Temporary signage, in the form of demountable signs or similar approved, shall be established, when required, to alert road users and local residents of expected abnormal load movements. All such movements on Council-maintained roads shall take place outwith peak times on the network, including school travel times, and shall avoid local community events; and

f) Identification of a nominated person to whom any road safety issues can be referred.

*Reason: In the interests of road safety and to ensure that abnormal loads access the site in a safe manner.*

## **19. Deer Management Plan (DMP)**

No development, with the exception the Site Enabling Works, shall commence until a Deer Management Plan ('DMP') has been submitted to and approved in writing by the planning authority in consultation with NatureScot. The DMP will set out proposed long-term management of deer using the Development site and shall provide for the monitoring of deer numbers on site from the period from Commencement of Development until the date on which site infrastructure has been removed and final site restoration completed. The approved DMP shall thereafter be implemented in full.

*Reason: To protect ecological interests and in the interests of habitat enhancement.*

## **20. Water Quality and Fish Monitoring Plan**

(1) No development, including Site Enabling Works, shall commence until an integrated Water Quality and Fish Monitoring Plan (WQFMP) has been submitted to and approved in writing by the planning authority in consultation with the local District Fishery Board and Scottish Government Marine Directorate – Science, Evidence, Data and Digital.

(2) The WQFMP must take account of Marine Scotland Science's guidance and shall include:

a) provision that water quality sampling should be carried out for 12 months (or as agreed with the planning authority) prior to Commencement of development, during construction and for 12 months after construction is complete;

b) key hydrochemical parameters (including turbidity and flow data), the identification of sampling locations (including control sites), frequency of sampling, sampling methodology, data analysis and reporting;

c) fully quantitative electrofishing surveys at sites potentially impacted and at control sites for 12 months (unless a reduced survey period is justified, guided by survey results and to be agreed with the planning authority) prior to the Commencement of development, during

construction and for 12 months after construction is completed to detect any changes in fish populations; and

d) appropriate site-specific mitigation measures including those detailed in the EIA Report.

(3) Thereafter, the WQFMP shall be implemented in full within the timescales set out in the WQFMP.

*Reason: In the interests of water quality and of wild fish.*

## **21. Outdoor Access Plan**

(1) No development including Site Enabling Works shall commence until a detailed Outdoor Access Plan has been submitted to and approved in writing by the planning authority. The purpose of the plan shall be to maintain public access routes to core paths during construction, and to maintain outdoor access in the long-term. The Outdoor Access Plan shall include details showing:

a) all existing access points, paths, core paths, tracks, rights of way and other routes (whether on land or inland water), and any areas currently outwith or excluded from statutory access rights under Part One of the Land Reform (Scotland) Act 2003, within and adjacent to the application site;

b) any areas proposed for exclusion from statutory access rights for reasons of privacy, disturbance or effect on curtilage related to buildings or structures; and

c) all proposed paths tracks and other alternative routes for use by walkers, riders, cyclists, canoeists, all-abilities users, etc. and any other relevant outdoor access enhancement (including construction specifications, signage, information leaflets, proposals for on-going maintenance etc); any diversion of paths, tracks or other routes (whether on land or inland water), temporary or permanent, proposed as part of the Development (including details of mitigation measures, diversion works, duration and signage).

(2) The approved Outdoor Access Plan, and any associated works, shall be implemented in full prior to the Commencement of development or as otherwise may be agreed within the approved plan.

*Reason: In the interests of maintaining public access rights.*

## **22. Road Mitigation Schedule of Works**

No development shall commence until a schedule of advanced Road Mitigation Works and a transport report for the affected routes on the public road network have been submitted to and agreed in writing by the planning authority, in consultation with the roads authority. The report, primarily in relation to road mitigation, shall be implemented as approved, and must include as a minimum:

a) The identification and delivery of all upgrades to the public road network to ensure that it is to a standard capable of accommodating construction-related traffic (including the formation or improvement of any junctions leading from the site to the public road) to the satisfaction of the Roads Authority, including:

i) An updated route assessment report for abnormal loads, including swept path analysis and details of the movement of any street furniture, any traffic management measures, and any upgrades and mitigations measures as necessary. This should be undertaken for the candidate turbine and any subsequent changes to either the turbine specifications or proposed method of transport would require any assessments to be updated as necessary. The route assessment report should include the following as a minimum:

- a review of overhead services along the route;
- a review, in summer conditions, of roadside vegetation along the access route and clearance of any vegetation that may interfere with abnormal load movements.
- a review of road works or road closures that could affect the movement of abnormal loads.
- a review of new or diverted underground services that may be at risk from abnormal loads.
- consultation and agreement with Police Scotland and The Highland Council regarding the movement of abnormal loads on the local road network.

ii) A trial run supported by high-definition video footage and a summary report to confirm the ability of the local road network to cater for turbine delivery, undertaken in conjunction with both the roads authority and Police Scotland. Three weeks' notice of this trial run must be made to roads authority who must be in attendance if deemed necessary.

iii) Details of the proposed site access at its junction with the public road and any required works to the standards as set out within the council's Roads and Transportation Guidelines for New Developments. Such works may include suitable drainage measures, improved geometry and construction, measures to protect the public road, and the provision and maintenance of appropriate visibility splays.

iv) An assessment of the capacity of existing bridges and other structures along the construction access route(s) to cater for all construction traffic and abnormal load traffic, with upgrades and mitigation measures proposed as necessary. All assessment work must be carried out under the Technical Approval process laid out in DMRB CG300. This involves the submission of an Approval in Principle (AIP) for each assessment for acceptance by the Technical Approval Authority (TAA). This AIP should include details of the proposed delivery vehicles, including axle weights and spacings. On completion of the assessment, assessment and check certificates must be submitted to the TAA, along with the assessment report and copies of the assessment and check calculations. All works to be completed to the satisfaction of the Council prior to any construction activities taking place.

v) Following completion of the trial run and structural assessments, full details of all road mitigation measures needed to facilitate abnormal load movements shall be agreed with the planning authority. The said measures shall be fully implemented prior to any abnormal load movements commencing. Appropriate reinstatement/ restoration works shall be carried out, as required by planning authority, at the end of the turbine delivery and erection period.

vi) A detailed assessment and design of upgrade works to Kirkton Farm Road, including its junction with the A836, required to accommodate the indicative improvements identified within the Abnormal Load Route Assessment. The works shall be carried out in full accordance with the plans as may be approved, unless otherwise agreed in writing with the planning authority. Thereafter, any works identified within said transport report shall be completed prior to any haulage operations (either general construction vehicles or abnormal load) taking place, unless otherwise agreed in writing by the planning authority.

vii) A review of existing carriageway drainage provision on Kirkton Farm Road, including at its junction with the A836, and provision of details of suitable drainage provision associated with carriageway mitigation works including widening and realignment. Thereafter, any drainage works identified shall be completed prior to any haulage operations (either general construction vehicles or abnormal load) taking place, unless otherwise agreed in writing by the planning authority.

viii) A review of existing carriageway markings and traffic signs over the length of the proposed works, with any necessary improvement works undertaken prior to any haulage operations (either general construction vehicles or abnormal load) taking place, unless otherwise agreed in writing by the planning authority.

b) Establish the current condition of the proposed access route, confirming its suitability

or otherwise to accommodate the predicted levels of construction traffic. This work will be undertaken by a consulting engineer acceptable to the planning authority and will involve an engineering appraisal including the following:

- i) assessment of the structural strength of the carriageway including construction depth and road formation, where this is likely to be significant in respect of proposed impacts, including non-destructive testing and sampling as required;
- ii) Road surface condition and profile; and
- iii) Details on road widths and the vertical and horizontal alignment of carriageway running surfaces.

c) A registered legal agreement under Section 96 of the Roads (Scotland) Act 1984 to include the provision of a Road Bond or similar security, under which the developer is responsible for the repair of any damage to the public road network that can reasonably be attributed to construction-related traffic. The agreement shall take account of any neighbouring significant developments that might progress concurrent with the works proposed and will provide, if necessary, a mechanism for apportionment of costs between respective developers. As part of this agreement, pre-start and post-construction road condition surveys must be carried out by the developer. The scope of said road condition surveys, both pre-start and post-construction should be agreed with the planning authority prior to any works being undertaken.

*Reason: To ensure that the construction of the wind farm is carried out appropriately and does not have an adverse effect on the environment, and to protect road safety and the amenity of other users of the public road network and rights of way.*

### **23. Aviation Lighting**

(1) Prior to commencing construction of any wind turbine, or deploying any construction equipment or temporal structure(s) 15 metres or more in height (above ground level) the undertaker must submit an aviation lighting scheme for the approval of the Scottish Ministers, in consultation with the Civil Aviation Authority and Ministry of Defence, defining how the development will be lit throughout its life to maintain civil and military aviation safety requirements as determined necessary for aviation safety by the Ministry of Defence.

(2) This should set out:

a) details of any construction equipment and temporal structures with a total height of 15 metres or greater (above ground level) that will be deployed during the construction of wind turbines and details of any aviation warning lighting that they will be fitted with; and

b) the locations and heights of all wind turbines and any anemometry mast featured in the development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbines; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used.

(3) Thereafter, the development must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the lifetime of the development.

*Reason: To maintain aviation safety.*

## **24. Aviation Charting and Safety Management**

The developer must notify the Ministry of Defence, at least 14 days prior to the commencement of the works, in writing of the following information:

- a) the date of the commencement of the erection of wind turbine generators;
- b) the maximum height of any construction equipment to be used in the erection of the wind turbines;
- c) the date any wind turbine generators are proposed to be brought into use;
- d) the latitude and longitude and maximum heights of each wind turbine generator, and any anemometer mast(s).

*Reason: To maintain aviation safety.*

## **25. Telecommunication**

Within 12 months of the first export date, any claim by any individual person regarding television or telecommunications interference at their house, business premises or other building shall, at the request of the planning authority, be investigated by a qualified engineer appointed by the developer and the results shall be submitted to the planning authority within three months of the date of its request. Should any impairment of services be attributable to the development, the developer shall remedy such impairment within three months of the submission of the report to the planning authority.

*Reason: To mitigate the potential effect of telecommunications interference on the development.*

## **26. 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 more than either: 2dB above the maximum predicted levels within EIA Report dated November 2022, Chapter 13, Table 13-14 (Immission values); the daytime noise limit presented in the EIA Report, Chapter 13, Table 13-14 (Limit values); or the night-time noise limit presented in the EIA Report, Chapter 13, Table 13-15 (Limit values), whichever is the lesser, at any windspeed up to and including 12 m/s at a standardised height of 10m. The noise limits are presented in the table below:

Name	Easting	Northing	Noise Limit (dB L <sub>A90</sub> ) at Standardised Wind Speed (m/s)								
			4	5	6	7	8	9	10	11	12
Ar Dachaidh	289018	961690	25	31	35	37	37	37	37	37	37
Kirkton Cottage	288977	962044	22	27	32	34	34	34	34	34	34
Ackron	289964	962482	21	27	31	33	33	33	33	33	33
Golval	289878	962108	23	28	32	35	35	35	35	35	35
Tigh Na Breac	289924	960774	24	29	34	36	36	36	36	36	36
Calgary Beg	289902	959076	25	30	34	37	37	37	37	37	37
Achiemore	289573	958703	26	31	35	37	38	38	38	38	38
Culifearne Croft	289717	958747	26	32	35	37	38	38	38	38	38
Achimore	289505	957986	26	31	35	37	38	38	38	38	38
Former Free Church	289507	957801	25	31	35	37	37	37	37	37	37
27 Upper Bighouse	288880	957488	26	31	36	38	38	38	38	38	38
25 Upper Bighouse	288888	957156	24	29	34	36	36	36	36	36	36
Craigfillan	289470	957372	24	30	34	36	36	36	36	36	36

In addition:-

- a) Prior to the First Commissioning Date, the Company shall submit 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.
- b) Within 21 days from receipt of a written request of the planning authority, following a complaint to it alleging noise disturbance at a dwelling, the Company shall, at its expense, employ an independent consultant approved by the planning authority to assess the level of noise immissions from the Development at the complainant's property (or a suitable alternative location agreed in writing with the planning authority) 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. Within 14 days of receipt of the written request of the planning authority made under this paragraph b), the Company shall provide the information relevant to the complaint to the planning authority in the format set out in Guidance Note 1(e).
- c) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the Company shall submit to the planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Where the proposed measurement location is close to the wind turbines, rather than at the complainant's property (to improve the signal to noise ratio), then the Company's submission shall include a method to calculate the noise level from the wind turbines at the complainant's property based on the noise levels measured at the agreed location (the alternative method). Details of the alternative method together with any associated guidance notes deemed necessary, shall be submitted to, and agreed in writing by the planning authority prior to the commencement of any measurements. Measurements to assess compliance with the noise limits of this condition shall be undertaken at the measurement location approved in writing by the planning authority.

d) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the Company shall submit to the planning authority for written approval a proposed assessment protocol setting out the following:

- i. the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of the day) to determine the assessment of rating level of noise immissions.
- ii. a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the planning authority under paragraph b), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the planning authority and the attached Guidance Notes.

e) The Company shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the planning authority made under paragraph b) of this condition unless the time limit is extended in writing by the planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. 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.

f) Where a further assessment of the rating level of noise immissions from the Development is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph e) above unless the time limit for the submission of the further assessment has been extended in writing by the planning authority.

g) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine 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) of the attached Guidance Notes to the planning authority on its request within 14 days of receipt in writing of such a request.

h) In the event that the rating level, after adjustment for background noise contribution and any tonal penalty, is found to exceed the conditioned limits, the Company shall submit to the planning authority for written approval, a scheme of mitigation to be implemented within fourteen days of submission of the report identifying the exceedance (as required under paragraph f) above). The scheme shall define any reduced noise running modes to be used in the mitigation together with sound power levels in these modes and the manner in which the running modes will be defined in the SCADA data.

i) The scheme referred to in paragraph h) above should include a framework of immediate and long-term mitigation measures. The immediate mitigation measures must ensure the rating level will comply with the conditioned limits and must be implemented within 14 days of the submission of the report identifying the exceedance. These measures must remain in place, except during field trials to optimise mitigation, until a long-term mitigation strategy is ready to be implemented

*Reason: To protect amenity and to ensure that noise limits are not exceeded and to enable prompt investigation of complaints.*

## **Guidance Notes for Noise Condition – Condition 24**

These notes are to be read with and form part of the noise condition above. 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 Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. 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) Values of the LA90,10-minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1b)), using a sound level meter of EN60651/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 measurement) 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 measurement). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60942:2018 "Electroacoustics – sound calibrators" Class (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.

b) The microphone shall 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 shall be placed at least 3.5 metres away from the building façade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the compliance measurements is withheld, the wind farm operator 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 speed wind direction data and with operational data logged in accordance with Guidance Note 1d) and rain data logged in accordance with Note 1f).

d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine, arithmetic mean power generated by each turbine and any data necessary to define the running mode as set out in the curtailment plan, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the planning authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. Each 10-minute arithmetic average mean wind speed data as measured at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2 b). All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.

e) Data provided to the planning authority shall be provided in comma separated values in electronic format with the exception of data collected to assess tonal noise (if required) which shall be provided in a format to be agreed in writing with the planning authority.

f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level 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). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the planning authority prior to the commencement of measurements.

## **Guidance Note 2**

a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph b).

b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the planning authority but excluding any periods of rainfall measured in accordance with Note 1 f).

c) Values of the LA90, 10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2 b) shall be plotted on an XY chart with noise level on the Y-axis and 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) shall be fitted to the data points to define the wind farm noise level at each integer speed.

## **Guidance Note 3**

a) Where, in accordance with the approved assessment protocol 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 shall 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 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

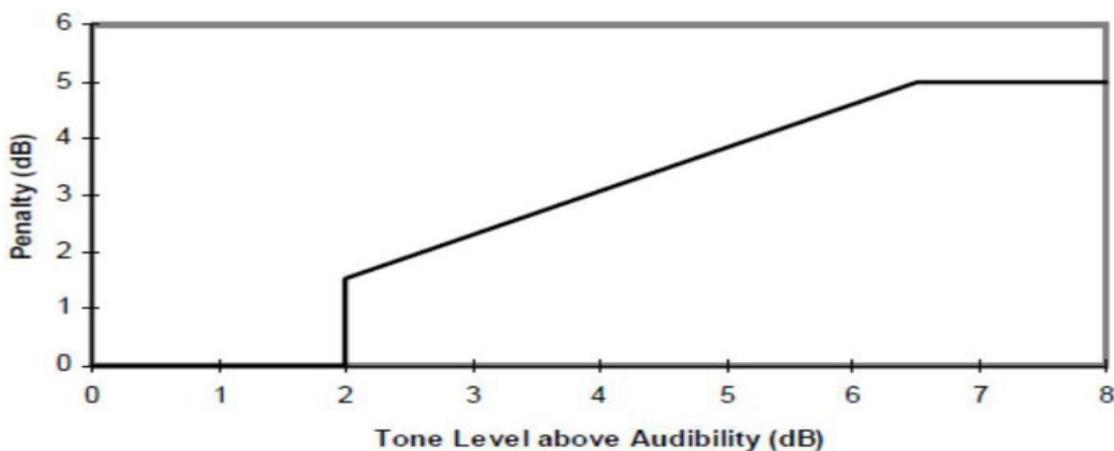
uninterrupted clean 2-minute period out of the affected overall 10- minute period shall be selected. Any such deviations from the standard procedure shall be reported.

c) For each of the 2-minute samples the tone level above 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 speeds 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 substituted.

e) At least squares “best fit” linear regression 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 fitted to values  $\pm 0.5\text{m/s}$  of 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 Note 2.

f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



#### Guidance Note 4

a) If a tonal penalty is to be applied in accordance with 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 Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol. 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 Note 2.

b) If the rating level lies at or below the noise limits approved by the planning authority then no further action is necessary. In the event that the rating level is above the noise limits, 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.

c) 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:

i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol.

ii. 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.

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

iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty lies at or below the noise limits approved by the planning authority then no further action is necessary. If the rating level at any integer wind speed exceeds the noise limits approved by the planning authority then the development fails to comply with the conditions.

## **27. Site Decommissioning, Restoration and Aftercare**

(1) The Development will cease to generate electricity by no later than the date thirty years from the date of Final Commissioning. The total period for decommissioning and restoration of the Site in accordance with this condition shall not exceed three years from the date of Final Generation without prior written approval of the Scottish Ministers in consultation with the planning authority.

(2) No development including Site Enabling Works shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by the planning authority (in consultation with NatureScot, SEPA and Transport Scotland). The strategy shall outline measures for the decommissioning of the Development and restoration and aftercare of the site and shall include proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.

(3) Not later than 3 years before decommissioning of the Development or the expiration of this consent (whichever is the earlier), 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 in consultation with NatureScot and SEPA.

(4) The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include (but is not limited to):

a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases); b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal

- access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- c) a dust management plan;
  - d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent road network;
  - e) details of anticipated impacts on the road networks and vehicle types and movements;
  - f) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
  - g) details of measures for soil storage and management;
  - h) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
  - i) details of measures for sewage disposal and treatment;
  - j) temporary site illumination;
  - k) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
  - l) details of watercourse crossings;
  - m) details of archaeological supervision to oversee the protection / fencing off of all known heritage assets within 50m of the proposed working areas, including all areas to be used by construction vehicles; and
  - n) a species protection plan based on surveys for protected species (including birds) carried out no longer than eighteen months prior to submission of the plan.

(5) The Development shall be decommissioned, site restored and aftercare thereafter undertaken in accordance with the approved plan, unless otherwise agreed in writing in advance with the planning authority in consultation with NatureScot and SEPA.

*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.*

## **28. Financial Guarantee**

(1) No development including Site Enabling Works shall commence unless and until a bond or other form of financial guarantee in terms reasonably acceptable to the planning authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in Condition 27 is submitted to the planning authority.

(2) The value of the financial guarantee shall be agreed between the Company and the planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in Condition 27.

(3) The financial guarantee shall be maintained in favour of the planning authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in Condition 27.

(4) The value of the financial guarantee shall be reviewed by agreement between the Company and the planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

*Reason: to ensure that there are 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.*

## **29. Redundant Turbines**

In the event that any wind turbine installed and commissioned fails to produce electricity on a commercial basis to the public network for a continuous period of 12 months, then unless otherwise agreed in writing with the planning authority, after consultation with the Scottish Ministers, such wind turbine will be deemed to have ceased to be required. If deemed to have ceased to be required, the wind turbine and its ancillary equipment will be dismantled and removed from the site within the following 12-month period, and the ground reinstated to the specification of the planning authority after consultation with the Scottish Ministers.

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

## **30. Site Inspection Strategy**

(1) Prior to the Date of Final Commissioning, the Company shall submit an outline Site Inspection Strategy (“Outline SIS”) for the written approval of the planning authority. The Outline SIS shall set out a strategy for the provision of site inspections and accompanying Site Inspection Reports (“SIRs”) to be carried out at 25 years of operation from the Date of Final Commissioning and every five years thereafter.

(2) No later than 24 years after the Date of Final Commissioning, the Company shall submit a final detailed Site Inspection Strategy (“Final SIS”), based on the principles of the approved Outline SIS for the written approval of the planning authority. The Final SIS shall set out updated details for the provision of site inspections and accompanying SIRs, in accordance with relevant guidance at that time, to be carried out at 25 years of operation from the Date of Final Commissioning and every five years thereafter.

(3) At least one month in advance of submitting each SIR to the planning authority, the scope of the SIR shall be agreed with the planning authority.

(4) The SIRs shall include, but not be limited to:

a) Details to demonstrate that the infrastructure components of the Development are still operating in accordance with Condition 7 and Condition 26; and

b) An engineering report which details the condition of tracks, turbine foundations and the wind turbines and sets out the requirements and the programme for the implementation for any remedial measures which may be required.

(5) The SIS and each SIR shall be implemented in full unless otherwise agreed in advance in writing by the planning authority.

*Reason: To ensure the Development is being monitored at regular intervals after the first 25 years of operation.*

## **31. Community Liaison Group**

No development including Site Enabling Works shall commence unless and until a

Community Liaison Plan has been approved in writing by the planning authority after consultation with the relevant local community councils. This plan shall include the arrangements for establishing a Community Liaison Group to act as a vehicle for the community to be kept informed of project progress by the Company. The terms and condition of these arrangements must include that the Community Liaison Group will have timely dialogue in advance on the provision of all transport-related mitigation measures and keep under review the timing of the delivery of turbine components. The terms and conditions shall detail the continuation of the Community Liaison Group until the wind farm has been completed and is fully operational. The approved Community Liaison Plan shall be implemented in full.

*Reason: To assist with the provision of mitigation measures to minimise potential hazards to road users, including pedestrians, travelling on the road networks.*

### **32. Planning Monitoring Officer (PMO)**

(1) There shall be no Commencement of Development unless and until the terms of appointment by the Company of a suitably qualified environmental consultant as PMO have been submitted to, and approved in writing by, the planning authority. The terms of appointment shall:

a) impose a duty to monitor compliance with the terms of the deemed planning permission and the conditions attached to it;

b) require the PMO to submit a report to the planning authority every two months summarising works undertaken on site; and

c) require the PMO to report to the planning authority any incidences of non-compliance with the terms of the deemed planning permission and conditions attached to it at the earliest practical opportunity.

(2) The PMO shall be appointed on the approved terms throughout the period from Commencement of Development to completion of construction works and post-construction site reinstatement works.

*Reason: To enable the development to be suitably monitored to ensure compliance with the permission and the conditions attached to it.*

### **33. Woodland Management Plan**

(1) No development including Site Enabling Works shall commence until a detailed scheme of Woodland Management and Compensatory Planting (including future maintenance) has been submitted and approved in writing by the planning authority, in consultation with Scottish Forestry. This shall be based upon and informed by the EIAR Technical Appendix 3.2 with the area to be planted being a minimum of 3.58ha and a maximum of 13.28ha.

(2) All planting shall be implemented, at the earliest opportunity in line with the approved scheme or as otherwise agreed in writing with the planning authority.

(3) Thereafter, the planting and areas of woodland to be retained shall be maintained throughout the lifetime of the development in accordance with the approved scheme.

*Reason: In the interest of protecting Scotland's woodland resource.*

## **Appendix 2: Hearing and documents**

### [Hearing agenda](#)<sup>12</sup>

Webcast for [hearing session 1](#) – 20 November 2024

Webcast for [hearing session 2](#) – 21 November 2024

### **Hearing participants**

#### Applicant

Marcus Mackay KC

Fraser Mackenzie

Ryan Bissoonauth

Alan Huntridge, SLR Consulting Ltd

Jenny Bell, Atmos Consulting Ltd

James Wilson, Atmos Consulting Ltd

David Bell, David Bell Planning Ltd

#### The Highland Council

James Findlay KC (also acting for NatureScot)

David Cowie

Peter Whelan

#### NatureScot

Karen Rentoul

Claire Davidson

Heather Jardine

### **Documents**

#### [Updated Core Documents List](#)

Other key documents as hyperlinked above

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<sup>12</sup> I subsequently corrected two errors in the agenda. In question 2.4 the reference to CD7.14 should be to CD7.21. In question 2.5 “good quality” should be “good condition”.