

Report to the Scottish Ministers

SECTION 36 OF THE ELECTRICITY ACT 1989 AND SECTION 57 OF TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Robert Seaton, a reporter appointed by the Scottish Ministers

- Case reference: WIN-270-10
- Site Address: Golticlay, 15 kilometres south west of Wick, Caithness, KW3 6DA
- Application by E.ON Climate & Renewables UK Developments Limited
- Application for consent (S36 Electricity Act 1989) and deemed planning permission (S57 Town and Country Planning (Scotland) Act 1997)
- The development proposed: construction and operation of the Golticlay Wind Farm
- Dates of inquiry / hearing sessions: 8 to 11 October 2018

Date of this report and recommendation: 20 February 2020

CONTENTS

Page

Summary Report	3
Preamble	12
Abbreviations used in the report	14
Chapters	
1. Background	15
2. Policy context	23
3. Landscape and visual impact	37
4. Ornithology	76
5. Ecology	91
6. Peat and carbon balance	95
7. Other matters	101
8. Environmental impact assessment	114
9. Proposed conditions	116
10. Overall conclusions and recommendations	120
Appendices	
Appendix 1: Schedule of documents	123
Appendix 2: Statement of common ground, inquiry precognitions, hearing statements, written submissions, closing submissions and appearances	124
Appendix 3: Proposed conditions	127

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



The construction and operation of Golticlay Wind Farm, 15 kilometres south west of Wick, Caithness, KW3 6DA

• Case reference	WIN-270-10
• Case type	Section 36 application
• Reporter	Robert Seaton
• Applicant	E.On Climate & Renewables UK Developments Limited
• Planning authority	The Highland Council
• Other parties	RSPB Scotland Joanne Bowd and Janet Cowin Peter Batten Caroline Window
• Date of application	27 October 2016
• Date case received by DPEA	30 October 2017
• Method of consideration and date	Inquiry sessions on 8 and 9 October 2018 Hearing sessions on 9 and 10 October 2018 Community hearing in the evening of 11 October 2018 Accompanied site inspection on 12 October 2018 Unaccompanied site inspections on 6 and 7 October 2018, in the evening of 12 October 2018, and on 14 May 2019
• Date of report	20 February 2020
• Reporter's recommendation	Grant section 36 consent and deemed planning permission

The Site:

The application site is located about 3.1 km north west of Lybster, as shown on figure 1.1 of the Environmental Statement. It is accessed from the C1053 road from Lybster to Achavanich. There is existing permission for three turbines, 75 metres to tip, at the site.

Description of the Development:

The proposed development comprises 19 turbines with a maximum height to tip of 130 m and associated infrastructure including 13.75 km of track including 5.6 km of new track, 6.5 km of upgraded track and 1.6 km of floating track. There is an associated habitat management plan. Enabling works to the C1053 road are proposed, though consent is not sought in the present application. Compensatory planting is also proposed.

Consultations and Representations:

The application and environmental statement and subsequent further environmental information submitted in 2017 was subject to consultation with statutory consultees and advertised for public comment. Additional information submitted in 2018 at my request for the purpose of the inquiry was circulated to the parties to the inquiry.

Highland Council objected to the proposed development on the basis of its adverse visual impact on the Caithness landscape, particularly as viewed from viewpoint 6 in Lybster and viewpoint 4 in Upper Lybster.

RSPB Scotland objected in respect of effects upon bird species of conservation concern, including qualifying interests of the Caithness and Sutherland Peatlands Special Protection Area and the East Caithness Cliffs Special Protection Area.

A range of other consultees had no objection to the proposed development or no objection subject to conditions being imposed.

In response to the public consultation, the Scottish Government's Energy Consents Unit (ECU) received 246 objections and three letters of support. These raised a wide range of issues and concerns. The council directly received 260 representations. Most of the representations made to the ECU were in the form of a pro-forma.

The Applicant's Case:

National energy and planning policy provides strong support for renewable energy development in principle, subject to consideration of its particular effects against a number of criteria. Recently published policy in the Scottish Energy Strategy and Onshore Wind Policy Statement and the more ambitious targets for renewable energy generation in the Scottish Energy Strategy and for reduction of carbon emissions set out in the Climate Change (Emission Reductions Targets) (Scotland) Bill increase the weight to be given to the proposed development's benefits in terms of renewable energy generation.

National planning policy requires development plans to include a spatial framework to direct wind-energy proposals to the most suitable sites. The policy places the application site within a group 3 area – an area where windfarms are likely to be acceptable. In order to meet the targets set for renewable energy development, significant effects on landscape and visual amenity are inevitable.

The Highland-wide Local Development Plan policy 67 is the most relevant development plan policy to the application's determination. It too provides support for renewable-energy development subject to its consideration against a number of criteria. There is statutory supplementary guidance associated with policy 67. This is the council's Onshore Wind Energy Supplementary Guidance and the Caithness Landscape Sensitivity Appraisal. The supplementary guidance provides a spatial framework that confirms the application site is in a group 3 area.

The applicant carried out an environmental assessment of the proposed development. This identified that it would have significant landscape effects, though these would be confined to within about 3 km of the application site. It identified significant visual effects, particularly to the south and east of the proposed development.

With mitigation measures in place, neither the construction of the proposed development nor its operation would have adverse effects upon bird species. The restoration of forestry land to peatland would have a beneficial effect both upon the development's carbon balance and upon ecology. Forestry would be replanted elsewhere.

Although construction of the proposed development's infrastructure would have some adverse impact upon peat, even leaving aside the peatland restoration and forestry planting proposed, the generation of renewable energy would pay back the embodied carbon in under two years.

Although the proposed development would have significant environmental effects upon landscape and visual amenity, these are relatively limited given the proposed development's scale and have been suitably mitigated in the design. The benefits in terms of renewable energy generation would outweigh these. The council's planning officers also found the effects to be acceptable.

The proposed development performs well against the criteria in Scottish Planning Policy paragraph 169, it is sustainable development and benefits from the policy presumption in favour of such development, and also performs well against the criteria in the Highland-wide Local Development policy 67 and specifically the design criteria set out in the supplementary guidance. The proposed development should be granted consent.

There is existing consent at the application site for a three-turbine windfarm but this may be revoked by agreement.

Highland Council's Case:

National energy policy and planning policy is acknowledged to support renewable energy development in principle as does the development plan. The application site is acknowledged to be in an area identified in the spatial framework as a group 3 area, where windfarms are, according to policy, likely to be acceptable. However, any development requires to be considered against the specific policy criteria both in national policy and in the development plan.

National targets for renewable energy and reduction in carbon emissions are not intended to reduce the protection given to the environment or the landscape in particular. Development must still be in the right place. While sustainability is a material consideration, windfarms are not automatically to be considered sustainable. Furthermore the policy presumption in favour of sustainable development does not operate outside a planning context.

As a consequence of several methodological flaws, the applicant's landscape and visual assessment underestimates the degree of the proposed development's landscape and visual effects. The proposal sits astride a sensitive landscape transition between the sweeping moorland landscape in which it is located and the coastal landscape. It would have significant landscape effects within about five kilometres. There would be an adverse effect upon the landscape setting of Lybster and Upper Lybster, the A99 and the Grey Cairns of Camster.

There would be the significant adverse visual effects not only at viewpoints 2 to 6 and 8 to 10 acknowledged by the applicant, but also significant effects at the Grey Cairns of Camster

(viewpoint 1) and Burringill (viewpoint 7). The applicant's assessment underestimates the degree of effect at a number of viewpoints.

There would also be significant combined effects of wind-energy development at viewpoints 1, 4, 8, 10, 11, 12, 14, 16 and 18. Aviation lighting of the proposed development would compound the cumulative effect. Residents of the dispersed settlements to the north of Lybster would experience significant visual effects both individually and in combination with the Beatrice offshore windfarm and Burn of Whilk. The proposed development would have a significant adverse effect on the visual setting of western and northern Lybster and a significant combined effect with other wind-energy developments on the settlement.

The sensitivity of the A99 is increased by its designation as part of the North Coast 500 route as is that of routes to "hidden gems" identified as part of the North Coast 500's promotion. The proposed development would have a significant adverse effect on the A99 and the route from Lybster by Roster to the Grey Cairns of Camster.

The applicant has acknowledged significant adverse effects on a number of core paths, but should also acknowledge such effects on core paths around and in Lybster.

The perception of encirclement of Lybster, the adverse effects on the Grey Cairns of Camster, the adverse effects on core paths and roads, the lack of compatibility with the existing pattern of development, the impact on perception of scale and distance and on the distinctiveness of landscape character mean that the proposed development fails to meet most of the design criteria set out in the council's Offshore Wind Energy Supplementary Guidance. It also does not accord with the guidance in the Landscape Sensitivity Appraisal.

RSPB Scotland's case:

The proposed development gives rise to a number of concerns about cumulative and in-combination pressures on bird species of conservation concern, including qualifying interests of the Caithness and Sutherland SPA and East Caithness Cliffs SPA. The applicant's assessment does not satisfactorily address all these concerns:

- The applicant has not carried out an in-combination assessment of the proposed development's barrier effect upon herring gull and great black-backed gull as qualifying interests of the East Caithness Cliffs SPA, although it acknowledges there would be some barrier effect.
- There may be cumulative displacement and barrier effects on arctic skua.
- In considering the cumulative effect on Natural Heritage Zone (NHZ) 5 populations, the applicant has considered only a cumulative effect with windfarms within 25 km of the proposed development, not any windfarm that might affect the NHZ 5 populations.
- The applicant has not quantified the estimated maximum cumulative effect upon golden plover in Natural Heritage Zone 5.
- Given the connectivity of the Caithness and Sutherland Peatlands SPA with Natural Heritage Zone 5, it should consider the cumulative effect on the former's golden-plover population against the population of the latter.
- The proposed development's effect on harrier, merlin and short-eared owl may be underestimated.
- The effectiveness of the artificial nest site in mitigating the potential effect on osprey previously nesting within the application site is yet to be proven.
- The mitigation measures proposed during the proposed development's operation to minimise collision risk for hen harrier, merlin and short-eared owl negate the benefits

that would accrue to qualifying interests of the Caithness and Sutherlands Peatlands SPA from the current land-management proposals

Furthermore, the estimated carbon-payback period for the proposed development is too long.

Joanne Bowd and Janet Cowin:

The effect upon the visual amenity of Braeval Farm Cottage, Roster, the objector's home, would be unacceptable. Its main views are directly towards the proposed development and only limited mitigation is possible.

Peter Batten:

The Scottish Government's Climate Change Plan 2018 includes a target that from 2020 onwards, Scotland's grid intensity will be below 50 grams of carbon dioxide per kilowatt hour. The carbon calculator provided by the applicant shows an expected value of 49.57 grams of carbon dioxide per kilowatt hour, and a considerably higher worst case estimate. The proposed development would contribute little to meeting the government target, unless mitigation measures are adopted to reduce its impact.

Caroline Window:

The proposed development would have an adverse landscape and visual effect on Lybster, including cumulatively with existing wind-energy developments. There is already an unacceptable cumulative effect on the landscape of Caithness.

The applicant's survey for osprey is inadequate. It is likely that there would be a much greater risk to osprey than that represented.

Wildcat were identified on the site in 2012. The applicant's survey was carried out at the wrong time of year to find wildcat.

The views of the community in Lybster, Latheron and Clyth have been disregarded by the Lybster, Latheron and Clyth Community Development Company in allowing its land to form part of the application site.

The enabling works to the C1053 would destroy homes and gardens along the road and adversely affect amenity and road safety.

There is no real economic benefit for the community.

Reporter's Conclusions:

Landscape and visual impact

The proposed development does not have any significant landscape or visual effects on any area designated for its landscape value or on any area of wild land. It would have significant landscape effects on the Sweeping Moorland landscape character type (LCT) within which it is located, the neighbouring Moorland Slopes and Hills LCT, and in the Flat Peatland LCT to its north within five kilometres. In the Small Farms and Crofts LCT to the south, I find significant landscape effects would extend as far as the A99.

The proposed development would have significant visual effects at the viewpoints at which they are predicted by the applicant. I do not consider the effects at the Grey Cairns of Camster (viewpoint 1) or at Burringill (viewpoint 7) would be significant. I have not found any significant individual or cumulative visual effects more than about five kilometres from the proposed development. Although I consider the applicant properly assessed the effect of the proposed development with existing developments as part of its baseline assessment, I agree with the council that there are locations where the combined effect with existing windfarms would be an element of the significance of the proposed development's visual effect. These would include Upper Lybster (viewpoint 4) and the Achow area (near Rhianrivach Broch, viewpoint 8).

There are significant adverse visual effects on several of the scattered settlements to the north of Lybster. In most cases, the effects are limited to a degree by the orientation of properties towards the sea or the south west. At Roster, however, where properties generally have a main view towards the proposed development, there is an adverse effect on the settlement's amenity of a high degree. This is where Braeval Farm Cottage is located. Roster is however between two and three kilometres from the proposed development. I did not find the proposed development's visual effect there or elsewhere to be overbearing at any particular property or such as to cause it to be an unattractive place to live.

The siting of the proposed development, set back from the coast, would limit its visual effects in the more detailed landscape near the coast. It is sited in accordance with existing patterns of development, such that cumulative effects on the Caithness landscape are limited. This accords with the recommendations in the council's Landscape Sensitivity Appraisal.

Although, if the proposed development were consented, wind-energy developments could be seen from a number of parts of Lybster and areas on the settlement's edge, there would not be any oppressive sense of Lybster being encircled. There would not be a significant adverse effect on the setting of the Grey Cairns of Camster or other valued natural or cultural landmarks. Although the proposed development would have significant adverse effects on the amenity of certain paths used for recreation within three kilometres of the proposed development, there is not such an effect with regard to paths near Lybster. The proposed development would significantly detract from the appeal of local roads to the north of Lybster, but not of the A99 or other trunk routes. The proposed development fits the existing pattern of wind-energy development. It minimises adverse effects upon landscape scale. It would only have a limited effect on the distinction between neighbouring landscape character types. For these reasons, the proposed development meets most of the design criteria relating to landscape and visual effects in the council's Onshore Wind Energy Supplementary Guidance.

Although there are significant landscape and visual effects on scattered settlements north of Lybster, they are not subject to the same degree of policy protection as the settlement of Lybster itself, as defined in the development plan.

The landscape and visual effects are not disproportionately greater than would be expected for a development of the proposed scale.

Ornithology

The applicant's approach to cumulative assessment, taking account of wind-energy development within 25 km of the proposed development, is standard in environmental impact assessment. In the absence of evidence of any particular significant cumulative impact that might not be captured by such an assessment, it is sufficient for identifying the significance of the proposed development's cumulative effects. The applicant's assessment of in-combination effects on the neighbouring SPAs took account of the developments Scottish Natural Heritage considered would potentially affect qualifying interests of those SPAs.

The provision of nesting platforms has suitably mitigated the impact upon osprey of the removal of the tree that was formally their nesting site. The location of the nesting platforms relative to the proposed development minimises collision risk during its operation.

Evidence from Stroupster windfarm demonstrates that there is unlikely to be significant disturbance of arctic skua as a consequence of the proposed development. The location of identified territories means a barrier effect is unlikely to arise in respect of those territories. The development would have no significant cumulative displacement or barrier effect on arctic skua.

Although the applicant has not quantified the maximum number of golden plover likely to be disturbed as a consequence of the proposed development, the information provided is sufficient for me to conclude, as SNH does, that a significant cumulative effect is not likely.

As regards hen harrier, short-eared owl and merlin, subject to construction works avoiding the breeding season where possible and to mitigation measures outlined in the draft construction environment management plan, there would be no significant effect upon those species from construction. The restoration of the application site to peatland, management of sward within an envelope around turbines and other bird deterrence measures would be sufficient to prevent a significant effect arising as a consequence of collision risk during operation.

SNH identified that appropriate assessment would be required in respect of the proposed development's potential effects on hen harrier, short-eared owl and merlin as qualifying species of the Caithness and Sutherland Peatlands SPA. Subject to these proposed mitigation measures, there would not be an adverse effect on the SPA's integrity.

SNH advised that the potential collision risk for herring gull and great black-backed gull, qualifying species of the East Caithness Cliffs SPA meant that appropriate assessment was required in respect of that SPA. The estimated collision risk is sufficiently low that there would not be an adverse effect on the SPA's integrity.

In the applicant's assessment of the proposed development's barrier effect, its assumption that all individuals from the SPA forage in the breeding season at one site – the Seater landfill – is precautionary. Even on such an assumption, the estimated effect would be a very small increase in flight times for a small proportion of individuals from the SPA. Such an effect is sufficiently small that a further assessment of the in-combination effect with other wind-energy developments is not necessary.

The proposed habitat management plan associated with the proposed development would not negate benefits that would otherwise be obtained from current land-management proposals for the site. The benefits would be less, though the applicant's habitat management proposals would have other benefits, including to ecology.

Ecology

The application site does not provide particularly suitable habitat for wildcat. Sightings of wildcat in the area in 2012 are unconfirmed. The monitoring and mitigation measures the applicant proposes during construction would be sufficient to minimise risk sufficiently. The applicant's habitat management proposals would benefit wildcat as compared with the site's existing condition.

I do not find significant adverse effects on other ecological receptors, subject to mitigation proposed. The applicant's habitat-management proposals are likely to benefit certain species such as water vole.

Peat and carbon balance

The position of infrastructure can be adjusted within micro-siting tolerances once more peat-probing data is obtained prior to development. This should be sufficient to minimise the proposed development's effect on peat.

Although the Scottish Government's carbon calculator shows a carbon intensity for the proposed development that is close to outcome the government seeks for grid intensity in its Climate Change Plan, the carbon calculator and the calculation of grid intensity use different inputs. For the purpose of the grid-intensity calculation, the intensity of power from the proposed development would be zero. The estimated payback period is acceptable. Given the use of a worst-case assumption on peat disturbance, the actual grid intensity and payback period are likely to be lower than the estimates. The peatland restoration and compensatory planting are likely to reduce the carbon intensity of the proposed development further than the estimate.

Other matters

I have considered other matters raised, including effects on transport (including the effects of the enabling works to the C1053), the historic environment, on amenity from noise and shadow flicker, on forestry, socio-economics and tourism, aviation, dark skies, and human health. The construction of the C1053 would have temporarily significant noise effects at some properties near the road. Otherwise, I have not found the proposed development would have any significant effect in these respects, subject to mitigation that can be secured by condition where necessary.

Compliance with statutory criteria and policy

The proposed development has strong support in principle from national policy in respect of renewable energy and climate-change mitigation. According to the spatial framework adopted in the development plan, the application site is in an area where windfarms are likely to be acceptable. Its significant adverse effects on landscape and visual amenity are minimised by the proposed development's siting and design. Its temporarily significant noise effects are acceptable and can be mitigated. The proposed development's significant

adverse effects are outweighed both in terms of national planning policy and policy 67 of the Highland-wide Local Development Plan (the main development plan policy applicable to the application's determination) by its contribution to climate-change mitigation and to meeting renewable-energy targets. The proposed development is sustainable. The applicant has undertaken reasonable mitigation in designing the proposed development in respect of its effects upon the natural beauty of the countryside and in respect of other matters Ministers are required to take into account by schedule 9 of the Electricity Act.

The existing consent for the three-turbine Rumster windfarm at the application site should be revoked by agreement before grant of consent to eliminate the possibility of unassessed cumulative effects arising.

Recommendations:

I recommend that S36 consent be granted and that planning permission be deemed to be granted, subject to:

- the satisfactory completion of an appropriate assessment in respect of the Caithness and Sutherland Peatlands SPA as set out at paragraphs 4.80 to 4.83,
- the satisfactory completion of an appropriate assessment in respect of the East Caithness Cliffs SPA as set out in paragraphs 4.84 to 4.87,
- conditions listed in Appendix 3 to this report, and
- a planning obligation in the form provided in document APP 008.001.

Scottish Government
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

File reference: WIN-270-10

The Scottish Ministers
Edinburgh

Ministers,

In accordance with my minute of appointment dated 15 January 2018 I conducted a public inquiry in connection with an application to construct and operate the Golticlay Wind Farm at a site 15 kilometres south west of Wick, Caithness, KW3 6DA. The Highland Council as Planning Authority has lodged an objection to the proposal which has not been withdrawn.

I held a pre-examination meeting on 27 March 2018 to consider the arrangements and procedures for the inquiry. It was agreed that the landscape and visual effects of the proposed development would be dealt with at an inquiry session. In addition it was agreed that there would be hearing sessions on the following issues: effects of the proposed development on wildcat and osprey, on peatland restoration proposals and any related forestry replacement, on residential visual amenity, on enabling works to the C1053 road and on conditions to be imposed should consent be granted. The agreed procedures were confirmed in a procedure notice issued on 26 June 2018.

The inquiry sessions were held on 8 and 9 October 2018, and the hearing sessions took place on 9, 10 and 11 October 2018. Forestry Commission Scotland withdrew its objection to the proposed development and therefore the hearing session on peatland restoration and forestry replacement did not go ahead. Only the applicant submitted hearing statements in respect of effects on wildcat and osprey, and therefore those hearing sessions did not take place either. I accepted the hearing statements as written submissions. Closing submissions were exchanged in writing, with the final closing submission (on behalf of the applicant) being lodged on 14 November 2018.

I conducted unaccompanied inspections of the appeal site, its surroundings and other locations referred to in evidence on 6 and 7 October 2018, on the evening of 12 October 2018 and 14 May 2019. Accompanied site inspections took place on 12 October 2018.

In compiling my report I sought further written submissions from the applicant and council on the effect on their landscape and visual cases of Scottish Natural Heritage's adoption of the Scottish National Landscape Character Types Map and Descriptions. These submissions were received on 9 August 2019 and 22 August 2019. I also sought information to verify the applicant's environmental information from the applicant and RSPB Scotland. These submissions were received on 3 December 2019, 19 December 2019 and 9 January 2019.

My report, which is arranged on a topic basis, takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the

discussion at the inquiry and hearing sessions. It also takes account of the Environmental Statement, Further Environmental Information submitted in 2017, Aviation Lighting Assessment submitted in 2018 and Additional Environmental Information submitted in 2018, and the written representations made in connection with the proposal.

Abbreviations

2017 FEI	Further Environmental Information submitted in 2017
2018 AEI	Additional Environmental Information submitted in 2018
AA	Appropriate Assessment
ALA	Aviation Lighting Assessment – additional environmental information submitted in 2018
CD	core document
CEMP	Construction Environment Management Plan
CP	Core Path
ECDU	(Scottish Government) Energy Consents and Deployment Unit
ECOW	Ecological Clerk of Works
EIA	Environmental Impact Assessment
ES	Environmental Statement
ETSU	The Assessment & Rating of Noise from Wind Farms (ETSU-R-97)
FES	Forest Enterprise Scotland
GLVIA3	Guidelines on Landscape and Visual Impact Assessment, 3 rd edition
GPG	Good Practice Guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise (IoA May 2013)
ha	hectares
HES	Historic Environment Scotland
HMP	Habitat Management Plan
km	kilometres
LCA	landscape character assessment
LCT	landscape character type
LMP	land management plan
LLCCDC	Latheron Lybster and Clyth Community Development Company
LVIA	Landscape and Visual Impact Assessment
MW	Megawatts
m	metres
NC500	North Coast 500 tourist route
NPF3	Third National Planning Framework
OWESG	(Highland Council's) Onshore Wind Energy Supplementary Guidance
SEPA	Scottish Environment Protection Agency
SNH	Scottish Natural Heritage
SPA	Special Protection Area
SPP	Scottish Planning Policy
VP	viewpoint
ZTV	zone of theoretical visibility

CHAPTER 1: BACKGROUND

Site location and description

1.1 The application site is located about 3.1 km north west of Lybster and about 15 km south west of Wick, as shown on figure 1.1. of the Environmental Statement (ES)¹. There are two existing access points to the site located on the C1053 public road from Lybster to Achavanich. The A9, running south to north from Latheron to Thurso, lies about 2 km to the west. The A99, running south west to north east from Latheron to Wick, is about 4 km to the south.

1.2 The site's boundaries are shown in ES figure 1.2². The site covers an area of about 748 hectares. It is for the most part presently used for commercial forestry, much of it planted on peat. The plantation over much of the northern and eastern part of the site has recently been felled. The site is gently sloping, rising from about 140 m in the south to 211 m at its highest point in the north east (the minor summit of Cnoc an Earrannaiche). To its north west is the minor summit of Stemster Hill (248 m) and to its south west is the Rumster Forest (another commercial forestry plantation), and the hill of Ben-a-Chielt.

1.3 Most of the site is owned by Forestry Enterprise Scotland (FES), though part of the site is owned by the Latheron, Lybster and Clyth Community Development Company (LLCCDC). The land owned by LLCCDC is shown shaded on ES Figure 2.2³.

1.4 There is existing consent on the LLCCDC land for a three-turbine windfarm in which the turbines would be 75 m in height from ground to tip⁴. This permitted development would not be carried out if the proposed development is granted consent. LLCCDC has provided a draft obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 by which it would undertake not to implement its existing permission if the present application is granted, implemented and electricity exported⁵.

The proposed development

1.5 The proposed development comprises 19 turbines with a maximum height from ground to blade tip of 130 m, an anemometer mast 80 m in height, two temporary anemometer masts, 13.75 km of access tracks including 5.6 km of new track, 6.5 km of upgraded track and 1.6 km of floating track, a control building and substation and associated development, including cable trenches and temporary construction compound. The proposal allows for microsite tolerance for various elements of infrastructure, including a 50-metre microsite tolerance for the turbines.

1.6 The applicant has proposed a habitat management plan (HMP) for the application site and has provided a draft HMP⁶. The draft indicates that following the felling of the existing forestry crop over the centre and east of the application site, the land would not be re-used for a commercial forestry crop. Instead 535 ha would be restored as peatland. This represents a change from the Forestry Commission's existing East Caithness Land

¹ [EIA vol 2 figure 1.1](#)

² [EIA vol 2 figure 1.2](#)

³ [EIA vol 2 figure 2.2](#)

⁴ [APP 008\(a\) planning permission 11/04522/FUL for three turbines; APP 8\(b\) planning permission 18/02436/S42 extending the life of planning permission 11/04522/FUL](#)

⁵ [APP 008.001 LLCCDC draft section 75 unilateral undertaking](#)

⁶ [2017 FEI supplementary document - draft HMP](#)

Management Plan (LMP), which includes the application site⁷. The LMP represents the current land management proposals for the application site if the windfarm does not go ahead. The LMP also proposed not to re-use all the land at the site for commercial woodland following the felling of the then-existing crop. Instead it proposed to restore of about 322 ha as peatland and an area of 213 ha as peatland-edge woodland.

1.7 A description of the proposed development is provided in ES chapter 4⁸. This is modified by section 4 of the 2017 Further Environmental Information (2017 FEI)⁹ and the land management proposals in the HMP. The layout plan is provided in figure 4.1 of the 2017 FEI¹⁰.

1.8 In the course of the inquiry, the applicant also proposed to provide no less than 232 ha of forestry planting to compensate for the woodland at the application site that would either be felled or would not be replanted as a direct result of the establishment of the infrastructure and for the peatland-edge woodland proposed in the LMP that would not be delivered as part of the HMP. The planting is proposed either at the Ardverikie estate or an alternative location. The plan for the compensatory planting would be submitted to and approved by the planning authority before commencement of the proposed development.

1.9 In order to proceed, the proposed development would require improvement works to be carried out to the C1053 road. These do not form part of the present application. They are, however, described in section 3 of the Additional Environmental Information (“the 2018 AEI”)¹¹ published in 2018.

Environmental impact assessment

1.10 The proposed development is EIA development and therefore the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EIA regulations) apply to any decision Ministers make upon it.

1.11 The applicant’s ES was published in 2016. Although the previous EIA regulations under which it was submitted have been revoked, the 2017 EIA regulations provide for the environmental statement to be treated as an EIA report for the purposes of the 2017 regulations.

1.12 The 2017 FEI, published on 1 June 2017, made a number of changes to the project description to address comments made by the Scottish Environment Protection Agency (SEPA) in respect of the proposed development’s effect upon peat. It includes the draft HMP and a draft construction environment management plan (CEMP)¹². The 2017 FEI also contains further information to address other comments made upon the proposal.

1.13 Following the pre-inquiry meeting, I required the applicant to provide additional information for the purpose of the inquiry. The applicant provided this in two parts. Further environmental information with an aviation lighting assessment (referred to below as “the

⁷ [CD 97 East Caithness LMP](#) – see [Map 4](#)

⁸ [CD 004b ES Vol 2a Main Report](#)

⁹ [CD 007a, 2017 FEI Vol 1 Main Report](#)

¹⁰ [CD 007, 2017 FEI figure 4.1 final layout](#)

¹¹ [2018 AEI](#)

¹² [2017 FEI supplementary document - CEMP](#)

ALA”) was published in May 2018¹³. It addressed the landscape and visual effects of the aviation lighting for the proposed development.

1.14 The 2018 AEI was published in June 2018. It provided further information on the proposed development’s effects on Scottish wildcat and on the proposed works to the C1053 road.

1.15 The proposal for compensatory replanting of 232 ha of forestry has not been environmentally assessed. Given that the location of the proposed replanting has not be finally determined, I do not consider that its likely significant effects, if any, are fully identifiable at present. Proposed condition 17 would prevent the development from proceeding until the compensatory planting plan has been approved by the planning authority¹⁴.

1.16 Several parties, including Forestry Commission Scotland and the RSPB, have made claims that the proposals in the applicant’s draft HMP are not as beneficial for ecology or ornithology as those set out in the existing East Caithness LMP. The differences between the LMP proposals and those in the HMP have some relevance to Ministers’ decision, but they represent an alternative use of the site to those for which consent is sought rather than an environmental baseline against which the effect of the proposed development is to be assessed for the purpose of EIA.

Consultation responses

AM Geomorphology (Scottish Government advisor on peat landslide hazard and risk assessment)

1.17 The consultation response set out conditions subject to which any consent should be granted¹⁵.

BT Networks

1.18 No objection to the proposed development.

Caithness District Salmon Fisheries Board

1.19 No objection to the proposed development

Civil Aviation Authority

1.20 No objection to the proposed development.

Forestry Commission Scotland (now Scottish Forestry)

1.21 Forestry Commission Scotland did not object to the proposed development subject to the imposition of a condition on any consent requiring the applicant to provide a compensatory forestry planting plan to replace 232 hectares of forest¹⁶.

¹³ [Aviation Lighting Assessment](#) (ALA)

¹⁴ The recommended conditions are provided in appendix 3 of this report

¹⁵ [AM Geomorphology response to 2017 FEI](#)

¹⁶ [Email from John Risby, FCS, dated 18 September 2018](#)

Highlands and Islands Airports Limited

1.22 No objection to the proposed development, subject to the provision of steady red omnidirectional aviation warning lights fitted at hub height to certain turbines¹⁷.

Historic Environment Scotland (HES)

1.23 No objection to the proposed development. HES provides comments on the degree of effect of a number of assets of the historic environment, including Golsary Broch, Rumster Broch, Appnag Tulloch Broch, Tulloch Broch and field system, Wag of Forse, and Forse House¹⁸.

Joint Radio Company

1.24 No objection to the proposed development.

Marine Scotland

1.25 No objection to the proposed development.

Ministry of Defence – Defence Infrastructure Organisation (MOD)

1.26 The MOD did not object to the proposed development subject to a condition requiring perimeter turbines to be fitted with omnidirectional red or infra-red lights¹⁹.

NATS Ltd.

1.27 NATS Ltd. initially objected to the proposed development on the basis of its effect upon the primary radar at Allanshill²⁰. It predicted that the proposed development would cause false primary plots to be generated and that it might also reduce the radar's effectiveness in detecting real aircraft. It subsequently reached an agreement with the applicant for mitigation of the effect and withdrew its objection subject to the imposition of specified conditions requiring the implementation of the mitigation²¹.

Royal Society for the Protection of Birds Scotland (RSPB Scotland)

1.28 RSPB Scotland objected to the proposed development in respect of the potential for cumulative and in-combination effects on Schedule 1 / Annex 1 / red-listed birds of conservation concern, including the barrier or displacement effects along the eastern edge of Caithness²². This included effect on qualifying interests of the East Caithness Cliffs Special Protection Area (SPA) and Caithness and Sutherlands Peatlands SPA. RSPB raised a concern that the benefits from the East Caithness LMP that would otherwise have arisen for qualifying interests of the Caithness and Sutherland Peatlands SPA would be negated by the proposed development.

¹⁷ [HIAL response to ES; 2017 FEI vol 1 Main Report](#), p 96

¹⁸ [HES response to ES, 16 December 2016](#)

¹⁹ [MOD response to ES, 13 December 2016](#)

²⁰ [NATS objection 14 November 2016](#)

²¹ [CD 31 Letter from NATS to DPEA withdrawing objection, 7 March 2018](#)

²² [RSPB response to ES – 16 December 2016; RSPB response to 2017 FEI - 31 July 2017](#)

1.29 RSPB Scotland also objected in respect of the 1.9-year carbon payback time which it considered was too long and arose from most of the turbines being located on deep peat. It recommended further mitigation to reduce payback time.

Scottish Environment Protection Agency (SEPA)

1.30 SEPA did not object to the proposed development subject to the imposition of conditions requiring

- a site-specific construction environment management plan,
- employment of an ecological clerk of works,
- application of micro-siting tolerances to avoid pockets of deep peat and groundwater-dependent terrestrial ecosystems,
- a buffer of 50 m around watercourses to be applied in respect of micro-siting tolerances,
- standards for design of new water-crossings, and
- decommissioning to be carried out in accordance with the environmental statement²³.

Scottish Natural Heritage (SNH)

1.31 SNH did not object to the proposed development subject to the imposition of conditions requiring that the proposed habitat management plan (HMP) should be agreed with the Scottish Government and should including certain monitoring requirements²⁴.

Scottish Water

1.32 No objection to the proposed development.

Scotways

1.33 Scotways did not object to the proposed development. It noted that the core path through Rumster Forest lay along the line of right of way HC25, and that this exited onto the C1053 public road near the access points to the application site. It also drew attention to the Welsh Government's advice on the set-back of turbines from established paths and rights of way²⁵.

Transport Scotland

1.34 Transport Scotland did not object to the proposed development subject to conditions being imposed

- requiring the proposed route for abnormal loads on the trunk road network to be approved by the trunk roads authority and for accommodation measures to be approved before movement of any such load; and
- requiring any additional signage or traffic control measures necessary for movement of loads to or from the site to be undertaken by a traffic consultant with the necessary qualifications to be approved by Transport Scotland before commencement of delivery.²⁶

²³ [SEPA response to ES – 13 December 2016; SEPA response to 2017 FEI – 27 July 2017](#)

²⁴ [APP5.5 SNH consultation response to 2017 FEI](#)

²⁵ [Scottish Rights of Way and Access Society response to ES – 4 January 2017](#)

²⁶ [Transport Scotland response to ES – 22 November 2016; Transport Scotland response to 2017 FEI – 21 July 2017](#)

1.35 The council's committee report indicates that the community council did not respond to the consultation.

Public participation

1.36 The applicant provided a pre-application consultation report. This provides a list of activities that the applicant states it carried out to consult the public about the proposed development before it made the application²⁷. The report states that activities the applicant carried out included two public information days in October 2014 in Lybster Community Centre and Watten Village Hall and two public exhibitions in Lybster Village Hall in January 2016. The report states that these were advertised in local newspapers, by direct mailing to local addresses, by invitation to holders of local elected offices, and by posters at public facilities in Lybster, Watten, Latheron, Thrumster and Dunbeath. Activities are also said to have included a meeting with crofters and with a community liaison group.

1.37 Section 5 of the pre-application consultation report sets out matters raised during the consultation and how the applicant responded to them. Matters raised included:

- Visual effects of the proposed development and the effectiveness of their assessment
- Effects the proposed development upon public health, including effects of noise and shadow flicker
- Cumulative effects of windfarm development in the area
- Proximity to houses
- Effect upon horse-riding and walking in the area
- Effect upon the C1053 road
- Impact of abnormal-load delivery upon traffic, and its integration with existing peak traffic and school traffic.
- The extent of forestry removal

1.38 The applicant's position statement indicates that the ES was advertised in the Caithness Courier on 2nd and 9th November 2016, in the John O'Groats Journal on 4th and 11th November 2016, in the Edinburgh Gazette on 4th and 11th November 2016 and in the Herald on 3rd and 10th November 2016. It states that the FEI was advertised in the Caithness Courier on 21st and 29th June 2017, the John O'Groats Journal on 23rd and 30th June 2017 and the Edinburgh Gazette on 21st and 26th June 2017.

1.39 Since I required the production of the ALA and 2018 AEI for the purpose of the inquiry, their advertisement was, under regulation 20(6) of the EIA regulations, not required separately from the inquiry. The inquiry was advertised in the Caithness Courier on 19th September 2018 and in the John O'Groats Journal on 21st September 2018.

1.40 The Energy Consents and Deployment Unit received 246 objections and three letters of support in respect of the proposed development in the course of consultation. The council's committee report states that it received 260 objections and no letters of support for the proposed development.

²⁷ [EIA supplementary document - Pre-application consultation report](#), section 2, page 6

1.41 The matters raised in opposition included the following:

- Effects upon landscape and visual amenity, including particularly cumulative effects with existing, consented and proposed windfarm development
- Effects upon residential amenity from noise, vibration, shadow flicker, visual impact, and consequent effects on human health,
- Disruption caused by construction traffic, including to emergency vehicles
- Effects upon the amenity of properties on the C1053 road from the effects of road widening
- Effects upon recreational use of the site and of core paths
- Effects upon the historical environment, including upon the Achavanich stone circle, the Wag of Forse complex and landscape, the Rumster Broch, the Golsary Broch, the Appnag Broch, the Ushilly Broch, the Achow Broch, the Corr listed building complex
- Effect upon tourism, including the effect upon the NC500 tourist route
- Effects upon wildlife and ecology, including upon golden eagle, white-tailed eagle, osprey, hen harrier, peregrine, breeding waders, long- and short-eared owl, migrating birds, and protected species including Scottish wildcat, pine marten, polecat, badgers, otters and water vole.
- Effect upon peat as a carbon sink, and related carbon intensity of the proposed development as compared with the Scottish Government's target for carbon intensity of electricity generation,
- Effect upon the water environment,
- Effect upon dark skies
- Limited socio-economic benefits locally

1.42 The matters raised in support included the following:

- The suitability of the application site as regards wind resource,
- The benefit to the local community and local government from revenue from the proposed development.

Council consideration

1.43 The Highland Council objected to the proposed development²⁸. It gave the following reasons:

- The proposal is contrary to Policy 67 (Renewable energy) and Policy 28 (Sustainable Design) of the Highland-wide Local Development Plan and the Onshore Wind Energy Supplementary Guidance as the development would have a significantly detrimental visual impact on the Caithness landscape for local residents and visitors, particularly as viewed from the village of Lybster, as evidenced in Viewpoint 6 at the Bayview Hotel and Viewpoint 4 at Upper Lybster.
- The application is contrary to Policy 67 (Renewable Energy) and Policy 57 (Natural, Built and Cultural Heritage) of the Highland-wide Local Development Plan and Scottish Planning Policy 2014 as the impacts of the development would be detrimental to the local wildcat and osprey population and are not able to be satisfactorily mitigated by siting, or other mitigation.

²⁸ [CD 14 Consultation response from The Highland Council, 19 September 2017](#)

1.44 The council subsequently withdrew the second reason for refusal. Therefore its sole reason for refusal considered at the inquiry was the first.

1.45 The council carried out internal consultation with its Environmental Health Officer, Forestry Officer, Historic Environment Team and Transport Planning Team were consulted²⁹. They raised the following matters in their responses to the ES:

- The Environmental Health Officer stated in response to the ES that he would object to the proposed development unless it complied with the noise limits of 35 dB L_{A90} daytime and 38 dB L_{A90} night time or up to 5 dB above background. He raised issues about the noise assessment methodology.
- The Forestry Officer sought compensatory planting for 23.27 ha of woodland lost as a consequence of the proposed development so that it complied with the Scottish Government's Control of Woodland Removal Policy.
- The Historic Environment Team objected to the proposed development in respect of the effect on the Grey Cairns of Camster. It also expressed concern about the impact to the setting of the Corr. It suggested that the socio-economic and environmental benefits of initiatives such as the Caithness Broch Project might be diminished by the proposed development.
- The Transport Planning team did not object to the application subject to the imposition of conditions on any consent relating to the route to be followed by construction traffic (through the C1053/A99 junction), the provision of a construction programme to the council, assessment of structures along the route of abnormal loads from Wick Harbour, an unladen trial for abnormal loads, agreement of mitigation measures, an agreement under section 96 of the Roads (Scotland) Act 1984 to cover cost of wear and tear arising from the proposed development, the approval of a traffic management plan, further route review, and approval of works required during decommissioning of the proposed development.

1.46 The council's Area Planning Manager – North put a report to the North Planning Applications Committee on 12 September 2017 recommending that the council should not object to the proposed development³⁰. This recommendation was rejected, and the council decided to object for the reasons set out above.

1.47 The Area Planning Manager – North put a further report to the North Planning Applications Committee on 17 April 2018 recommending that the committee should withdraw its second reason for objection³¹. The committee accepted this recommendation.

Inquiry

1.48 Appendix 1 to this report provide lists of documents submitted to the inquiry.

1.49 Appendix 2 to this report provides lists statements of agreed matters, inquiry precognitions, hearing statements, written submissions, closing submissions and appearances of parties at inquiry sessions.

²⁹ The council's internal consultation responses to the ES are available in [2017 FEI appendix 5.2](#).

³⁰ [CD 12 Highland Council North Planning Applications Committee Report 12 September 2017](#)

³¹ [Highland Council North Planning Applications Committee Report 17 April 2018](#)

CHAPTER 2: STATUTORY AND POLICY CONTEXT

Introduction

2.1 This chapter considers the principal statutory and policy framework for Ministers' decision on the proposed development, including the interpretation of policies. Other more detailed, topic-specific policy issues are dealt with, where appropriate, in chapters on the relevant topics.

2.2 There was agreement between the council and applicant on much of the statutory and policy context. Their agreement is set out in section 4 of their statement of agreed matters³². The areas of disagreement between the council and applicant on the statutory and policy framework for Ministers' decision were limited. The key issues between them were:

- the weight to be given to the contribution of onshore-wind development to meeting renewable energy targets relative to the weight to be given to visual impact / landscape protection and other environmental considerations;
- whether the elevated materiality of the presumption in favour of sustainable development in SPP paragraphs 32 to 33 was applicable in the context of an application under section 36 the Electricity Act 1989 and whether it should be applied;
- the relevance of policy 28 of the Highland-wide Local Development Plan to the application's determination; and
- the relevance of the Cumulative Landscape and Visual Assessment of Wind Energy in Caithness (Land Use Consultants, 2014)³³ as a consideration in the application's determination.

2.3 I held a hearing at which these areas of disagreement were considered. The council and applicant provided hearing statements:

- [Applicant hearing statement on policy](#)
- [Council hearing statement on policy](#)

2.4 I also dealt at the hearing with matters of interpretation of terms used in the council's Onshore Wind Energy Supplementary Guidance 2016 (OWESG)³⁴. In this report, I address those issues, where they arise, in chapter 3 (on landscape and visual effects).

The statutory framework for determining the applications

2.5 The applicant seeks consent for the proposed development under section 36 of the Electricity Act 1989 (the 1989 Act) and also deemed planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).

2.6 A generating station, such as the proposed development, that would have 50 megawatts or more installed capacity must be approved by Ministers under section 36 of the 1989 Act. Section 36 requires an application to be assessed in accordance with Schedule 9 of the 1989 Act. This requires Ministers to have regard to the desirability of

³² [Statement of agreed matters](#)

³³ [APP 002.003 2014 Cumulative Landscape and Visual Assessment of Wind Energy in Caithness \(LUC 2014\)](#);

³⁴ [CD 075 Onshore Wind Energy Supplementary Guidance \(OWESG\)](#)

preserving natural beauty, of conserving fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. An applicant must undertake reasonable mitigation of any effect that the proposal would have on the natural beauty of the countryside or on any flora, fauna, features, sites, buildings or objects.

2.7 The parties are agreed that section 25 of the 1997 Act (which requires a determination under that Act to be made in accordance with the development plan unless material considerations indicate otherwise) does not apply to a decision under section 36 of the 1989 Act. It also does not apply to on the grant of deemed consent under section 57 of the 1997 Act³⁵. I also agree. United Kingdom and Scottish Government energy policy, Scottish Government climate-change policy and planning policy, the development plan, local planning policy and views of statutory consultees and other interested parties are material considerations in the decision that Ministers must take.

Policy on climate change and energy

2.8 The UK Government has made a number of international and domestic commitments in respect of reducing emissions of greenhouse gases. It is also required to meet European Union targets and other international commitments for renewable-energy generation and climate-change mitigation. The United Kingdom Government has committed to 15% of the United Kingdom's energy needs being supplied from renewable sources by 2020.

2.9 The Scottish Government has a statutory target under the Climate Change (Scotland) Act 2009 (the 2009 Act) of achieving a 42% reduction in carbon emissions by 2020 and an 80% reduction in emissions by 2050 on a baseline of 1990. On 26 September 2019, the Scottish Parliament passed stage 3 of the Climate Change (Emissions Reductions Targets) (Scotland) Act 2019. Once the relevant sections of the Act are in effect, it will amend the 2009 Act by imposing new targets. It requires that Scottish Ministers ensure that net Scottish emissions are at least 100% lower than the 1990 baseline by 2045. It also imposes interim targets of a 56% emissions reduction by 2020, a 75% reduction by 2030 and a 90% reduction by 2040. The 2009 Act requires Ministers to have regard to the achievement of the targets in decisions such as that on the present application.

2.10 As part of its Climate Change Plan³⁶ produced in 2018 for meeting its emissions-reduction targets, the Scottish Government indicated that in monitoring the achievement of targets, it would adopt the indicator that Scotland's electricity grid intensity would be below 50 grams of carbon dioxide per kilowatt hour from 2020 onwards. The Climate Change Plan sets out the Scottish Government's aims that woodland cover will increase from around 18% to 21% of the country by 2032 and that 40% of Scotland's peatlands (250,000 ha) will be restored by 2030.

2.11 The Scottish Government has previously committed to a target that 100% of Scottish electricity consumption would be met from renewable sources by 2020. The parties agreed that this latter target relates to installed and not consented capacity. I also agree. In the Scottish Energy Strategy 2017³⁷, the Scottish Government has committed to

³⁵ [CD 112 Petition of William Grant & Sons Distillers Ltd for judicial review \[2012\] CSOH 98](#)

³⁶ [CD 048 Climate Change Plan](#)

³⁷ [CD 49 Scottish Energy Strategy](#)

a new target that 50% of all Scottish energy consumption would be met from renewable sources by 2030. The council and applicant agreed a list of the other most relevant EU, UK and Scottish renewable energy policy³⁸. I find that the agreed list is relevant.

2.12 The council and applicant also agreed that the Scottish Energy Strategy and the Onshore Wind Policy Statement confirm that onshore wind is to play a vital role in Scotland's future, helping to decarbonise electricity supplies and play a material role in growing the economy. I also agree. The Scottish Energy Strategy also refers to the Scottish Government's target of there being 1 gigawatt of community and locally-owned energy generation capacity by 2020.

2.13 The council and applicant agreed that energy, climate change and renewable energy policy are matters that should be afforded weight in the planning balance in the decision on this application. They disagreed on the relative weight to be given to the contribution of onshore wind development to meeting the renewable energy targets and to landscape and visual effects and other environmental considerations.

Scottish Government planning policy

2.14 The Scottish Government's planning policy is set out in the third National Planning Framework (NPF3)³⁹ and in Scottish Planning Policy (SPP)⁴⁰. These include policy in respect of renewable energy, and onshore wind in particular, among other matters. They are material considerations in the application's determination.

2.15 NPF3 is a long-term strategy for Scotland, the spatial expression of the Government Economic Strategy and of its plans for development and investment in infrastructure. It sets out the Government's vision, which includes that Scotland should become a low-carbon place, and its ambition to be a world leader in low-carbon energy generation, both onshore and offshore. Investment in low-carbon economy is identified as an opportunity for economic growth. Scotland is to continue to capitalise on its wind resource. Onshore wind is to continue to make a significant contribution to diversification of energy supplies.

2.16 SPP sets out national planning policies for Scotland. It includes commitments to reducing carbon emissions while protecting natural and cultural heritage.

2.17 In paragraphs 152 to 174, SPP sets out national policy on delivering heat and electricity infrastructure in order that Scotland should become a low-carbon place. It provides a number of principles for delivering electricity infrastructure. These include that the planning system should:

- support the transformational change to a low-carbon economy, consistent with national objectives and targets;
- support the development of a diverse range of electricity generation from renewable technologies, including the expansion of renewable energy generation capacity; and
- guide development to appropriate locations.

2.18 Development plans are required to set out a spatial framework that identifies areas likely to be most appropriate for onshore wind farms. SPP's table 1 provides a

³⁸ [Statement of agreed matters](#) paragraph 4.3.3

³⁹ [CD 65 NPF3](#)

⁴⁰ [CD 66 SPP](#)

number of requirements for such spatial frameworks. These include that development would not be acceptable in National Parks or National Scenic Areas (referred to in the policy as “group 1 areas”). Other areas are to receive significant protection, including areas of wild land, peatland and areas of carbon-rich soils, areas not exceeding 2 km around settlements identified in the local development plan, and areas with national cultural- or natural-heritage designations (“group 2 areas”). All other areas onshore are identified as areas with potential for windfarm development, where they are likely to be acceptable subject to detailed consideration of identified policy criteria (“group 3 areas”).

2.19 The applicant and council agree that the proposed development site is within an area with potential for windfarm development (a group 3 area). I also agree.

2.20 The SPP criteria for determining particular applications for windfarm development are set out in paragraph 169. This sets out 19 factors besides the spatial strategy to be considered in determining a proposal for a windfarm. These include landscape and visual effects, impacts on communities and individual dwellings, and effects upon natural heritage including birds.

2.21 In paragraphs 28 to 35, SPP sets out a presumption in favour of development that contributes to sustainable development. Paragraph 29 sets out 13 principles relating to the presumption by which decisions should be guided. SPP states that where a development plan’s relevant policies are more than five years old or otherwise out of date, the presumption becomes a significant material consideration in the determination of an application. In that case, the policy goes on to say that Ministers should take into account any adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against wider policies in the SPP.

2.22 The applicant and council do not agree whether SPP’s sustainability presumption applies outside the context of the town and country planning regime or, if it does, whether it would apply in this case.

The development plan

2.23 The development plan comprises the Highland-Wide Local Development Plan 2012 (the HWLDP)⁴¹, its associated supplementary guidance, and the Caithness and Sutherland Local Development Plan 2018 (C&SLDP)⁴². The supplementary guidance includes the council’s Onshore Wind Energy Supplementary Guidance 2016 (OWESG)⁴³ and the Landscape Sensitivity Appraisal for Caithness 2017 (the Sensitivity Appraisal)⁴⁴, which forms part of OWESG.

2.24 The council and applicant agree that there are no specific C&SLDP policies that are of particular relevance to the proposed development. C&SLDP includes strategic objectives encouraging development of renewables, energy infrastructure, employment, economic growth and addressing climate change. It also identifies the settlement boundaries to which the spatial framework for onshore wind development provided in OWESG relates.

⁴¹ [CD72 Highland-Wide Local Development Plan \(2012\)](#)

⁴² [CD74 Caithness & Sutherland Local Development Plan \(2018\)](#)

⁴³ [CD75 Onshore Wind Energy Supplementary Guidance \(OWESG\)](#)

⁴⁴ [CD76 Landscape Sensitivity Appraisal, part 2B: Caithness](#)

2.25 The council's reason for objection refers to two HWLDP policies: policy 67 (renewable energy) and policy 28 (sustainable design). The council and applicant agree that the policy of principal relevance to the proposed development is policy 67. The applicant considers that policy 28 is of limited relevance to the application's determination.

2.26 Policy 67 provides that renewable energy development proposals should be well-related to the primary resource. It sets out other considerations to be taken into account, including the contribution of the proposed development to meeting renewable-energy targets and any effect it is likely to have on the economy locally or nationally. Proposals are to be assessed against other development-plan policies and the Highland Renewable Energy Strategy and Planning Guidelines. This latter document has been replaced by OWESG. These factors are to be balanced, taking into account any mitigation measures included. The policy supports proposals if they are located, sited and designed such that they will not be significantly detrimental overall, individually or cumulatively, having regard to a number of factors. These include visual impact, amenity at sensitive locations including residential properties, the effect on natural and cultural heritage features, and on species and habitats.

2.27 Policy 67 also makes provision for supplementary guidance to provide details of areas to be protected from windfarms, areas of constraints, and areas of search. The council and applicant accept that OWESG and the Sensitivity Appraisal perform this role.

2.28 Policy 28 is a general policy on sustainable design. It provides support to developments that promote and enhance the social, economic and environmental well-being of the people of the council's area. It sets out a number of factors upon which proposed developments are to be assessed.

2.29 As regards OWESG, chapters 1, 2 and 4 and the first part of chapter 5 are relevant to the proposed development. Chapter 1 advises that policy considerations are to be balanced with wider strategic and economic objectives including sustainable economic growth in Highland and the area's contribution to renewable energy targets and tackling climate change. Chapter 2 provides a spatial framework consistent with table 1 of SPP.

2.30 Chapter 4 provides more detail on the council's approach to the considerations in policy 67. It includes matters for Ministers to consider. These include, in respect of the assessment of landscape and visual effects, criteria set out in paragraph 4.17.

2.31 The first part of chapter 5 describes how the council goes about assessing strategic capacity for wind-energy development and how it applies such assessments. The second part of chapter 5 contains the assessments of strategic capacity the council has made. The Sensitivity Appraisal is essentially a continuation of the second part of chapter 5, specific to Caithness.

The council's case

National planning policy

2.32 Location of a proposed development in a group 3 area identified in accordance with SPP does not remove the need for consideration of site-specific impacts. An assessment is required against the various factors set out in SPP paragraph 169. Wind-energy development must be sited and designed to ensure impacts are minimised.

2.33 NPF3 indicates that planning authorities best placed to plan for onshore wind at strategic and local levels, within the context of national spatial guidance. NPF3 sets out the importance of Scotland's landscapes and their contribution to quality of life, national identity and visitor economy.

2.34 The council acknowledges the SPP policy principle favouring development that contributes to sustainable development. The aim is to achieve the right development in the right place, not to allow development at any cost.

The sustainability presumption

2.35 As regards the SPP presumption in favour of development that contributes to sustainable development, that applies in a context where the development plan is out of date. In this case, the relevant policy in the development plan is not out of date.

2.36 Although the HWLDP is more than five years old, the development plan is still relevant and accords with national policy. The most relevant policy is HWLDP policy 67 – renewable energy developments. This reflects the balance the council has to strike between renewable-energy targets and protection of natural resources. OWESG and the Sensitivity Appraisal, both recently adopted and both part of the development plan, ensure the council has a comprehensive spatial framework identifying the areas most likely to be appropriate for onshore wind. Since the development-plan policies are not out of date, SPP does not operate such that its sustainable development presumption is a significant material consideration.

2.37 Even if the development plan is found to be out of date, the SPP sustainability presumption is not relevant to an application under the Electricity Act, only to the town and country planning regime. Planning is a self-contained code. The SPP sustainability presumption operates within that code. It is relevant in a planning case when there is an out-of-date policy framework in the development plan to assess a proposal against. Outside a planning context, the statutory presumption in favour of the development plan does not apply (as in the present case). The SPP sustainability presumption does not then apply either. The development plan, its age and its consistency with national policy are all material considerations, as is the sustainability of the proposed development.

2.38 Before the sustainability presumption applies, the decision-maker must determine whether the proposed development is sustainable or not. A development is not to be considered sustainable just because it is for wind energy. A consideration of impact is required, including visual impact.

Climate change and energy policy

2.39 Although a number of policies have been recently published, including the Scottish Energy Strategy, On-shore Wind Policy Statement and Climate Change Plan, there is nothing in this new material suggesting that there should be a lessening of protection for the environment, or that what was unacceptable before their publication has become acceptable now. There is nothing to indicate a relevant policy change in the consideration of the proposed development from that set out in NPF3 and SPP.

2.40 There is continued strong support for onshore wind, but such support should only be given where justified. There has to be landscape and visual capacity to absorb a

proposed development without unacceptable effects. This largely reflects the existing position set out in NPF3 and SPP.

2.41 It is illogical to suggest, as the applicant does, that giving more weight to the benefits of renewable energy does not mean giving less weight, relatively, to environmental protection. The corollary would be to suggest that if targets were in line to be met, their achievement would have less weight.

The development plan

2.42 The most relevant development plan policy is HWLDP policy 67. It sets out the balance the council has to strike between the delivery of proposals that make a contribution to meeting renewable-energy targets and protection of natural resources that contribute to the character of the Highland area. Policy 28 provides guidance on sustainable design and is also relevant.

2.43 OWESG and the Sensitivity Appraisal form part of the development plan. Since OWESG and the Sensitivity Appraisal are recently adopted, they should be afforded significant weight. Although the proposed development is identified as being in a group 3 area in OWESG'S spatial framework, the application must, also be considered against the issues set out in HWLDP policy 67 and the guidance on key development-plan considerations in OWESG's section 4.

Status of the 2014 Cumulative Assessment

2.44 The council commissioned background studies regarding the landscape and visual effects of wind farms to inform OWESG. These included the Cumulative Landscape and Visual Assessment of Wind Energy in Caithness (Land Use Consultants, 2014)⁴⁵. Although this document is relevant as background, it was not adopted as policy or guidance. The Sensitivity Appraisal, part of the development plan, sets out the council's position and supersedes this background document. The 2014 Cumulative Assessment should have little weight in decision-making.

The applicant's case

Climate change and energy policy

2.45 The proposal must be viewed against the pressing need to address climate change and improve the country's energy security.

2.46 The UK must comply with EU requirements to deliver 15% renewable energy by 2020 and a 16% reduction in greenhouse gas emissions by 2020 compared with 2005 levels. There is a real danger of the renewable-energy target being missed. Renewable-energy capacity is required not only to decarbonise the electricity supply but also to address requirements for heating and powering transport.

2.47 In Scotland, the Climate Change (Emissions Reduction Targets) (Scotland) Bill increases the carbon reductions that must be achieved from the already world-leading targets in the Climate Change (Scotland) Act 2009. The vision of the Scottish Climate Change Plan would see Scotland's emissions reduced by 66% against 1990 levels by 2032.

⁴⁵ [APP 2.3 2014 Cumulative Landscape and Visual Assessment of Wind Energy in Caithness \(LUC 2014\)](#)

This is referred to as an “enormous transformational change”. The targets proposed in the Bill are higher.

2.48 The Scottish Energy Strategy sets out that onshore wind will be a key contributor to delivery of renewable-energy targets, specifically the new 2030 target of 50% of energy from renewable sources. This could see renewable electricity generation rise to over 140% of Scottish electricity consumption to address heat and transport requirements. This may require about 17GW of installed renewables capacity by that year. The 2020 renewable-energy target is still unmet. The Onshore Wind Policy Statement (OWPS) also recognises onshore wind must play a vital role in meeting energy needs, growing the economy and meeting renewable targets.

2.49 The language used in the Scottish Energy Strategy and OWPS on the role of onshore wind is stronger than that in NPF3 and SPP. The targets are more stretching. Onshore wind has a vital role in meeting energy needs and targets. This should have substantial weight.

2.50 OWPS acknowledges the move to larger and more powerful turbines, and that this requires taller towers and blade-tip heights. The challenge the Scottish Government sets of attaining a subsidy-free industry means taking advantage of effective sites with good wind resources.

2.51 OWPS also acknowledges the low cost of onshore wind generation and its consequent contribution to meeting renewable targets without increasing consumer bills. It recognises the contribution of onshore wind to supporting a domestic supply chain.

2.52 The council acknowledges that, since the renewable-energy targets are not a cap, there is no reduction in the weight to be given to the contribution of further proposals to renewable-energy generation and reduction in carbon emissions. It does not acknowledge, though, that an increase in the targets increases the weight to be given to those benefits. That is illogical.

2.53 The language on the role of onshore wind is stronger in the energy policy statements than in NPF3 or SPP. Even if it is taken as being no different, the context has changed, since there are more stretching targets and no subsidy or certainty on route to market. The increased importance of the contribution that onshore wind is expected to make to targets and meeting future energy needs has to be afforded substantial weight. If the weight has not increased, then the statements have been made in vain and the targets risk not being met.

2.54 In practice, the introduction of significantly more ambitious targets and the need to switch to electric power for transport will inevitably result in a shift in the balancing exercise that has to be undertaken in assessing a proposal. This is a highly relevant factor in reaching a decision on any proposal.

2.55 The proposed development would clearly contribute to the Scottish Government’s emissions-reduction and renewable-energy goals. Its capacity factor of more than 40% is well above the Scottish average of 27% and represents a benefit of the proposal.

Planning policy

Performance against national planning policy

2.56 NPF3 sets out a vision for Scotland of being a growing, low-carbon economy and obtaining the opportunities involved in being a world leader in low-carbon energy generation. SPP policies reflect this vision. The applicant acknowledges that although there is strong support for renewable energy, it is not supported at any cost. The full range of environmental effects need to be judged acceptable before consent is forthcoming.

2.57 The application is located within a group 3 location, in which wind farms are likely to be acceptable subject to consideration of the criteria in SPP paragraph 169. The proposed development performs well against those criteria. The proposal also performs well against SPP's principles of sustainable development. The council's objection is limited to visual effects and narrowly specified, and underlines the relatively limited nature of harm that would result from the proposed development.

Application of the SPP sustainability presumption

2.58 Where the development plan is more than 5 years old, the presumption in SPP paragraph 33 in favour of development that contributes to sustainable development is a significant material consideration. For a refusal of consent, the degree of harm must clearly be shown to be of such a level that it significantly outweighs the benefits that arise. The HWLDP is more than 5 years old. This provision of paragraph 33 is therefore relevant. This is not avoided by the provision of newer supplementary guidance to the plan. It applies notwithstanding whether the plan (as the council argues) is consistent with national policy. The reporter took this view in respect of the Caplich windfarm⁴⁶, and it was adopted by Ministers in their decision.

2.59 Although planning is a self-contained code, the sustainable-development presumption still applies. It is a matter of national planning policy. If it did not apply to section 36 applications, then other national planning policies would not apply either. The council recognises that other national planning policies do apply. The presumption is not dependent on the weight to be given to the development plan, but whether the plan is out of date or more than five years old. In this regard, it is the age of the plan, not the weight to be given to OWESG or the Sensitivity Appraisal as supplementary guidance, that is relevant.

2.60 Although the proposal's benefits must be balanced against adverse effects, its sustainability tilts the policy balance to be struck in its favour.

2.61 The professional planning officers of the council did not address the presumption in their consideration of the application. Nonetheless, on what might be termed an "untilted balance" they reached the conclusion that the proposed development's adverse effects would not outweigh its benefits.

The development plan

2.62 The most relevant development plan policy is HWLDP policy 67. It supports proposals for renewable-energy development where they will not be significantly detrimental having regard to a range of considerations. As regards the most relevant of these considerations: the visual effects of the proposed development are acceptable; there is no

⁴⁶ [CD 116 Report on Caplich Wind Farm \(WIN-270-7\)](#)

unacceptable effect upon residential amenity; the applicant's thorough assessment demonstrates no significant effects on species or habitats.

2.63 HWLDP policy 28 has only limited relevance to a comprehensive assessment of the proposed development in accordance with the development plan. It adds nothing further to the detailed provisions of policy 67. The proposed development is consistent with it insofar as it is relevant.

2.64 As regards OWESG and the Sensitivity Appraisal, the proposed development is in one of the best areas for windfarm development to be identified in those documents. It derives support from them.

2.65 The proposed development would be consistent with the development plan. Given the age of the development plan the presumption in favour of sustainable development is engaged and tilts the balance, in any case, towards the proposed development.

The status of the 2014 Cumulative Assessment

2.66 The applicant acknowledges that the Cumulative Landscape and Visual Assessment of Wind Energy in Caithness (Land Use Consultants, 2014)⁴⁷ is not itself council guidance and was intended to inform supplementary guidance now issued as OWESG. The council's Planning, Development and Infrastructure Committee did agree in 2014 to note its conclusions and recommendations and to publish it so that it would have weight in the planning process⁴⁸. It provides relevant evidence as regards the cumulative situation for wind-energy development and also of the basis upon which the recommendations in the Sensitivity Appraisal were reached. In that respect, it is a material consideration. It confirms that the general location of the proposed development is one of the better locations in the study area for large turbines.

Reporter's conclusions

Climate change and energy policy

2.67 The parties have acknowledged that relevant climate-change policy and statutory targets and energy policy favour the development of renewable energy, including onshore wind.

2.68 The Scottish Energy Strategy states:

"To achieve our climate goals, Scotland needs to build on the progress made in decarbonising electricity production, and to see concomitant progress in the decarbonisation of heat and transport – while simultaneously maintaining affordable, secure and reliable supplies. This will not be simple, but Scotland is determined to play its part in the global effort to tackle harmful climate change."

The Scottish Government's targets for renewable-energy generation are set in this context.

2.69 The strategy describes the advantages of onshore wind as among the lowest cost forms of power generation. It is said to be a vital component of the huge industrial

⁴⁷ [APP 2.3 2014 Cumulative Landscape and Visual Assessment of Wind Energy in Caithness \(LUC 2014\)](#)

⁴⁸ [CD 092 Planning, Development and Infrastructure Committee report, 14 May 2014](#)

opportunity that renewables create for Scotland. Further, this means continuing to support onshore wind development in the right places and – increasingly – the extension and replacement of existing sites with new and larger turbines, all based on an appropriate, case-by-case assessment of their effects and impacts.

2.70 The Onshore Wind Policy Statement deals with various aspects of policy for onshore wind. Its Ministerial introduction is similarly positive about the important role of onshore wind. It states, “[W]e must support development in the right places and, increasingly, the extension and replacement of existing sites, where acceptable, with new and larger turbines, based on an appropriate case-by-case assessment of their effects and impacts.”

2.71 There is therefore considerable policy support for the development of new onshore-wind generating capacity.

2.72 The applicant does not expressly state in its argument that the protection to the environment including (most relevantly to the present case) visual amenity and the landscape, should be of relatively less weight in the balance as compared to the benefits of onshore-wind development following publication of the Scottish Energy Strategy or Onshore Wind Policy Statement. This does appear to be implied in its argument though.

2.73 For the following reasons, I am not persuaded that the Scottish Government did intend any diminution in the protection of the environment or its importance in the balance even upon introduction of the new targets.

2.74 First, I have not found anything express in the Scottish Energy Strategy or Onshore Wind Policy Statement that suggests that the considerations of environmental protection at any particular site are altered such that environmental protection is intended to be reduced to allow development where it would previously have been unacceptable. There is an emphasis in both documents on continuity of protection, including the protection of landscape, and on development being in the right place. If a change had been intended in the degree of environmental protection to be applied in respect of onshore wind development, I consider the two documents would have said so expressly.

2.75 The balance to be struck is referred to in national planning policy:

- NPF3 refers to the spatial framework provided by SPP for wind-energy development as guiding new wind energy development to appropriate locations, taking account of important features such as wild land.
- SPP includes among the four outcomes it seeks that Scotland should be a successful, sustainable place, a low-carbon place, and a resilient place. It incorporates the statutory targets for reduction of carbon emissions. In this context, it sets out the renewable energy targets and the principles for spatial frameworks, and it also makes it clear that the individual merits of a wind-energy proposal require to be carefully considered against the list of considerations set out in paragraph 169. This is in line with its principle that sustainable growth should ensure the right development in the right place.

There is nothing express in the Scottish Energy Strategy or Onshore Wind Policy Statement that would indicate a departure from policy as set out in those national planning documents.

2.76 Second, even before the publication of the Scottish Energy Strategy and Onshore Wind Policy Statement, energy policy was very favourable to the development of renewable-energy generating capacity, including onshore wind. The chief planner in November 2015 emphasised existing policy support for a transformational change to a low-carbon economy⁴⁹. He said that the Scottish Government's 2020 target for renewable generation was a statement of intent, and did not place a cap on the Scottish Government's support for renewable energy developments, including on-shore wind, once the target had been reached. The chief planner's letter indicated that there was capacity for the 2020 target to be exceeded. The new target set for 2030 supports use of such capacity both at new sites and through the more efficient use of existing sites. The policy does not necessarily require the diminution of environmental protection in respect of any particular proposal.

2.77 Third, onshore wind is not the sole renewable-energy source considered by the Scottish Energy Strategy. Onshore wind's role in achieving the targets is recognised as vital. But the strategy also takes account of the contribution that can be made by a number of different renewables technologies, including offshore wind, island wind, wave and tidal power, solar power, hydro power, and bioenergy. The Scottish Energy Strategy refers to the potential of these sources. They are capable of making an increasing relative contribution to meeting the renewable energy targets. While the strategy recognises advantages onshore wind has relative to other forms of renewable-energy generation, particularly its currently relatively low cost, the strategy also refers to constraints, such as the effect on Scotland's landscapes. I do not consider the evidence before me is such as to cause me to conclude that in practice only onshore wind can make a substantive contribution to meeting the energy targets.

2.78 NPF3 confirms that Scotland is to capitalise on its wind resource. It refers to the government's renewable-energy targets and the spatial framework provided by SPP as guiding new wind energy development to appropriate locations, taking account of important features such as wild land. It encourages diversification of the energy sector. It indicates the government's expectation that the pace of onshore wind-energy development will be overtaken by a growing focus on marine-energy opportunities including offshore wind and wave and tidal power. This is consistent with the Scottish Energy Strategy.

2.79 The Scottish Climate Change Plan incorporates the Scottish Energy Strategy's targets. It also provides a policy-output indicator for the electricity sector to measure the success of the Scottish Energy Strategy: that the electricity grid-intensity should be no more than 50 grams of carbon dioxide per kilowatt hour from 2020. The Climate Change Plan was published only shortly after the Scottish Energy Strategy. I do not find anything in it, either, that suggests lower weight should be placed on the protection of the environment when considered against any particular proposal for development of renewable-energy generating capacity in general or onshore wind in particular. The targets set out in the Climate Change Plan for emissions reduction must be achieved from a wide range of sources of emissions. They cannot be achieved solely from the energy sector, let alone solely from development of onshore wind capacity.

2.80 The vision for Scotland set out in NPF3 includes a growing low-carbon economy. The greenhouse-gas reduction targets set out in the Climate Change (Scotland) Act 2009 are integrated into national planning policy. There is undoubtedly strong support for renewable-energy development in national planning policy, as the applicant and council

⁴⁹ [CD 56 Letter from John McNairney, Chief Planner, to Heads of Planning, 11 November 2015](#)

have acknowledged. NPF3's policies address steps required within spatial planning to achieve the targets not only in energy generation, but in a range of sectors including land use management, waste management, urban infrastructure, sustainable water management, peatland restoration, and transport.

2.81 Since the inquiry, two further events have happened. First, the Climate Change (Emissions Reduction) (Scotland) Act 2019 ("the 2019 Act") has received royal assent. Second, the Scottish Government has recognised that there is a global climate emergency. I did not ask the parties to comment on these matters, nor did they ask for an opportunity to do so.

2.82 The 2019 Act is not yet in effect, although it can be anticipated that it will take effect in due course and its targets are a material consideration.

2.83 I do not understand the Scottish Government's recognition of the global climate emergency to include any specific change in the government's already strong policy support for development of renewable-energy capacity or reduction in carbon emissions. It also has not changed the environmental considerations to be taken into account in determining an application for renewable energy generation. The government has indicated that the emergency needs a systematic response appropriate to the scale of the challenge, and not a piecemeal reaction.

2.84 The Scottish Climate Change Plan was produced in the context of the government target to reduce emissions by 80% by 2050. The passing of the 2019 Act with more ambitious targets was anticipated in the Climate Change Plan, though the bill's proposed targets were amended in Parliament to be still more ambitious than those proposed. Parliament brought forward the bill's proposal of a target of a net 100% reduction in emissions from the 1990 baseline from 2050 to 2045. The Government has committed to updating the annual targets set out in the Climate Change Plan within six months of the 2019 Act receiving royal assent.

2.85 Ministers' decision on the proposed development must be taken with the increased emissions reductions targets in mind. However, I still do not find it to be a necessary implication that that an effect on the environment that was unacceptable before either the enactment of the 2019 Act or the recognition of the global climate emergency has become acceptable as a consequence of those events. My recommendations in this report are made on that basis.

National planning policy

2.86 Plainly proposals that contribute to sustainable development are supported by SPP. The main issue in contention between the council and applicant as regards national planning policy is whether the elevated level of materiality of sustainable development as a consideration in circumstances described in SPP paragraph 33 (where the development plan is out of date) applies in the context of an application for consent under the Electricity Act. I doubt that very much, in practice, rides on the resolution of this issue. This is particularly so if Ministers find (as I do) that the proposed development complies with the development plan.

2.87 The reporter in the Caplich windfarm case considered that the elevated level of materiality set out in SPP paragraph 33 did apply. Ministers accepted his report, including this element of his reasoning. Nonetheless, I disagree.

2.88 The statutory arrangements for determination of applications under the Electricity Act are different from the arrangements under the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). SPP sets out Ministers' policies for exercise of their powers within the planning system. I acknowledge that those policies, in general, are highly relevant to Ministerial decisions on applications under the Electricity Act. I do not consider that every policy is necessarily relevant, though, given the different statutory context.

2.89 Section 25 of the 1997 Act requires decisions on planning applications to be taken in accordance with the development plan unless material considerations indicate otherwise. This section 25 presumption in favour of the development plan applies even when the development plan is out of date. It is in this statutory context that SPP paragraph 33 provides for the sustainability of a proposed development to have raised materiality in specified circumstances (including where the existing development plan is out of date). Paragraph 33 is clearly intended to direct how planning authorities should address the section 25 test in circumstances where the development plan is out of date.

2.90 In a decision under the Electricity Act, where (as the applicant has acknowledged) both SPP and the development plan are material considerations, where they represent only two of a number of relevant policy considerations, and there is no statutory presumption in favour of either, I do not consider that SPP paragraph 33 is relevant.

2.91 If I am wrong in this (and SPP paragraph 33 does apply in the context of a decision on consent under the Electricity Act) I would still note these points:

- I consider SPP paragraph 33 would only raise the materiality of sustainability as a consideration in respect of the development plan, and not in respect of other relevant policy considerations.
- As the applicant acknowledged, raised materiality of the sustainability presumption under SPP paragraph 33 is not conclusive as to the weight to be given to the development plan.

2.92 If my view on the applicability of SPP paragraph 33 to the present decision is correct, then there is no formal policy consequence to my determination as to whether the development plan is out of date. I make the following assessment in respect of the development plan in case Ministers (unlike me) consider that raised materiality under SPP paragraph 33 applies in the context of the present decision where the development plan is out of date.

2.93 The HWLDP is now more than five years old. I acknowledge that the supplementary guidance comprised in OWESG and the Sensitivity Appraisal is relevant, not yet five years old, and forms part of the development plan. I also acknowledge that no party has suggested that the spatial framework provided in OWESG does not comply with national policy. However, OWESG and the Sensitivity Appraisal only provide (and only can provide) further detail in respect of HWLDP policy 67. Given that HWLDP policy 67 – the principal development-plan policy – is more than five years old, I consider that (if SPP paragraph 33 is taken to be relevant to the present decision) the raised materiality of sustainability as a consideration must, as a matter of policy, be taken to apply.

2.94 I agree with the council that a wind-energy development is not, simply by its nature, development that contributes to sustainable development. The capacity of the proposed development to generate renewable power and contribute to a reduction in carbon emissions does weigh in favour of a finding that it would contribute to sustainable

development. However, as SPP paragraph 28 sets out, the aim is to achieve the right development in the right place, not to allow development at any cost. Other aspects of its environmental effects require to be considered - those dealt with in the following chapters of this report, including its landscape and visual effects, effects on amenity, ecology and ornithology, carbon balance, traffic, historic environment and others.

Highland planning policy and guidance

The Highland-wide Local Development Plan

2.95 While both the applicant and council agreed that HWLDP policy 67 was the main policy in the development plan relevant to the application's determination, they disagreed on the relevance of HWLDP policy 28. I agree with the council and applicant that HWLDP policy 67 is the key development-plan policy for determination of the application.

2.96 While the applicant disputed the degree of relevance of HWLDP policy 28, it did not deny that it was relevant. Nonetheless, I agree with the applicant that, its relevance is limited. It gives general guidance on sustainable development within the context of the plan. The guidance in policy 67 is, by contrast, specific to renewable-energy development.

Cumulative Landscape and Visual Assessment of Wind Energy in Caithness (Land Use Consultants, 2014)

2.97 The 2014 Cumulative Landscape and Visual Assessment, produced by Land Use Consultants, was evidently intended to inform the council's Sensitivity Appraisal. In that sense, as formal guidance for decision-making, the Sensitivity Appraisal clearly supersedes it. However, I consider that the 2014 assessment still has some evidential value both for the detail it provides on the cumulative effects of onshore wind-energy development proposed at that time and for the assistance it might provide in interpreting the Sensitivity Appraisal's guidance.

CHAPTER 3: LANDSCAPE AND VISUAL IMPACT

Evidence on landscape and visual impact

3.1 The applicant has provided a landscape and visual impact assessment (LVIA). This is contained in volume 2a (Main Report), chapter 7, of the environmental statement, dated October 2016⁵⁰. Figures accompanying the LVIA are contained in volume 2b of the ES and visualisations in volume 2ci (SNH visualisations) and 2cii (Highland Council visualisations).

3.2 At my request, the applicant provided additional environmental information on the landscape and visual effects of aviation lighting on the proposed turbines (the Golticlay night time aviation lighting assessment, provided on 1 June 2018 – referred to below as “ALA”)⁵¹. The 2018 AEI section 3.7 considers the landscape and visual effects of the enabling works on the C1053 road⁵².

3.3 The council and the applicant both provided evidence at the inquiry from professional landscape architects, Mr Jonathan Mason for the applicants and Mr Mark Steele for the council.

3.4 Parties submitted the following documents in relation to the inquiry session on landscape and visual effects:

- [Inquiry statement for the applicant](#)
- [Inquiry statement for the council](#)
- [Report on landscape and visual effects by Mr Jonathan Mason, witness for the applicant](#)
- [Report on landscape and visual effects by Mr Mark Steele, witness for the council and figures](#)
- [Precognition of Mr Jonathan Mason](#)
- [Precognition of Mr Mark Steele](#)

3.5 Ahead of the inquiry a statement of agreed matters was submitted jointly by the council and the applicant⁵³. The matters relating to landscape and visual effects agreed between the parties are summarised below:

- The methodology employed in the ES and the ALA in the assessment of landscape and visual effects broadly followed good practice guidance at the time of publication.
- The LVIA study area and relevant areas of focus were within accepted thresholds and are sufficient to enable the identification of the potential significant landscape and visual effects of the proposed development.
- There would be no significant landscape effects beyond approximately 5 kilometres radius of the proposed development.
- The viewpoints used in the ES LVIA and the ALA were properly representative of the landscape types and locations from which there may be views towards the proposed development on an individual and cumulative basis and the viewpoint selection to

⁵⁰ [CD 004b ES Vol 2a Main Report](#)

⁵¹ [Aviation Lighting Assessment](#) (ALA)

⁵² [2018 AEI](#)

⁵³ [Statement of agreed matters](#)

inform the assessment is appropriate for the scale and siting of the proposed development.

- The ZTVs, wirelines and photomontages in the ES LVIA and ALA are appropriate for the purposes of assessment and accord with relevant guidance.
- The ZTVs are based on a digital terrain model that assumes bare ground and does not take into account the screening effects of structures and vegetation. They represent a “worst-case scenario” depicting theoretical visibility of the proposed development with no intervening obstructions and under favourable weather conditions. Actual potential visibility would be less than illustrated.
- Some significant landscape and visual effects are inevitable in windfarm development. Significant effects are not, in themselves, an indicator of unacceptability in the context of such an application.
- Effects upon landscape character did not form part of the council’s objection. An understanding of landscape effects informs assessment of visual effects.
- There would be no significant or material effect upon any landscape designation.
- Wild land areas do not require consideration at the inquiry.
- Although the 1998 Caithness and Sutherland Landscape Character Assessment⁵⁴ forms the basis of more recent work, baseline landscape character has changed since 1998, in part because of windfarm development. The development site overlaps landscape character types (LCTs) 1 (Sweeping Moorland) and 2 (Moorland Slopes and Hills).
- The proposed development would have some significant landscape effects upon parts of LCT 1, LCT 2 and LCT 15 (Small Farms and Crofts). The council finds that parts of LCT 1A (Flat Peatland) would be subject to some significant effects.
- The landscape and visual effects of the proposed aviation lighting would not in themselves be significant, as reported in the ALA.
- The council’s Onshore Wind Energy Supplementary Guidance Addendum Part 2B, Landscape Sensitivity Appraisal, December 2017 (“the Sensitivity Appraisal”) provides a strategic-level study to inform future decision-making. It is not intended to replace site-specific assessment of proposals. The site lies within landscape character type CT4 (Central Caithness).
- Eight viewpoints were agreed to be subject to significant visual effects. These are VP2 (Roster), VP3 (Hill of Mid Clyth), VP4 (Upper Lybster), VP5 (A99 west of Lybster), VP6 (Bayview Hotel, Lybster), VP 8 (Rhianrivach Broch), VP9 (Osclay, public road between Lybster and Achavanich), and VP10 (Golticlay).
- The cumulative assessment in the ES considered all existing, consented and proposed windfarms within approximately 35 kilometres of the proposed development. Changes to the cumulative baseline are as set out in table 1 in the statement of agreed matters.
- The table confirms that if the proposed development is consented and the consent implemented, the proposed Rumster Forest scheme would not be built.

3.6 The Caithness and Sutherland Landscape Character Assessment, carried out in 1998 for SNH, is the baseline study for the landscape and visual assessment in chapter 7 of the ES. There are two more recent assessments of landscape character and its sensitivity to development. The council’s 2017 Sensitivity Appraisal addresses the Caithness landscape’s sensitivity to windfarm development specifically⁵⁵.

⁵⁴ [CD 093 Caithness and Sutherland Landscape Character Assessment](#)

⁵⁵ [CD 076 Sensitivity Appraisal](#)

3.7 SNH's 2019 National Landscape Character Assessment (NCLA) was issued after the inquiry. The council and applicant provided written submissions on the effect of the NLCA on their cases⁵⁶. Both the applicant and council referred to SNH guidance that the 1998 Landscape Character Assessment was to be used as the baseline study for applications made before publication of the NCLA. Their submissions on 2017 Sensitivity Appraisal and the 1998 Landscape Character Assessment remained relevant⁵⁷.

Evidence on residential visual amenity

3.8 The proposed development's effect upon residential visual amenity is considered in ES chapter 7 and in appendix 7.8.

3.9 I held a separate hearing session on the proposed development's effect on residential visual amenity. I visited three houses at the request of their owners. Two were in Roster: Braeval Farm Cottage and Roadside Cottage, and the other was Eriska in Achow. I am also familiar with the locations of the other properties considered in the residential visual amenity survey.

3.10 The proposed development's effect upon residential amenity did not form part of the council's reasons for objection to the application. It was a matter raised in a number of objections. I held a hearing in which Joanne Bowd and Janet Cowin gave evidence as residents at Braeval Farm Cottage in Roster to consider the particular effect of the proposed development upon the visual amenity of that house.

3.11 Joanne Bowd and Janet Cowin supplied a joint statement with accompanying photographs and photomontages for Roster extracted from the Landscape and Visual Impact Assessment⁵⁸ and a separate hearing statement⁵⁹. The applicant also supplied a hearing statement accompanied by photographs of Braeval Farm Cottage and a figure showing its location and that of the properties assessed in the Residential Visual Assessment⁶⁰. The hearing statement identified one additional property about 2.5 kilometres distant from the proposed development, near Camster, which was under construction at the time of my site inspection.

Main points for the council

Methodology

3.12 Although the applicant's assessment methodology broadly accords with current guidance for landscape and visual assessment, there are a number of points on which the council's evidence differs.

3.13 First, the council considers that, although the effects of a windfarm development are reversible, windfarms should nevertheless be assessed as permanent developments. The twenty-five-year lifespan of the proposed development is equivalent to a generation. In any

⁵⁶ [Submissions for the applicant on the NLCA; Submissions for the council on the NLCA](#)

⁵⁷ A figure is provided at the end of the applicant's submissions on the NCLA comparing its landscape character types with the LCTs identified in the 1998 Caithness and Sutherland Landscape Character Assessment and the LCAs identified in the 2017 Sensitivity Appraisal. In relevant respects, the NCLA LCTs have the same extent as the Sensitivity Appraisal's LCAs.

⁵⁸ [Joanne Bowd and Janet Cowin statement and photographs 2 July 2018](#)

⁵⁹ [Joanne Bowd and Janet Cowin statement 23 July 2018](#)

⁶⁰ [Applicant's hearing statement on residential visual amenity](#)

case, Scottish Planning Policy paragraph 170 indicates windfarm sites should be regarded as suitable for use in perpetuity. The ES understates the magnitude of the proposed development's effect in this respect.

3.14 Second, guidance indicates that travellers on recognised scenic routes are to be treated as having high sensitivity. The use of the A99 has increased significantly recently because of its inclusion in the North Coast 500 Route ("the NC500"), although it is not designated as a key route in OWESG. High sensitivity should be accorded to travellers on the NC500, of which the A99 forms part, and on the unclassified road from the A99 to the Grey Cairns of Camster, promoted as a "hidden gem" of the NC500. The ES understates the sensitivity of the relevant viewpoints in this respect.

3.15 Third, the value of a view is not diminished simply because only a small number of people may visit it. The value of viewpoint 1 at the Grey Cairns of Camster is not reduced because there is limited availability of roadside parking. The ES may understate the sensitivity of viewpoint 1 in this respect.

3.16 Fourth, the council's assessment addressed movement of turbines, which appears to be downplayed in the applicant's evidence, particularly in respect of viewpoint 7. The ES may understate the magnitude of the proposed development's effect in this respect.

3.17 Fifth, an assessment of cumulative effects should include not only an assessment of the additional effects of the proposed development in conjunction with other developments that do not already form part of the baseline (as they are defined in the environmental statement). It should, in accordance with SNH guidance, also consider the combined effects with existing developments.

Landscape effects

3.18 There would be significant landscape effects within about five kilometres, including significant effects upon LCT1A (Flat Peatland). Given the position of the proposed development on a prominent skyline of LCT1 (Sweeping Moorland), its significant landscape effects would extend across LCT15 (Small Farms and Crofts) as far as the coast, notwithstanding that in some locations visibility is restricted by topography, vegetation and buildings. There would be consequent adverse effects upon the landscape and visual setting of the settlements of Lybster and Upper Lybster, the A99 and the Grey Cairns of Camster.

3.19 In terms of the Sensitivity Appraisal, the proposal sits astride a sensitive landscape transition between the CT4 sweeping moorland and flows LCT and CT2 Coastal Crofts and Small Farms LCT. Its prominent position in the landscape gives rise to very serious and substantial visual impacts, like those acknowledged in the Sensitivity Appraisal in respect of Buolfuich and Burn of Whilk windfarms⁶¹. To permit the proposed development would repeat and reinforce those effects.

3.20 The majority of visual receptors are located in CT2, to which CT4 LCT is identified in the Sensitivity Appraisal as an important backdrop. The visual receptors identified as having the highest sensitivity in CT2 are residents of the immediate locality, visitors/tourists (including cyclists and walkers) and people at key viewpoints.

⁶¹ [CD 076 Sensitivity Appraisal](#) p 101

Visual effects

3.21 The significant effects of the proposed development, although limited to a 5-kilometre circle from the proposal, are much greater than the normal effects consequent upon such a proposal. It stands at the end of a glen with Lybster at the foot, in a relatively heavily populated landscape. It is the visual impacts primarily in an arc from the north-east to the south (VP1 round to VP7) that are significant and important. In this area, the large, sky-lined turbines would be viewed in the context of a small-scale landscape with many scale comparators.

3.22 In addition to the significant visual effects the applicant has acknowledged the proposed development would have at viewpoints 2 to 6 and 8 to 10, the council identifies significant effects adverse visual effects at viewpoints 1 and 7.

3.23 Mr Steele also gave evidence that there would be significant combined effects at viewpoints 1, 4, 8, 10, 11, 12, 14, 16 and 18.

3.24 Mr Steele reviewed the assessment of the council's officers, and found the degree of significance of the proposed development's visual effect to be understated at viewpoints 1, 2, 3 and 5.

3.25 Residents of the dispersed crofting settlement of the scattered settlements north of Lybster, (Upper Lybster, Roster, Achow and Osclay, referred to collectively in the council's evidence as "Upper Lybster") would experience significant visual effects, as demonstrated by viewpoints 2, 4, 8 and 9. Views of turbines would be introduced in areas free of turbine visibility. Upper Lybster would therefore be significantly affected by the proposed development.

3.26 The proposed development would contribute to a significant combined effect of wind energy development at viewpoint 4 in Upper Lybster and viewpoint 8 at Rhianrivach Broch, where it would be seen with the Beatrice windfarm and Burn of Whilk.

3.27 As regards the settlement of Lybster itself, viewpoints 5 and 6 demonstrate that the proposed development would significantly adversely affect the visual setting of western and northern Lybster. There would, cumulatively, be a significant adverse effect upon the landscape and visual setting of Lybster as a consequence of the combined effect with other existing and consented windfarms, primarily the closest of the offshore windfarms, Beatrice Offshore. The combined effect is demonstrated by MSC viewpoint 2 from core path CA10.01 above Lybster Harbour, from which Burn of Whilk, the Beatrice Offshore Windfarm and the offshore Beatrice Demonstrator can presently be seen⁶².

3.28 The applicant acknowledges adverse effects on recreational users of core paths in respect to paths through Rumster Forest and from Achavanich to Munsary. The proposed development would also have significant visual effects on core paths CA10.12 Back Path, CA10.15 Bayview to Harbour Road, and CA10.01 Coastguard Lookout and Brethren Well⁶³. There would also be significant combined effects upon the latter.

3.29 Taking into account the enhanced sensitivity of the A99 as a consequence of the NC500 designation and the proposed development's prominence on the road, the consequent extent and level of effect upon it is greater than reported in the ES. Viewpoint 7

⁶² [Mark Steele inquiry report, appendix D - figures](#)

⁶³ The relevant sections of the core path plan are provided in documents [THC 09](#), [10](#) and [11](#).

(Burrigill) provides the important first glimpse of the turbines on that route. When its enhanced sensitivity is taken into account, the effect at the viewpoint becomes significant.

3.30 The unclassified road to the Grey Cairns of Camster, a “hidden gem” listed with the NC500 designation, should also be assessed as a scenic route. Users of that road would consequently be subject to significant visual effects.

3.31 At the Grey Cairns of Camster themselves, the proposed development would be seen from viewpoint 1 on a prominent skyline to the west behind the Round Cairn. Distinctive and prominent skylines should not be interrupted by turbines and moving blade tips breaking the skyline should be avoided. The assessment of a high sensitivity with a moderate magnitude of impact should have led to a moderate/major level (and so significant) effect. This would have been consistent with the findings of SNH. The applicant’s proposal to reduce the height of one turbine so that the hub is not visible would not alter the level or significance of the visual effect.

3.32 Turbines of both the Camster and Burn of Whilk windfarms are already visible from the Grey Cairns. The proposed development would also be visible from the Long Cairn interpretation board along the alignment of the Long Cairn on a prominent skyline. There would consequently be a significant combined visual effect.

3.33 There would be significant combined effects at viewpoint 10, Golticlay, where the proposed development would be seen with Burn of Whilk, the existing and consented offshore windfarms and also Camster.

3.34 Although Mr Steele did not undertake a detailed consideration of the proposed development’s effects at viewpoints 11 to 24, he found the proposed development would also contribute to a significant cumulative effect at viewpoints 11, 12, 14, 16 and 18.

3.35 Although the parties agree that the effect of aviation lighting on turbines would not itself be significant, at night the lights on the cardinal turbines of the proposed development and those out at sea will reinforce their presence. The lights on the nacelle of cardinal turbines would appear to flash when the blades are aligned between the light and the viewer. The proposed turbines would be in an area the applicant acknowledges to be relatively dark. Their lighting would be a factor that would contribute to a significant cumulative visual effect.

Siting and design

3.36 The ES does not define any design principles or objectives. The proposed development’s design results in negative effects of a type described in Siting and Designing Windfarms in the Landscape⁶⁴ paragraph 2.29: there would be partial screening by topography at viewpoints 1 and 2 and uneven visual density and stacking at viewpoints 2, 4, 8 and 10. These effects would also occur at certain other viewpoints.

3.37 The proposed development does not meet a number of the siting and design criteria set out in OWESG paragraph 4.17⁶⁵.

3.38 Criterion 1: The proposed development would be visually prominent from the western edge of Lybster. The perception of encirclement of Lybster by wind development

⁶⁴ [CD 090 Siting and Designing Windfarms in the Landscape, Version 3, Scottish Natural Heritage 2017](#)

⁶⁵ [CD75 Onshore Wind Energy Supplementary Guidance \(OWESG\)](#)

would be reinforced as a consequence of the visibility of the proposed development together with the Beatrice Offshore and Burn of Whilk windfarms. These would be visible in most views on the periphery of Lybster. The proposed development's significant effects at viewpoints 5 and 6 and its visibility on routes into Lybster, including the A99 east and west and minor roads to the north and core paths would contribute to this impression. The proposed development does not achieve the threshold for criterion 1.

3.39 There would also be a sense of encirclement of the dispersed settlements of Upper Lybster, although the council acknowledges this would not be a consideration in respect of criterion 1.

3.40 Criterion 3: The proposed development would cause significant and adverse effects upon the Grey Cairns of Camster, a valued cultural landmark, that would diminish their prominence and disrupt their relationship with their landscape setting. Although Historic Environment Scotland did not object in respect of the proposed development's effect upon the cairns' setting as a historic monument, the landscape setting is not restricted solely to the understanding of setting.

3.41 Criterion 4: The proposed development would have a significantly adverse effect upon core paths in the area and consequently would not meet criterion 4.

3.42 Criterion 5: There would be adverse effects upon the A99 and local access roads, which would significantly detract from its visual appeal. The proposed development consequently does not meet the criterion's threshold.

3.43 Criterion 6: The proposed development would be at odds with the existing pattern of wind-energy development: it is located in an elevated transition into the moorland interior adjacent to the CT2 Coastal Crofts and Small Farms LCA. The Sensitivity Appraisal advises that the elevated transition should be avoided by windfarm development⁶⁶. The proposed development would not consolidate with an existing cluster as advised in the Sensitivity Appraisal. Consequently it does not meet the criterion's threshold.

3.44 Criterion 8: The proposed development would fundamentally affect the perception of scale and distance in the landscape by placing tall turbines in the context of the small-scale CT2 landscape. It does not meet the criterion's threshold.

3.45 Criterion 10: The distinctiveness of landscape character would be adversely affected by the proposed development in a location where the variety of character is important to the appreciation of the landscape. This is on account of its location in an elevated transition into the moorland interior, which forms a prominent skyline and defines the extent of the visual setting of Lybster and Upper Lybster.

Effect of existing permission

3.46 Although a windfarm of three 80-metre turbines, the Rumster Community Wind Energy Project, has already been approved for the site, that is a quite different proposal with a different level of impact. It does not establish the acceptability of a large-scale commercial windfarm.

⁶⁶ [CD76 Sensitivity Appraisal, part 2B: Caithness](#), paragraph 2.4

Main points for Scottish Natural Heritage (SNH):

3.47 In its letter dated 13 January 2017⁶⁷, SNH did not object to the proposed development, nor did it record any serious concerns. It considered that several effects were understated. Significant landscape effects were likely to extend to at least five kilometres to the north, east and south of the proposed development. Localised effects on LCT15 Small Farms and Crofts would extend over a greater area than described and significant effects were likely to occur in LCT1A Flat Peatland. It did not find the effect on the Causeymire and Knockin Flows Wild Land Area to be significant.

3.48 SNH also considered that, in addition to the significant visual effects identified in the ES, there would be significant effects at viewpoints 1 and 11.

Main points for Joanne Bowd and Janet Cowin

3.49 Braeval Farm Cottage, the objectors' home, is the highest-situated property in Roster at 140 metres above sea level. It is built on a north-south axis and all major windows other than one face directly west towards the proposed development. There are no structures, natural or man-made, between the house and the windfarm that would lessen the proposed development's impact. The view from the house is outstanding as is shown by the photographs provided in evidence⁶⁸.

3.50 This will be destroyed by the proposed development. The applicant acknowledges that it would be prominent and eye-catching and would change the nature of the views. It would have an overwhelming presence as a large-scale industrial development in the middle of what is currently a wilderness. The lights on the turbines would be perceived to flash. While there are lights on the Roster mast, which is seen in the view, they are static. Because of Braeval Farm Cottage's outlook directly towards the proposed development, the proposed development would have a greater effect on it than on other properties within two kilometres.

3.51 While some bushes might be planted to mitigate the proposed development's impact to a degree, such planting near the house would detract from the view and planting further away would provide limited mitigation. It would provide limited screening in winter. Planting is also unlikely to be successful in screening the turbines fully given the thinness of the soil.

3.52 Living in the countryside has many disadvantages: poor broadband, a poor water supply and limits on services. The advantages include the view and the air quality. A countryside community like Roster is therefore particularly sensitive to adverse visual effects.

Main points raised in representations from the public:

3.53 Many of the representations made by the public related to the landscape and visual effect of the proposed development. Specific matters raised in written objections and at the evening hearing session included:

- The proposed development will add to the adverse cumulative effect of existing, consented and proposed wind turbines on the landscape of Caithness;

⁶⁷ [APP5.5 SNH consultation response to 2017 FEI](#)

⁶⁸ [Joanne Bowd and Janet Cowin statement and photographs 2 July 2018](#)

- The proposed development would be too close to Lybster and would have an adverse visual effect upon it;
- It would cause, in particular, a cumulative perception of encirclement of Lybster and settlements around Lybster, when added to the offshore windfarms and Burn of Whilk - there would be no vista clear of intrusion;
- The proposed development and related transmission infrastructure would have an adverse cumulative impact with existing and consented development upon the Flow Country, a landscape of high value;
- The proposed development would have an adverse effect on the visual amenity of local residents in their homes;
- The proposed development would have an adverse effect on the NC500, both individually and cumulatively;
- There would be an adverse effect upon core paths in the area;
- The proposed development's position on a hill would enhance its adverse landscape and visual effect;
- The proposed development's flickering aviation lighting would have an adverse effect on visual amenity;
- Its aviation lighting would have a cumulative effect with that of Burn of Whilk and the offshore windfarms;
- Since all development with existing consents is not completed, the full cumulative effect is not yet generally understood; and
- People who live in Caithness have made a lifestyle choice to live in an area of high amenity, and this makes residents particularly sensitive to the adverse effects of a windfarm upon amenity, including visual amenity.

Main points for the applicant

3.54 The landscape and visual impact assessment (LVIA) considered the potential effects of the introduction of the proposed development on landscape and visual receptors, including cumulative effects. It identified that there would be significant impacts arising from the scheme:

- Significant effects on landscape character would occur within approximately 3 to 3.5 kilometres of the application site.
- There would be no significant effects on designated landscapes or wild land.
- The proposed development would be sited to take advantage of a simple, open moorland site and presents a simple image. The turbines are set back from the smaller-scale landscapes of the coast.
- Significant visual effects would be limited to within approximately 5 kilometres
- Significant cumulative effects would occur at some locations in close vicinity to the west of the application site, including at viewpoint 10. More generally there would be limited cumulative effects with existing, consented and proposed windfarms nearby.
- The proposed development would not have an overbearing effect on any residential property.

3.55 SNH, the Scottish Government's statutory adviser on landscape, raised no objection to the proposed development. Although SNH takes a somewhat different view on the extent of significant landscape and visual effects, these represents differences in judgement of a type that are not uncommon.

3.56 The council's professional officers made their own assessment of the significance of landscape and visual effects. Although they did not agree in full with the LVIA, they considered the proposed development was acceptable in landscape and visual terms and recommended that the council should not object.

3.57 As regards the claim in the template objection provided by a number of members of the public that the landscape and visual effects would be extremely severe, it is relevant to note that only about half of the objections came from people living in the proposed development's vicinity and who would experience its effects. Experience from pre-application public exhibitions indicates that there are also residents who are supportive and many who are indifferent.

The council's objection and evidence

3.58 The council's reason for objection related to the proposed development's visual effects, particularly as viewed from Lybster. Its objection was without the support of any expert evidence or assessment. It should be understood as being limited to the matters raised in its formal reasons for objection. In objecting to the proposed development, the council did not disagree with their officers' findings in respect of the degree or significance of effect the proposed development would have.

3.59 In so far as the evidence of the council's witness, Mr Steele, goes beyond the objection made by the council, it is clear that this is without any authority from the council and that his views have not been adopted by it.

3.60 The following points should be noted about the council's objection:

- It is limited to visual impact and does not extend to landscape impact, as confirmed in the statement of agreed matters. This is unusual for an objection to the proposed form of development.
- The visual impact to which objection is taken is limited to visual impact as viewed from the village of Lybster and an area south-south-east of the proposed development and within five kilometres of the proposal.
- The council's objection does not suggest any objectionable cumulative impact, nor was any detailed evidence called to support such an objection.

3.61 The report of the council's witness sought to expand upon the objection by raising matters in relation to:

- an area 15 km from the development in all directions,
- what he termed the visual setting of Lybster or Upper Lybster - essentially views of Lybster or Upper Lybster with the possibility of the development in the view,
- the impact upon visitors to the Grey Cairns of Camster, and upon users of roads and core paths in the wider area, and
- cumulative impact .

3.62 In closing, the council appeared to limit the areas of concern to an arc from the north-east to the south within 5km of the proposal. This is still a wider area than that to which the council's objection relates.

3.63 No evidence was given by the council on the acceptability of the proposed development. There is no evidence that the proposal would have an unacceptable effect or one that would conflict with the requirements of schedule 9 of the Electricity Act 1989.

3.64 Mr Steele agreed in cross-examination that there is no suggestion that the landscape and visual impacts in this case go beyond those that are an inevitable consequence of any windfarm development. Notwithstanding this, the council's closing submission suggests that the significant effects are much greater than the normal effects consequent upon any such proposal.

Landscape

3.65 Of the four LCTs within 10 kilometres, there would be significant effects upon three:

- LCT 1: Sweeping Moorland, within which the proposed development would be located,
- LCT 2: Moorland Slopes and Hills, where there would be a significant effect on the character of the north and east part of the small area within 10 kilometres.
- LCT 3: Small Farms and Crofts, where the presence of the proposed development would be obvious in the inland area north of Lybster in which the influence of the coast is reduced. This includes Roster, Upper Lybster and the C1053 to Achavanich. More generally, although the turbines would form a skyline feature, the underlying characteristics of the landscape would not be changed and the landscape effect would not be significant.

3.66 There would not be a significant effect on LCT 1A: Flat peatland. There the existing character of largely undeveloped peatland would remain.

3.67 The proposed development would be located towards the edge of the open peatland and moorland landscape of inland Caithness, now characterised by the presence of a series of windfarms. Although the proposed turbines would be higher than those of the closest neighbouring developments, on account of the separation and large landscape scale, this difference would not be such as to be readily apparent in the landscape. The proposed development would accord with the established development pattern.

3.68 Although the applicant's assessment differs with that of SNH on the extent of significant landscape effects to the north, given the open and relatively undifferentiated landscape, determining where the significant effect ceases is a matter of degree and judgement. As regards the extent of significant landscape effects in LCT 15 to the south, the influence of the turbines would diminish as the influence of the coast and views to the sea and mountain scenery to the south west increases. Significant landscape effects consequently do not extend beyond the A99, about 3.5 kilometres from the proposed development.

3.69 In closing, the council contends that the proposed development "sits astride a sensitive landscape transition" and that it is this which provides the basis for its objection. This goes beyond the council's objection. Mr Mason's evidence shows that the transition from the settled coastal strip to sweeping moorland occurs within CT2 Coastal Crofts and Small Farms whereas the proposal is located wholly within the open simple moorland setting of CT4. This can be seen, for instance, from viewpoint 3 (Hill of Mid-Clyth). This shows that large-scale, open, undifferentiated moorland extends a considerable distance

beyond the boundary of CT2 to the south and the east of the application site. Mr Mason's evidence is supported by the Sensitivity Appraisal.

3.70 The concern in the Sensitivity Appraisal regarding Buolfuich and Burn of Whilk windfarms arose from their location on prominent spurs of the Sweeping Moorland landscape which enclose the Coastal Crofts landscape. The position of the application site is not similar.

3.71 The evidence does not support the council's claim in closing that the landscape south of the proposed development is heavily populated. It is sparsely populated, as council officers stated in the committee report.

3.72 Any significant landscape impacts have to be considered in the context of the appraisals made of the sensitivity of this area to windfarm development, as Mr Steele agreed.

Visual effects

3.73 The LVIA found that the proposed development would have significant visual effects at viewpoints 2, 3, 4, 5, 6, 8, 9 and 10 out of the 24 viewpoints assessed. At seven other viewpoints the council's officers found significant visual effects (1, 7, 14, 16, 17, 18 and 21). In the statement of agreed matters, the council appears to have reduced the number of viewpoints on which they disagree to viewpoints 1 and 7. Other than the viewpoints identified in the LVIA, SNH considered that there would be significant effects at viewpoints 1 and 11.

3.74 As regards viewpoint 1, factors affecting the magnitude of change include the presence of a modern forestry plantation, of the Rumster mast in the same view as that of the proposed development, of existing turbines closer to the viewer than the proposed development, and of the road, parking layby and contemporary interpretation facilities. The judgement in the LVIA of the effect's magnitude only differs slightly from that of council officers.

3.75 As regards viewpoint 7, there is foreground clutter that would be visible in views to the proposed development. House windows facing the development are generally small and appear to be associated with more functional rooms.

3.76 As regards viewpoint 16, the section of road the viewpoint represents does not appear to be particularly valued. It may be that a sense of arrival in Wick is an element of the viewpoint's value, but the proposed development would be to south, in the opposite direction and not part of the experience of arrival.

3.77 As regards viewpoint 18, the distance from the proposed development is a factor that mitigates its impact. It would be less prominent than the many existing turbines in whose context it would be seen. Although there is some stacking it would compare favourably with other schemes.

3.78 Overall, although there may be disagreement in the context of the subjective assessment of landscape and visual effects about the significance or otherwise of certain effects, the council officers considered that the proposals' landscape and visual effects were acceptable overall. The objection relates to effects on Lybster and two specific viewpoints about which there was no disagreement with officers over significance of effects.

3.79 Mr Steele, the council's witness, limited his assessment to viewpoints 1 to 10 in his report, having identified that the proposed development would not (leaving aside cumulative effects) have a significant effect at other viewpoints. Of these ten, Mr Steele found there to be a significant effect where the ES did not at only two (viewpoints 1 and 7). However, for all viewpoints other than viewpoint 3, Mr Steele found a higher level of effect than that found in the ES. Council officers' assessment of the level of effect at these viewpoints was closer to the ES than to Mr Steele's.

3.80 Mr Steele made a number of errors in his approach that result in his consistently over-scoring the visual effects of the proposed development:

- He mistakenly treated the proposed development as being permanent and irreversible. It should have been treated (in accordance with the Landscape Institute's Guidelines on Landscape and Visual Impact Assessment, 3rd edition – "GLVIA3"⁶⁹) as being of long-term duration and reversible. Mr Steele acknowledged in cross-examination that duration and reversibility were important considerations in assessing magnitude of visual effects.
- He increased the susceptibility of road users on the A99 on the basis that it is a scenic route on account of its being part of the NC500. The NC500 is designated as a marketing tool. It is not designated as a scenic route and was not chosen for its scenic qualities. The views of windfarms already obtainable over the route have not impaired the designation's success as a marketing tool.
- He also treated the unclassified road to the Grey Cairns of Camster as a scenic route, because the cairns are promoted with the NC500 as "Hidden Gems". There is no justification for this treatment.
- He inflated the susceptibility/sensitivity of visual receptors affected by the proposed development located within character area CT2, which he states is the landscape type with the highest susceptibility to windfarm development. The Sensitivity Appraisal in appraising CT4 takes account of visual effects of development in CT4, even where those effects arise beyond CT4. The advice in the appraisal on the effect of development on CT2 relates solely to development within CT2.

3.81 These errors were compounded by Mr Steele's use of a five-level approach to assessing magnitude of effect, ranging from "very low" to "very high". His definition of the "very low", "low" and "medium" levels were essentially the same as those used for "medium", "low" and "negligible" in the second edition of the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment ("GLVIA2"). The scale effectively created an additional high-end category, reflecting a bias to inflating results.

3.82 Mr Steele's approach to the proposed development was negative, not neutral. This can be seen in his assertion that a reduction in height of turbine 10 leading to the screening of its hub would have a negative effect on account of the view from viewpoint 1 of the movement of its blades on the skyline. He was unable to maintain this position in cross-examination.

3.83 Mr Steele sought to make a similar point about stacking of turbines. However, he produced no evidence to rebut council officers' assessment on stacking. This was that a well-spaced and cohesive design when viewed from the south east around settlements had been a key design driver and that there were few occasions where the proposal would add

⁶⁹ [CD 086 Guidelines on Landscape and Visual Assessment, 3rd edition](#)

to visual stacking with other consented or operational developments. He also produced no evidence that stacking went beyond what was inevitable in such a windfarm development.

Residential visual amenity

3.84 Of the twenty-four residential receptors (and twenty-six residential properties) within 2.5 kilometres of the proposed turbines, nineteen are located more than two kilometres away. Three are located between 1.8 and 2 kilometres and only two within 1.25 kilometres. The closest is 1.09 kilometres away⁷⁰. All these properties are located to the south, south-east or east. Nine are at Roster or Camster, five at Upper Lybster, and ten on minor roads south of Golticlay Forest.

3.85 Nine of the residential properties within 2.5 kilometres have principal views towards the windfarm, seven in Roster and Camster and two elsewhere. Due to the distance and the perceived openness and large scale of the landscape setting, the effect of the proposed development would not be overbearing or oppressive at any of these properties. The proposed development would not create conditions that would cause any dwelling to be widely regarded as an unattractive place to live.

3.86 Braeval Farm Cottage is about three kilometres from any proposed turbine. The proposed development would have a significant effect there, given the property's orientation and the proposed turbines' prominence in views to the west. Given the distance, the panoramic views and the openness and large scale of the proposed development's setting, the effect upon the cottage would not be overbearing or cause it to become an unattractive place to live. There is scope for establishing further screening to control views to the proposed development.

Siting and design

3.87 The proposed development achieves a rational and simple turbine layout within the constraints of the site. It performs well in respect of the SNH guidance on Siting and Designing Windfarms in the Landscape⁷¹. Windfarms are seen from all directions and negative effects such as stacking, uneven gaps and partial screening by topography will inevitably occur as the position of the observer changes relative to the turbines. This does not make the proposed design unacceptable or unsatisfactory.

3.88 The proposed development responds positively to the guidance provided in the Caithness and Sutherland Landscape Character Assessment (1998). It is set within an area of open landscape, separate from other artefacts such that its relationship with the surrounding space is clear. The additional elements it introduces are simple in form and appear visually balanced in most views. It would be inferior in scale to the surrounding landscape, both horizontally and vertically. It is permeable: views are not blocked and openness not interrupted. It has very limited effect on more sensitive landscape areas.

3.89 The Cumulative Landscape and Visual Assessment of Wind Energy in Caithness 2014 ("the 2014 Cumulative Assessment"⁷²) carried out by Land Use Consultants for the council, was a technical study that examined the capacity for windfarm development in Caithness with reference to cumulative considerations. The assessment was

⁷⁰ See [Environmental Statement, Appendix 7.8](#), Figure 7.8a

⁷¹ [CD 088 Siting and Designing Windfarms in the Landscape \(2014\)](#) and [CD 090 Siting and Designing Windfarms in the Landscape \(2017\)](#)

⁷² [APP 2.3 2014 Cumulative Assessment](#); also see [ES vol 3, figure 7.5](#)

commissioned to establish a clearer basis for assessment of wind-energy proposals and for guidance as to where they should be directed. It accepts that cumulative landscape and visual effects are an inevitable result of further wind energy development. In this context, it indicates that an acceptance of greater localised cumulative effect in the areas it identifies would reduce cumulative effects on the wider area (and specifically on areas such as the Flow Country and Berriedale Coast SLA or Morvern wild land area). The council published the assessment so it could have weight in the planning process⁷³.

3.90 The application site is identified by the 2014 Cumulative Assessment as being within an area where cumulative effects of wind energy development can be limited by siting additional development in association with existing patterns of development. The applicant accepts this does not make the application site automatically suitable, and site-specific assessment is still required.

3.91 OWESG indicates that sensitive siting and design play an important part in making wind energy developments an accepted feature of the environment and is key to mitigating adverse impacts. OWESG acknowledges that cumulative effects occur and provides a framework to guide developers to appropriate sites. Suggestions by objectors that there is uncontrolled proliferation of wind energy development are inaccurate.

3.92 The Sensitivity Appraisal is part of OWESG⁷⁴. It considered in detail the sensitivity of the various landscapes in Caithness to windfarm development. It gives the landscape character type (CT4 Sweeping Moorland and Flows) at the appeal site a score of 3 for sensitivity to windfarm development, the second best score on the Sensitivity Appraisal's scale of 1 to 4. This indicates it is likely to be one of the best areas in Highland for such development. Although the Sensitivity Appraisal identified no areas in Caithness with strategic capacity for wind-energy development, it is clear that, if the most sensitive landscapes are avoided and principles of good design met, then there is scope to accommodate further development in CT4. In order to be acceptable, it advises that development should:

- concentrate and consolidate with existing development,
- maintain open, clear and direct views that allow appreciation of the wild landscape, particularly from the A9 and
- be designed so that the logical relationship between development scale and landscape character is maintained.

3.93 The proposed development achieves all three.

3.94 OWESG itself sets out ten criteria relating to landscape and visual aspects of windfarm development to be used as a framework to assist assessment of such proposals. The council's officers found the proposed development achieved the necessary threshold for eight of the ten criteria, and partly met the other two. The applicant's assessment is that it meets all but one of the criteria.

3.95 Criterion 1: Turbines are not visually prominent in most views within or from the settlement of Lybster or most of its access routes. The proposed development would sit to one side of Lybster. As a consequence, encirclement of the settlement cannot occur. Within Lybster a minority of views are directed towards the north west, and the best views

⁷³ [CD 092 Report to the Planning, Development and Infrastructure Committee](#)

⁷⁴ [CD76 Landscape Sensitivity Appraisal, part 2B: Caithness](#)

are undoubtedly of the mountain scenery to the west. Although the proposed development would be prominent to the north west of the settlement, views towards it would not be available from most properties or public areas within the settlement. Where available, they would not be principal views. The criterion would be met.

3.96 Mr Steele treated outlying areas, such as Upper Lybster, as settlements for the purpose of criterion 1. Only the settlement area of Lybster defined in the Caithness LDP is to be considered. Mr Steele's fieldwork related to three viewpoints outside Lybster. He accepted that turbines are not visible from the majority of views within Lybster itself. Although he identified that there are views towards the proposed development from western Lybster, he did not address whether the proposed development would be prominent.

3.97 The ES addresses the question of prominence in its assessment of viewpoints. It assessed that the proposed turbines would be prominent at viewpoint 5 (which is outside Lybster to the west) and conspicuous (not prominent) at viewpoint 6. These assessments were accepted by council officers. Although the applicant accepts some properties in northern Lybster would have rear views represented by viewpoint 5, this would be a minority. As regards viewpoint 6, it is an atypical view, representative of a worst case, rather than of southern Lybster generally.

3.98 In its submissions, the council takes the stance that the proposed development's effects on areas outside the settlement boundary are of equal importance to those within the settlement boundary to which criterion 1 applies. This is an attack on its own policy in OWESG.

3.99 Even if views from Upper Lybster were considered in respect of criterion 1, there is still no suggestion that the proposed development would be prominent in the majority of views. Of the three viewpoints in Mr Steele's fieldwork, two look towards Beatrice Offshore Windfarm, and it is not suggested the proposed development would be visible. The panorama provided for the third viewpoint is only 180-degrees, and does not demonstrate Lybster's encirclement. Within the dispersed settlements, most properties (and the landscape generally) have principal views to the south, directed to the Moray Firth. Only in Roster and Camster are there a small number of properties that would face the proposed development, and these are located in an open setting with views available in most directions.

3.100 Mr Steele did not suggest that the proposed development on its own would cause a perception of encirclement, but only as a cumulative effect. This goes beyond the council's objection. Neither Burn of Whilk nor Beatrice Offshore Windfarm would be visible from most of the settlement and turbines would not be prominent in views from most of the settlement.

3.101 Criterion 2: Mr Steele initially sought to argue that the criterion was not met on the basis that the A99 west and east of Lybster is a "key route". It is not. The proposed development does not have any significant impact on any key route. The council has acknowledged that the criterion is met.

3.102 Criterion 3: The Grey Cairns of Camster are not prominent, being set in a hollow. Even if they are prominent when seen from viewpoint 1, this cannot be equated to their being prominent as a landmark. Views from the cairns do not add to their understanding. Since the cairns are not prominent, their prominence cannot be diminished. Development at a distance beyond the hollow would not disrupt the setting. Camster and Burn of Whilk

windfarms, although visible on the approach to the cairns and from the entrance to the Long Cairn, have been permitted. Even if it were conceded that there is a significant visual effect at viewpoint 1, that does not mean the criterion is not met.

3.103 The council's contention that the proposed development would diminish the prominence of the cairns and disrupt their relationship with their setting is remarkable, given that it has made no objection on built or cultural heritage grounds.

3.104 Criterion 4: Mr Mason took a more cautious view than council officers in accepting that the proposed development did not fully meet the criterion's threshold. He noted, though, that there is a difficulty in identifying what the "key recreational routes" are to which the criterion applies. Although core paths are among the examples the criterion gives of such routes, the network of core paths is such that a significant effect on a core path as a consequence of a windfarm development is almost inevitable. The threshold has to be interpreted so as not to place significant constraint on such development. The evidence did not suggest that core paths in the area of the proposed development are of a particular or greater importance than elsewhere.

3.105 Criterion 5: The turbines would not significantly detract from the appeal of the A99. Views ahead and to the sea would be the natural focus when travelling in either direction on that road. This is so in the short section between viewpoints 7 and 5 about which Mr Steele expressed concern. The proposed development would be set back by about five kilometres from this section of road. The threshold of "overwhelm or significantly detract" is high. The proposed development's visual effect on this section of road would not meet it.

3.106 Criterion 6: The proposed development does accord with the existing pattern of wind energy development and so the criterion's threshold is met, as confirmed by council officers and Mr Mason. The proposed development would retain an appropriate visual break so that it would not adversely affect the setting of other windfarms. In scale, the proposed turbines would be just a little larger than Camster and Burn of Whilk, though the increase in height would be difficult to perceive. The blade-to-tower ratio is similar to Burn of Whilk, so they would appear of similar proportions. Though the ratio is different from that of Camster, the intervening topography means the schemes are unlikely to be seen together fully. Mr Steele's citation of guidance at paragraph 2.4 of the Sensitivity Appraisal, advising development should avoid the elevated transition into the moorland interior, is not apt.

3.107 The Sensitivity Appraisal recommends that development should concentrate in clusters. ES figure 7.5 illustrates that concentration within clusters does not require an existing cluster⁷⁵. The figure demonstrates that the advice is really about concentrating development within the areas identified in the 2014 Cumulative Assessment. The proposed development is in the centre of such an area.

3.108 The proposed development complies with the advice of the Sensitivity Appraisal on the pattern of development and meets criterion 6.

3.109 Criterion 7: It is common ground with the council that the proposed development meets this criterion.

⁷⁵ CD 004 ES Vol 2b [figure 7.5a to 7.5b](#); [figure 7.5c](#)

3.110 Criterion 8: The proposed development has been positioned within a very large scale and expansive setting with few scale comparators. The development will not diminish the scale of the receiving landscape. The criterion is met.

3.111 The council's officers were satisfied that the criterion was met. This is a further matter on which Mr Steele disagrees with them. He refers to the turbines being the largest in Caithness. This does not address the threshold. The important questions are the scale of the turbines and how they relate to the scale and distance in the landscape.

3.112 Criterion 9: It is common ground with the council that the proposed development meets this criterion.

3.113 Criterion 10: The proposed development respects the distinctiveness of landscape character and maintains the integrity and variety of the landscape character areas. It meets the criterion.

3.114 The council officers were satisfied that the criterion was met. This is another matter on which Mr Steele disagrees with officers. His position conflicts with the council's acceptance that there is no landscape-impact ground for its objection and represents another exaggeration by Mr Steele of his case.

3.115 Mr Steele's argument that the proposed development would increase homogeneity, causing variety of landscape to be lost would imply that the presence of turbines is an element of existing landscape character. The criticism is inconsistent with Mr Steele's comments in respect of criterion 6, that the proposed development would not concentrate with an existing cluster.

3.116 The transition between the settled coastal strip and sweeping moorland occurs within LCT15. The proposed development is located wholly in LCT1. It would not affect the distinction between the two landscape character types or the integrity or variety of the landscape character areas.

3.117 The proposed development therefore performs well against the OWESG criteria.

Conclusion

3.118 The proposed development represents an appropriate solution in this location. It does not give rise to a degree of landscape or visual impact or harm that is obviously unacceptable. It satisfies the terms of the Electricity Act 1989 schedule 9 as they concern landscape and visual receptors.

Reporter's reasoning

Methodology

3.119 I address first the differences between the council and the applicant as regards methodology:

Whether the proposed development should be treated as permanent or reversible for landscape and visual assessment

3.120 This point has been considered in a planning appeal and a previous application under section 36 of the Electricity Act 1989⁷⁶. On both occasions, the reporters found that the landscape and visual effects of a windfarm were not to be treated as reversible, and made reference to SPP paragraph 170 to justify their position.

3.121 SPP paragraph 170 states:

“Areas identified for wind farms should be suitable for use in perpetuity. Consents may be time-limited but windfarms should nevertheless be sited and designed to ensure impacts are minimised and to protect an acceptable level of amenity for adjacent communities”.

3.122 The second sentence of the paragraph makes sense in its context if it is to be implied that, although permission for a windfarm may be time-limited (and the development reversible), for the purpose of its siting and design and for assessment of its effect on the amenity of adjacent communities, it is to be treated as permanent. I also find, relying solely on the paragraph’s first sentence, that a reasonable worst-case assumption I should make is that the landscape and visual effects of a windfarm on the site will (if Ministers grant consent for the present application) persist in perpetuity and be at least as great as those of the proposed development.

3.123 I therefore consider, in the light of SPP paragraph 170, that the landscape and visual effects of the proposed development are to be treated as permanent. I take this into account in my assessment of landscape and visual effects.

Sensitivity of roads as a consequence of the NC500 designation

3.124 I am not convinced that travellers on the A99 should be treated as having increased sensitivity as visual receptors simply because of the road’s designation as part of the NC500. As the applicant has argued, the designation is promotional and not linked to the road’s inherent qualities. Windfarms are already a relatively familiar sight on the NC500. The council identified in the recently published Sensitivity Appraisal roads that it considered had particular visual sensitivity. It did not include the A99 in its section close to the application site among those roads.

3.125 Mr Steele’s claim about the sensitivity of the unclassified road to the Grey Cairns of Camster has a similar basis. Tourists may use the road and, of necessity, people visiting the cairns will. While the route is attractive in parts, I do not find it to be an especially scenic route where travellers might go to look at the landscape. I do not find that travellers on the route would be particularly sensitive to the effect of turbines.

Visitor numbers and the sensitivity of the viewpoint at the Grey Cairns of Camster

3.126 I agree with Mr Steele that the viewpoint’s value would not be diminished simply because there was limited roadside parking (and so evidence of limited numbers visiting the

⁷⁶ [CD128 Inquiry report on the South Kyle windfarm \(WIN-190-3\)](#), paragraph 3.227; [CD142 Decision notice on Cnoc an Eas windfarm \(ppa-270-2155\)](#) paragraph 34

cairns). I do not understand the applicant to have taken such a view. Mr Mason denied having applied a lower value in his evidence as a consequence of low visitor numbers.

Movement of turbines as a factor in landscape and visual assessment

3.127 I agree with Mr Steele that the movement of turbines is to be taken into account in obtaining a full understanding of the landscape and visual effects of a windfarm development. Mr Mason's evidence was that the LVIA and his own evidence did take account of turbine movement. I am not persuaded otherwise. There is direct reference in the LVIA to the movement of turbines, for instance, as a factor in the cumulative effect at viewpoint 10. I take into account the movement of turbines in reaching my own conclusions on the significance of the proposed development's visual effects.

Combined effects of windfarms

3.128 Cumulative effects were not an issue that the council raised expressly in its reasons for refusal. The SNH guidance, *Assessing the Cumulative Impact of Onshore Wind Energy Developments*, 2012⁷⁷, defines cumulative effects as "the additional changes caused by a proposed development in conjunction with other similar developments" or "the combined effect of a set of developments, taken together." I understand Mr Steele to distinguish between an assessment of the additional effects of the proposed development on a baseline landscape where there are already windfarms and an assessment of the combined effect of all the windfarms in the landscape taken together, including the proposed development.

3.129 The SNH guidance states in respect of cumulative visual assessment that "the aim of a cumulative assessment is to identify the magnitude of additional cumulative change which would be brought about by the proposed development when considered in conjunction with other windfarms"⁷⁸. It indicates by the example in the box in paragraph 8 what kind of effect should be considered as a combined effect. It gives the example of the two windfarms, sited one on either side of a valley, having the effect of making the observer feel surrounded by development, and where consequently the combined effect would be greater than the sum of the effect of either windfarm individually. It also gives an example in which siting several houses in the countryside together can have an effect that is little greater than that of the development of one house alone. A combined effect may therefore be greater or less than the individual effect a proposed development might have if other development with which it has such a combined effect is ignored.

3.130 It is clear to me that the LVIA did consider combined effects of the proposed development with existing development. This is confirmed at ES paragraph 7.7.2, which indicates they were considered as an element of the proposed development's individual effect at viewpoints. I am content to adopt that approach in this report.

3.131 Guidance in GLVIA3 indicates that the method of cumulative assessment should be considered at scoping stage. I find that the applicant's cumulative assessment was carried out in accordance with the method set out in the scoping report⁷⁹ to which the council did not object at that stage⁸⁰.

⁷⁷ [CD 085 Assessing the Cumulative Impact of Onshore Wind Energy Developments, SNH, 2012](#)

⁷⁸ [CD 085 Assessing the Cumulative Impact of Onshore Wind Energy Developments, SNH, 2012](#), paragraph 70

⁷⁹ [CD 001 Scoping report](#)

⁸⁰ CD 002 Scoping opinion (see Highland Council response attached), found in [ES Vol 3](#), Appendices, appendix 5

Alleged negative bias of Mr Steele's assessment methodology

3.132 I have some sympathy for the applicant's argument that Mr Steele's use of a five-level scale, effectively adding an additional level at the top for assessments of sensitivity, magnitude of effect and level of effect, can appear to inflate results. It is not helpful in assessing the evidence to have to consider a second assessment scale, different from that used in the ES, which the council has agreed followed good practice. Nonetheless, Mr Steele's assessment scale is transparently set out. I consider any dispute over the level of effects can conveniently be dealt with in instances where they arise.

Landscape effects

3.133 I agree with the applicant and council that no designated landscape or wild land area would be significantly affected by the proposed development.

3.134 The applicant acknowledges that there would be significant effects on two of the landscape character types identified in the Caithness and Sutherland Landscape Character Assessment: LCT1 (Sweeping Moorland) in which the proposed development is located and LCT2 (Moorland Slopes and Hills), which lies immediately to the west and south-west. Whether there would be a significant adverse effect upon LCT1A (Flat Peatland) and the degree to which there is a significant effect on LCT15 (Small Farms and Crofts) is disputed.

3.135 Although turbines are visible elsewhere in LCT1A, I consider that the relative prominence of the proposed development within about five kilometres of it, is likely to lead locally to a greater magnitude of effect than that assessed in the ES. I also take into account the permanency of the effect. I therefore agree with SNH and the council that it is likely there would be a locally significant effect on LCT1A. For similar reasons, I agree that significant landscape effects would extend to the east for about five kilometres within the Sweeping Moorland LCT, as far as the Burn of Whilk windfarm.

3.136 The influence of the proposed development would be reduced south of the A99 within LCT15 (Small Farms and Crofts) given the sloping trend of much of the landscape towards the sea, the focus of views on the sea, and the increased distance. The proposed development would still appear as a relatively large-scale element in some of the more intimate spaces of that area. Viewed from higher elevations (VP3 – Hill of Mid-Clyth, VP4 – Upper Lybster, VP 8 – Rhianrivach Broch), it would evidently be set in a different landscape. When viewed from lower elevations (VP5 - west of Lybster, VP6 – Bayview Hotel), it would be a sky-lined background element. I find that significant landscape effects would be likely to extend into LCT15 as far as the line of the A99.

Visual effects

Viewpoints

3.137 I consider below each of the viewpoints at which, according to Mr Steele's evidence, the proposed development has a significant individual or cumulative (combined) effect. In each case, in reaching a conclusion on the degree of visual effect, I take into account that the visual effect is to be assessed as permanent.

Viewpoint 1 (Grey Cairns of Camster)

3.138 The applicant has made a commitment to reduce turbine T10 by 10 metres. Its hub would then not be seen from viewpoint 1. The change in design would be secured by condition 2 recommended in this report⁸¹. Visibility of the proposed development would consequently be limited largely to blades (one other turbine hub would theoretically just be visible). The applicant's commitment means that the turbines would not be quite as depicted in the visualisations for the viewpoint.

3.139 The main elements of interest in the view are the two cairns, known as the Round Cairn and Long Cairn, and their setting. The proposed development would be seen from the viewpoint on a moorland horizon beyond the forestry plantation which forms the more immediate background to the Round Cairn. Although the skyline is relatively simple at present (though broken by the tip of the Rumster mast), I do not consider it is particularly prominent nor do I consider the longer view to the skyline particularly sensitive. I do not consider that the proposed development would greatly affect the sense of enclosure or the special sense of place at the cairns.

3.140 Although the Camster windfarm is obvious from the viewpoint, it does not form the background of the view to either cairn. Many of its turbines are screened by existing forestry. Any view to the Burn of Whilk windfarm at the viewpoint is limited and in the opposite direction from the cairns. More distant developments are screened by forestry. I find that the influence of turbines although evident is excluded from the cairns' immediate setting. I do not consider that, at the viewpoint, the proposed development would have a significant effect individually or in combination with other development.

3.141 Some turbines in the Camster windfarm can be seen on the approach to the viewpoint along the minor road and when standing at the viewpoint, though much of that windfarm is screened by the forestry plantation or topography. I do not consider that, for a traveller passing viewpoint 1 on the minor road from West Clyth to Watten, the relatively brief view of the proposed development's blade tips across commercial forestry would have a significant effect either individually or as a sequential cumulative effect with the Burn of Whilk or Camster turbines.

MSC viewpoint 1 (Long Cairn information board)

3.142 Mr Steele produced images from a second viewpoint at the information board by the Long Cairn⁸². He demonstrates that the proposed development would be seen from the information board behind the Long Cairn, looking along the alignment of the Long Cairn. Once again, I do not consider the effect of a view limited mainly to the proposed development's blades on the skyline would be significant. The interest is in the close views of the Long Cairn and Round Cairn.

3.143 Mr Steele demonstrates that several of the Burn of Whilk turbines can be seen from the Long Cairn information board. They would also be seen from the boardwalk when returning to the car park. I do not find that views of the proposed development, taken together with these relatively limited views of turbines beyond the cairns' immediate context,

⁸¹ See Appendix 3 of this report

⁸² [Landscape and visual report by Mr Mark Steele for the Council, Appendix D](#), Viewpoints 1a and 1b.

would amount to a significant combined effect upon the cairns, even seen sequentially when walking between viewpoints 1 and MSC 1.

Viewpoint 2 (Roster)

3.144 Viewpoint 2 represents the settlement of Roster. The houses in the settlement are oriented to the west, towards the proposed development at a range of just under 2.5 kilometres to just over 3 kilometres. The view is direct across moorland with no intervening screening vegetation. The effect is only somewhat mitigated by the distance between the proposed development and the viewpoint, and by the landform, which causes the more distant turbines to be less prominent. The viewpoint is of high sensitivity. I find that the significance of effect is correctly assessed in the ES and by Mr Steele at the upper end of their respective scales.

3.145 Mr Steele referred to the visual effect upon the viewpoint of the turbines being partly hidden behind the ridge. The blades of the westernmost turbines would be partly hidden. This would be in the context of the view of a large windfarm seen on a wide ridge where the blades of the closest turbines would be fully in view. I do not consider the partial hiding of the more distant turbines would add substantially to the complexity of the visual effect.

Viewpoint 3 (Hill of Mid-Clyth)

3.146 Viewpoint 3 represents the unclassified road crossing the Hill of Mid-Clyth. It is just beyond the summit of the road and has a panoramic view with the proposed development in its centre. The turbines would be seen at just under 5 kilometres in an open landscape with few features, partly backgrounded by the slightly undulating skyline of Stemster Hill. The assessment in the ES is of a Moderate to Major significance of effect, and Mr Steele makes an assessment of a similar degree of effect. I agree that the effect would be of the degree assessed in the ES. Although Burn of Whilk turbines are theoretically visible, there would be a minimal combined effect.

Viewpoint 4 (Upper Lybster)

3.147 Viewpoint 4 represents views from the scattered settlement of Upper Lybster. The viewpoint itself lies off the unclassified road. The proposed development would be seen to the north-west at just over 2.6 kilometres in a wide and largely featureless landscape. There is some foreground clutter, but that would not be present in every view from Upper Lybster. The edge of the commercial forest seen in the view might provide some scale indication of the turbines, but I consider the forest is more likely to be perceived as a horizontal element in the view.

3.148 Mr Steele treats the residents at Upper Lybster as receptors of very high sensitivity. GLVIA3 advises that residents should be treated as receptors with the greatest susceptibility to change⁸³. It also advises that there will be a gradation in susceptibility to change and that consideration must be given to the extent to which receptors' attention is likely to be focused on views and visual amenity. The value of the view also has to be taken into account in determining the overall sensitivity of the viewpoint.

⁸³ [CD 086 Guidelines on Landscape and Visual Assessment, 3rd edition](#) paragraph 6.32

3.149 While there are properties near the viewpoint, their main orientation is generally not towards the proposed development⁸⁴. Although some houses have principal views to the north, the orientation of properties tends to be to the south, out to sea. The orientation of properties somewhat reduces the susceptibility of those properties to effects of the proposed development. It is also evidence that the highest value is not placed on views over the landscape in which the proposed development is set. I consider that the ES's assessment of medium sensitivity is correct.

3.150 The turbines of the proposed development would present a generally coherent and well-spaced group at the viewpoint. Although there appears from the visualisations to be some overlapping of turbines and some uneven gaps, this would be no more than would be expected in a windfarm of its size. I consider that this would be less apparent if the windfarm was seen in three dimensions.

3.151 Although the Beatrice offshore windfarm is relatively distant from the viewpoint (some 20 kilometres), the size of its turbines, their number and the windfarm's horizontal extent, particularly when taken together with the consented offshore windfarms beyond, make it an appreciable element of the view out to sea. The consented windfarms, further out to sea, would extend the view of turbines further west across the southern horizon. The aspect of many of the dwellings is out to sea.

3.152 The offshore turbines are seen in a different landscape context and in a different direction from the proposed development. This would limit any combined effect arising from the introduction of the proposed development. Some houses would have views to offshore turbines to the south and to the proposed development to the north. Upper Lybster residents would obtain views of turbines when travelling to Lybster and back again on the sole road to Upper Lybster.

3.153 Although the Burn of Whilk turbines is also an appreciable presence, its turbines form a coherent group set in a wide landscape. The properties at the viewpoint do not have their principal views in its direction. Although some other, more distant existing or consented onshore turbines can be seen from the viewpoint, I consider their contribution to any combined effect would be very limited.

3.154 I do not consider that the cumulative effect of the proposed development being added to existing and consented development would be overbearing for the scattered settlements, or any particular house within them.

3.155 The proposed development would have four red lights. These would be relatively dim (much dimmer than the lights on the Stemster mast or those on the Beatrice turbines, and perhaps of similar intensity to those on the Burn of Whilk turbines). They would, though, draw attention in the evening and at night to the proposed development's presence. I acknowledge that for a viewer at the viewpoint, there would be a combined effect, inasmuch as there would be a sense sequentially as the viewer turned around of tall, lit development across the landscape. I consider the contribution of the proposed development (like that of other existing onshore development) would be limited, though, since the viewer's attention would be drawn most by the striking bright lights of the offshore windfarms in sea views.

⁸⁴ The main aspects of properties are shown on figure 1 of the [Report on landscape and visual effects by Mr Jonathan Mason, witness for the applicant](#)

3.156 Mr Steele defines a “very major” visual effect as “the introduction of visually very discordant and/or very intrusive elements that would cause the loss or a very substantial deterioration to distinctive visual characteristics or perceptual qualities.” He defines a “major effect” similarly, leaving out the word “very” where it is used in the definition of “very major effect”. I consider that his “very major / major” finding in respect of viewpoint 4, although not at the absolute top of his scale, is still overstated.

3.157 Taking into account the combined effect of the proposed development, I consider that the magnitude of effect of introducing the proposed development upon the viewpoint would be medium to large, and the overall significance of its visual effect moderate to major in terms of the scale given in the ES. The addition of the consented offshore windfarms east of the Beatrice windfarm would not substantially change the combined effect the proposed development would have.

Viewpoint 5 (A99 west of Lybster)

3.158 The view at viewpoint 5 is now not quite as shown in the visual evidence provided. A house has been built so that there is no longer a direct view north from the viewpoint itself on the A99. That said, similar views can be obtained from a short distance to the west on the A99 or to the north of the new house. At the viewpoint, views from properties tend to be to the south towards the sea or, for properties within the settlement boundary, the main views tend to be into the settlement. While some properties close to the viewpoint would have views towards the proposed development, those views would tend to be from the rear or oblique. Consequently, I disagree with Mr Steele’s assessment of the sensitivity of residents as being at the highest point on his five-level scale. I consider the proposed development would have an effect of moderate to major magnitude, and consequently of moderate to major significance in terms of the scale given in the ES.

Viewpoint 6 (Bayview Hotel)

3.159 At viewpoint 6 (Bayview Hotel), although the effect is significant, neither the ES nor Mr Steele put the effect at the highest point on their scale. I consider their assessment of the effect’s degree of significant to be relatively similar. Given the distance and context in which the proposed development is seen, I find that the effect would be of moderate to major significance, in terms of the scale given in the ES.

Viewpoint 7 (Burrigill)

3.160 Residents at home are to be treated, generally, as highly sensitive receptors. At Burrigill, though, the houses are generally oriented to views to the sea or to the west along the coast. The proposed development would either be seen obliquely or from rear windows. I agree with the assessment in the ES that this would reduce residents’ susceptibility to the change. There would be limited or no view from houses in the settlement lying south of those immediately beside the A99.

3.161 Although the proposed development would be obvious to travellers on the road, it would be seen within a wide landscape. Large existing metal barns, trees and an overhead line running parallel to the road lie between the road and the turbines. Commercial forestry near the turbines is likely to be perceived at five kilometres’ distance as a horizontal element of the view and have limited effect as a scale indicator. The turbines would be perceived, given their distance, as subordinate in scale to the overhead line. The main views from the road are, in any case, to the sea (even if that view is briefly hidden at the

viewpoint itself) or along the coast or, when travelling west, to Scaraben. I consider that the sensitivity of the view to the north from the road is limited.

3.162 Overall, given the distance, the context, and the sensitivity of the landscape, I do not find the visual effect of the proposed development to be significant at viewpoint 7.

Viewpoint 8 (Rhianrivach Broch)

3.163 Viewpoint 8, on the unclassified road through at Achow, is a relatively elevated viewpoint providing panoramic views. The proposed turbines would be located in a wide landscape to the north, partly in commercial forestry. As at viewpoint 4, the forestry is perceived as a horizontal element of the landscape, though the forestry edge would to some degree provide a marker of scale of the proposed development. There are a few scattered houses mostly to the viewpoint's south. Mostly they have their main aspect to the south towards the sea or to the south-west towards Scaraben and the Lone Mountains. One house, Eriska, several hundred metres from the viewpoint, has principal views to the north, towards the proposed development.

3.164 Mr Steele assesses the sensitivity of the viewpoint as very high for nearby residents and high for residents, tourists and cyclists who might use the road. Notwithstanding that there is a house with a view towards the proposed development near the viewpoint, I do not consider that, by itself, at three kilometres from the proposed development, would justify an assessment of very high sensitivity. There is no substantial evidence that the road is greatly used by tourists or cyclists. The C1053 is likely to be a more convenient route to join the A9 when travelling from the Lybster area. The road would no doubt be used by residents of the nearby houses, but it is not in any sense a public space within a settlement. I find Mr Steele's assessment overstates the sensitivity of the viewpoint. I consider that the ES's assessment of the viewpoint having medium sensitivity is correct.

3.165 Just as at viewpoint 4, the proposed development would present a relatively well-spaced, coherent group, notwithstanding some overlapping of turbines or uneven spacing seen in the two-dimensional visualisations.

3.166 As at viewpoint 4, in the evening and at night the view of the offshore turbines with their aviation warning lights lit is striking. As at viewpoint 4, I acknowledge that the lighting of the proposed development, along with the warning lights of Burn of Whilk and the existing mast on Stemster Hill, would have a combined effect. I consider such an effect would be relatively limited.

3.167 Overall, I consider that the proposed development would have an effect of large magnitude and moderate to major significance. The addition of the consented offshore turbines beyond the Beatrice Offshore Windfarm, extending the sea view of turbines to the south west, would not substantially change the combined effect the proposed development would have.

Viewpoint 9 (Osclay)

3.168 Viewpoint 9 represents the view from the C1053 north to the proposed development at just over 1.3 kilometres.

3.169 Mr Steele assesses the viewpoint as having very high sensitivity on account of the potential for a visual effect on residents. The only house close to viewpoint 9 (Osclay) is

Gamekeepers' Cottage. This has its main aspect facing in the opposite direction from the proposed development. While I acknowledge that the residents would experience the effect of the proposed development when travelling to and from the house and in its curtilage, given the house's orientation, there is unlikely to be the same degree of effect in the house. I do not consider, in any case, that the presence of a single house justifies an assessment of very high sensitivity for the viewpoint. I therefore find Mr Steele's assessment of sensitivity to be overstated.

3.170 The road itself may provide a convenient route from Lybster to join the A9 not just for residents of Lybster but also for others, including tourists and cyclists. An objector has also referred to using it for horse-riding. It is not a road that is likely to be chosen for its views or particular scenic value though. I do not consider that an assessment of more than medium sensitivity of travellers on the road is justified.

3.171 That said, I find that, given the magnitude of effect, its significance would be major.

Viewpoint 10 (Golticlay)

3.172 At viewpoint 10 (Golticlay), the ES puts the impact of the windfarm at the top of its scale in terms of level of effect, while Mr Steele assessed it as having a range of effects between very major and moderate. I understand Mr Steele's assessment of a "very major" effect relates to the effect upon residents, tourists or cyclists using the minor road, who he considers of high sensitivity. There is no designation that would suggest the route is used by tourists or cyclists particularly and it is not an especially scenic route. I consider that Mr Steele again somewhat overstates its sensitivity and the consequent level of effect. Nonetheless, I consider that the significance of the effect would be major.

3.173 As at viewpoints 4 and 8, I do not consider that any overlapping of turbines or uneven spacing is greater than would be expected in a development of the proposed scale.

3.174 The ES acknowledges that the proposed development would have a significant cumulative visual effect with the Beatrice offshore windfarm, consented at the time of the ES but built now, and with the other consented offshore windfarms at viewpoint 10 (Golticlay).

Viewpoint 11 (unclassified public road near Badlipster)

3.175 SNH stated that the effect at viewpoint 11 (the unclassified public road near Badlipster) would be significant, though it did not give detailed reasons.

3.176 The proposed development would be at some distance from the viewpoint (just under 7.5 kilometres). It would be set in the Sweeping Moorland landscape where there are few scale indicators and would be subordinate to the vast scale of the landscape.

3.177 I acknowledge that many existing turbines can be seen and consented turbines will be added to the view. The proposed development would add to the extent of turbines in the view, and would be in a new direction, not grouped with existing windfarms. However, taking into account distance from the proposed development, the scale of the landscape, and the immediate influence of the Camster windfarm at the viewpoint, I do not consider that the proposed development would have a significant effect either on the existing baseline or in combination with consented windfarms.

Viewpoint 12 (Yarrows archaeological trail)

3.178 At viewpoint 12, on the Yarrows archaeological trail, I agree with Mr Steele that the proposed development would somewhat extend the horizontal extent of turbines and would create a somewhat more complex image together with the Burn of Whilk windfarm. Wide views across Caithness and out to sea are obtained at the viewpoint and include the Beatrice Offshore Windfarm and many of the Caithness windfarms – the Wathegar and Causeymire groups and as far as Stroupster. I do not find there to be a sense that windfarms dominate the landscape, nor that the proposed development would cause a change in that respect. The cumulative effect of the proposed development would be limited, and I do not find it to be significant.

Viewpoint 14 (Watten railway crossing)

3.179 I acknowledge that at viewpoint 14, the proposed development, seen at about 16.5 kilometres, would add to the extent of existing and consented wind energy development on the horizon seen from the viewpoints. However, the windfarm groups seen at these viewpoints remain distinct, each in its own setting. The cumulative effect of the proposed development is limited given its distance and the small sector of the horizon it occupies. I do not find the effect to be significant. I do not consider that the effect would be substantially changed if consented windfarms were added to the baseline.

Viewpoint 16 (Loch Hempriggs)

3.180 Although the proposed development would add to the horizontal view taken up by turbines, it would be seen in its own setting. I do not consider it would add greatly to the complexity of the view. I agree with the applicant that the presence of the proposed development to the south west would not tangibly affect the sense of arrival in Wick for travellers from the south west on the A99. Given the medium sensitivity of the viewpoint, I do not find the effect to be significant.

Viewpoint 18 (Mybster)

3.181 The proposed development would be seen at over 13 kilometres, though the movement of proposed development's turbines would still be evident. It would appear of a similar scale to the Camster and Burn of Whilk turbines. Given its relatively small extent in the wide landscape and the medium sensitivity of the viewpoint, I do not consider the effect would be significant, even when the consented Halsary windfarm has been completed.

Effects upon the residential component of visual amenity

3.182 Generally speaking, planning does not protect private interests, such as the interest in a view from a private residence. In a densely populated country, and even in the more sparsely populated parts of Caithness, some private residences are likely to be affected by essential infrastructure projects, such as the installation of renewable energy capacity. For the impact of such a proposed development upon any particular private property to override the public interest in the project, the impact must be severe. I accept the applicant's reasoning in respect of the assessment to be made in respect of individual properties, set out in section 2.1 of its hearing statement⁸⁵. I consider that the visual effect upon an

⁸⁵ [Applicant's Hearing Statement on the Visual Component of Residential Amenity](#)

individual property would be unacceptable if it was overbearing to a degree that the property might be considered an unattractive place to live.

3.183 There are few properties close to the proposed development. The closest are Gamekeeper's Cottage and Bulreanrob, both over a kilometre away. Neither is oriented towards the proposed development. The nearest property with a principal view towards the proposed development is on the Achow road over two kilometres from the proposed development. Although it has a principal view to the proposed development in the north, it also has a principal view to the south. Similarly, although Eriska, another kilometre away, near Achow, would have a principal view towards the proposed development, I do not find the proposed development would dominate it in a way that would render it an undesirable place to live. I do not consider that any of these properties would be unacceptably visually affected by the proposed development.

3.184 In respect of properties at Roster, I have acknowledged as regards viewpoint 2 that the visual effect would be significant and is correctly assessed in the ES and by Mr Steele at the upper end of their scales of effect.

3.185 I visited two properties in Roster: Roadside Cottage and Braeval Farm Cottage. There is a wireframe visualisation for the view from Roadside Cottage in ES appendix 7.8⁸⁶.

3.186 I agree with the applicant that there would be a significant visual effect similar to that at viewpoint 2 at Braeval Farm Cottage. I acknowledge that the proposed development would be seen in the principal views from the house, particularly from the new northern section, where there is limited screening in the garden. I also agree with the applicant that, given the distance from the proposed development, the openness of the landscape setting and the wide panorama in which the proposed development would be seen, the effect would not be overbearing.

3.187 As regards Roadside Cottage, the effect would be somewhat different in quality to that at viewpoint 2, given that it is closer to the proposed development, its view would be from a lower angle and the more distant turbines would be partly screened by topography. The house is arranged around a courtyard. The applicant has recorded it as having a principal view to the west, though the windows on the house's western aspect are small and not obviously those of a principal view. The proposed development would be an obvious presence for residents in its garden and when working in the attached fields, but still at some distance, seen in a large-scale landscape beyond a ridge in a context where scale indicators are absent. I do not find the effect would be overbearing.

3.188 Although views from Roadside Cottage or Braeval Farm Cottage would be significantly affected by the proposed development, I do not consider that either would become an unattractive place to live as a consequence of it. I consider that the effect upon these two properties is reasonably representative of other properties in Roster and Camster.

3.189 Otherwise, as regards the properties studied in the applicant's residential assessment, I agree with the conclusion of that assessment that the proposed development would not have an unacceptable effect upon the visual amenity of any individual property.

⁸⁶ [ES Vol 3 appendix 7.8](#)

Cumulative landscape and visual effects

3.190 I have considered above the matters raised by parties as regards cumulative landscape effects and visual effects at viewpoints.

3.191 The parties' statement of agreed matters notes a number of changes in the status of windfarm developments within the cumulative study area since the study of the proposed development's cumulative effects reported in the ES. Since the statement of agreed matters was made, I noted on my site inspection that the Bad a' Cheo windfarm (in the group around Causeymire), and the Beatrice Offshore Windfarm are now complete. I also note that the Navidale windfarm has been refused planning permission at appeal. The cumulative assessments in the ES must be read in the light of these changes in status. An objector has also drawn to my attention that the Moray West offshore windfarm has been consented and that an application has been made for the Camster II windfarm.

3.192 Although the Moray West offshore windfarm would be within 60 km of the proposed development and part would be within the 35 km study area for cumulative effects around the proposed development, neither the applicant nor the council drew the application for the development or the grant of consent to my attention during the inquiry or subsequently. At its closest, Moray West would be about 27 km from the proposed development. It would extend to the south-west the distant views of turbines in the seascape when looking out to sea from a number of viewpoints at which the proposed development could also be seen. Although the Moray West development would extend the angle of view in which turbines might be seen out to sea for instance from viewpoint 4 or 8, the turbines would be distant, located in an entirely different landscape from the proposed development, and likely to be perceived as part of the same feature as the other consented offshore windfarms. I consider that the proposed development's addition to a baseline including Moray West would not change my findings on the significance of visual effects.

3.193 As regards the application for the Camster II windfarm, I have not sought further evidence from the parties on this. Since the application is not presently as advanced as that of the proposed development I consider it likely that the decision on that application will be taken after that on the proposed development. I therefore consider that cumulative effects can effectively be considered in the decision-making process on that development. I understand that it is proposed at a site that lies to the north east of the existing Camster windfarm, on the opposite side of it from the proposed development. I have not found that the proposed development would have any significant cumulative effect with the existing Camster windfarm. In view of this, I do not consider it likely that significant cumulative effects would arise with the Camster II windfarm either.

3.194 While I understand that proposals for windfarms on Stemster Hill and Dunbeath are being scoped, no application has yet been made for those developments. In the absence of an application, it is not practically possible for me to consider the proposed development's cumulative effects with it. That must be a matter for any future application for that windfarm. It is possible that an application might be made for one or more of those developments before the present application is determined. I consider though that, since the present application is further forward in the planning process, any cumulative effects those developments might have with the proposed development can adequately be considered when the applications for those developments are determined.

Siting and design

Design

3.195 Stacking or spacing effects are inevitable from some viewpoints for most windfarms, particularly of the proposed scale. I have not found such effects to be disproportionate at any viewpoint. I also do not consider that the partial screening of certain turbines at several viewpoints represents an effect that is greater than might be expected for such a development. I consider that, in these respects, the proposed development is consistent with SNH's guidance in *Siting and Designing Wind Farms in the Landscape*⁸⁷.

3.196 The applicant's Design Statement indicates that the applicant recognised and sought, to a degree, to mitigate the proposed development's effect on Roster and viewpoints to the east and north east⁸⁸. It describes how over the several design reviews, turbines proposed to the east of the present application site were removed from the design initially proposed.

Siting in the context of the Sensitivity Appraisal and 2014 Cumulative Assessment

3.197 The Sensitivity Appraisal provides an assessment of landscape capacity for further wind-energy development in Caithness. Although it is part of the development plan, there is little policy in it. It is useful in identifying matters for assessment of the proposed development's landscape and visual effects. It is however no substitute for detailed assessment such as that provided in the environmental information accompanying the application.

3.198 The proposed development would be located at the edge of the relatively large CT4 LCT. Parties are in dispute on several points as to the Sensitivity Appraisal's advice:

- whether the application site falls within an elevated transition from the coast into the moorland interior;
- whether the Sensitivity Appraisal advises that development of the type proposed should avoid the elevated transition from the coast into the moorland interior;
- whether the position of the proposed development can be compared with that of Buolfreich and Burn of Whilk windfarms, referred to in the Sensitivity Appraisal as "prominent"; and
- the degree to which the proposed development can be said to comply with the Sensitivity Appraisal's advice to concentrate with and consolidate existing clusters.

3.199 As regards the first point, the application site is at the edge of CT4. It has a south-easterly aspect, inclining towards the sea, unlike much of CT4. However, the fabric of the landscape at the application site is unlike the CT2 landscape. It has very little of the field divisions or croft houses seen in CT2 that might serve as scale indicators. Where the forest has been felled, the landscape is simple and open. I agree with the applicant that the landscape to the south of the proposed development, within CT2, is transitional, with houses and field divisions becoming less frequent close to the application site. The application site is set back about five kilometres from the coast. This appears to accord with the recommendations of the 2014 Cumulative Assessment, acknowledged by the

⁸⁷ [CD 090 Siting and Designing Windfarms in the Landscape](#)

⁸⁸ [CD 005 Design Statement](#)

council to be a background document in creating the Sensitivity Appraisal⁸⁹. I find that the proposed development is not within the sensitive transition referred to in the Sensitivity Appraisal's paragraph 2.4, but just beyond it. That said, such areas are not defined by a bright line. The application site has some of the sensitivities of the transitional area to the south, particularly because its turbines would be conspicuous in parts of CT2.

3.200 The advice at paragraph 2.4 of the Sensitivity Appraisal against locating turbines in the more elevated transition from rolling agricultural landscapes to the moorland interior relates (expressly at least) only to small and micro turbines. The council's case that it also relates to the construction of large-scale turbines relies upon that being implied. It is not plain that it is implied.

3.201 There is no express advice for CT4 (such as that given in respect of CT9) that turbine development should be pulled back from the LCT boundary. The Sensitivity Appraisal gives the CT4 LCT the highest rating of sensitivity to small individual turbines, but the second lowest rating of sensitivity to large-scale windfarms. Much of the existing windfarm development in CT4 occurs at sites upon the LCT's fringe.

3.202 The Sensitivity Appraisal is not explicit as to why it advises small or micro turbines should avoid the sensitive transition to the moorland interior or why the CT4 landscape is particularly sensitive to the development of such turbines. The 2014 Cumulative Assessment⁹⁰ advises that small-medium turbines (as well as turbines much larger than 100 to 120 metres) would be inconsistent with the existing pattern of wind energy development in an area including the application site. In view of this, I conclude that, in terms of the Sensitivity Appraisal's advice, turbines of the proposed height could be acceptable at the application site, even if small turbines are not.

3.203 The Sensitivity Appraisal does make adverse comment on the prominence of the commercial-scale Burn of Whilk and Buolfruich⁹¹ and the medium-scale turbine at Latheronwheel⁹², on the transition to the moorland interior. I do not consider that the proposed development would be similarly prominent, though. The Sensitivity Appraisal likens driving through the CT2 landscape character area to experiencing a series of rooms partially contained by elevated spurs of the Sweeping Moorland. Both Buolfruich and Burn of Whilk windfarms are located on such spurs of the CT4 landscape, causing them to be prominent in the CT2 landscape. The proposed development would have the high ground of Ben-a-Chielt, Stemster Hill, Cnoc an Earrannaiche and Hill of Mid-Clyth on either side. This would limit longer views to the proposed development from within the CT2 landscape. Notwithstanding the site's aspect, the proposed development would be set back from the coast or coastal settlement. It would not occupy a position similarly prominent to Buolfruich or Burn of Whilk.

3.204 The Sensitivity Appraisal's paragraph 2.4 indicates that there is limited potential for larger-scale development within parts of the moorland interior of Caithness, though further development should be concentrated within existing clusters to consolidate them. I understand the purpose of this advice to be to limit cumulative effects of further wind-energy development. The 2014 Cumulative Assessment was carried out with a view to identifying opportunities for further wind-energy development in Caithness, from a point of view of

⁸⁹ [APP 02.003 2014 Cumulative Assessment](#), paragraph 10.8

⁹⁰ [APP 02.003 2014 Cumulative Assessment](#), paragraph 10.28

⁹¹ CD 076 [Sensitivity Appraisal](#) page 101

⁹² CD 076 [Sensitivity Appraisal](#) page 97

cumulative landscape and visual effects. ES figures 7.5A to 7.5C show the proposed development's location plotted in the context of the recommendations of the 2014 Cumulative Assessment. The assessment took into account landscape sensitivity and the sensitivity of certain receptors, including the A99, the Grey Cairns of Camster, Lybster and Lybster Golf Club, to visual effects.

3.205 Offshore turbines were not taken into account in the 2014 Cumulative Assessment. Nonetheless, I find, given the proposed development's set-back from the coast, that the proposed development can still be said (as the 2014 Cumulative Assessment found) to be sited in association with existing patterns of development, so that its cumulative effects on the Caithness landscape would be limited. I consider that this is consistent with the purpose of the advice given in the Sensitivity Appraisal with regard to CT4.

OWESG siting and design criteria

3.206 Of the criteria in OWESG paragraph 4.17, the proposed development's accordance with criteria 1, 3, 4, 5, 6, 8 and 10 is at issue between the council and the applicant. Council officers also set out their assessment of the proposed development's accordance with the criteria in the committee report⁹³. Their assessment was that the proposed development did not meet criteria 2, 3 and 5, though in the case of criterion 5, for a different reason from that advanced by the council at the inquiry.

3.207 Each of the criteria has a general measure and, in respect of the measure, a threshold that a proposed development ought to comply with (though, as I have noted, the criteria do not represent a policy test the proposed development must pass, but only provide a framework for the proposed development's assessment).

Criterion 1: The perception of settlements being encircled by wind energy developments

3.208 Criterion 1's threshold requires that turbines are not visually prominent in the majority of views within or from a settlement or key location or from most of its access routes. How the proposed development's effect on Lybster measures against the criterion is at issue between the parties. The criterion applies to the settlement within the boundaries defined in the development plan⁹⁴.

3.209 The sole viewpoint within the Lybster's settlement boundary as defined in the development plan is viewpoint 6 (Bayview Hotel). Viewpoint 5 lies on the A99 on the western approach to Lybster. I do not consider either viewpoint 6 or viewpoint 5 is typical of views from public places or private houses in Lybster to the proposed development.

3.210 There are relatively few properties within the settlement boundary that have their main aspect to the north and would obtain a direct view of the windfarm. The Bayview Hotel at viewpoint 6 is unusual in having such a view. Seaview House, near the head of the path from the harbour, is another that would have such a view. Some properties, particularly those just west of the settlement boundary, are oriented for sea views and so have rear windows facing north. For the most part though, the houses within the settlement on its western side are oriented into the settlement. Views from properties towards the proposed development in the north west tend either to be direct views from the rear or, more commonly, oblique views from the rear.

⁹³ [CD 12 Highland Council North Planning Applications Committee Report 12 September 2017](#), Appendix 2

⁹⁴ The settlement boundaries are shown in [CD 074 Caithness and Sutherland Local Development Plan](#) page 38

3.211 There would be views to the proposed development from some of the village's public areas, including the area north of the village hall and from Jeffrey Street. There would also be views from pedestrian paths to the west of the village, including the Back Path (core path CA10.12) and the head of the path from the Harbour Road to the Bayview Hotel (CA10.15). The proposed development would be likely to have significant visual effects in these areas. The public spaces of the village around the Quatre Bras crossroads and south of the village hall are contained though. For most of the village, views to the proposed development from public spaces would be largely screened by buildings.

3.212 The proposed development would be conspicuous on main approaches to the village but not, in most cases, prominent. The access routes include the A99, the C1053, the road to Upper Lybster, and minor road to Hillhead, and also the paths approaching the village. The proposed development would be seen in front views of vehicles travelling from Lybster to Upper Lybster or Achavanich, but vehicles returning to Lybster from those locations would have passed the proposed development and lost it from view some time before. On the A99, the proposed development would be set back in the landscape and views both entering and leaving the village would not generally be towards it. It would be seen in front views travelling east in a 1.5 kilometre section of road by Occumster, but that is not immediately outside the village. On the Back Path, as with the A99, it would be seen set back in the landscape, though it may have a greater effect, given that walkers on the path would have more time to view the landscape. On the path from Invershore to the harbour, and other paths around the south of the settlement, it would be seen at a distance intermittently. The views from the Hillhead road immediately before the village would be limited by the buildings of the settlement. Overall, I do not find that the proposed development is visually prominent from most of its access routes.

3.213 The council raised the cumulative visual effect of the proposed development upon Lybster along with the offshore turbines and the Burn of Whilk windfarm in its evidence on criterion 1 (although not in its original objection). Many of the objections from members of the public also related to the proposed development's cumulative effect upon Lybster, referred to by, for instance, Councillor Andrew Sinclair, as a perception of encirclement.

3.214 There would be few public spaces or buildings within the defined boundary of the village where not only the proposed development, but also either the offshore windfarms or Burn of Whilk could be seen. As Mr Steele acknowledged, there are no significant cumulative effects at either viewpoint 5 or 6.

3.215 The Burn of Whilk turbines and offshore turbines would be visible on access routes to the proposed development. Given its distance and the intervening topography, I do not consider that Burn of Whilk is visually prominent on any of the access routes. The offshore turbines are undoubtedly a conspicuous element of the view out to sea, particularly at the settlement's southern end, and on the paths to Invershore and to Shelligeo. There are some locations on the approach to the settlement where the proposed development and the offshore turbines or Burn of Whilk turbines would be an appreciable element of the wider view for someone approaching or leaving it. The offshore turbines, Burn of Whilk and the proposed development would be seen at some locations outside the village, for instance at Ibby's bench on the path from Invershore, which was referred to in evidence by Mr Steele. However, I do not consider that even at that location, the turbines in the wider view would be prominent or that there would be any oppressive sense of Lybster being encircled.

3.216 Overall, I find that the proposed development broadly meets criterion 1.

Criterion 2: The extent to which the proposal reduces or detracts from the transitional experience of key gateway locations and routes

3.217 As regards criterion 2, council officers considered that the proposed development's effect on the A9 at Borgue (viewpoint 17) caused it not to meet the criterion. The council did not object on this ground though. The view from Borgue is one of the key views identified in the Sensitivity Appraisal⁹⁵ and the A9 one of the key routes. The table of key views identifies its value as lying in the unobstructed view along the coastline from the road. It states that the eye is drawn to the details of the coastline. The proposed development would be at some remove from the coastline, over 17 kilometres from the viewpoint, in the context of a broad view in which the Burn of Whilk and Berriedale and Dunbeath turbines would already be seen. I do not consider the proposed development would significantly detract from the view at Borgue. I find the criterion to be met.

Criterion 3: The extent to which the proposal affects the fabric and setting of valued natural and cultural landmarks

3.218 The council has not sought to argue that there is an adverse effect of the Grey Cairns of Camster's setting as an ancient monument, but does argue that the proposed development has an adverse effect upon the cairns' visual setting. Given my findings in respect of viewpoint 1 and Mr Steele's additional viewpoint at the cairns (MSC1), I consider that the proposed development meets criterion 3 in respect of the cairns.

3.219 Objectors have referred to the proposed development's effects on other natural and cultural landmarks. I agree with the assessment of the council officers and witnesses that it meets the criterion in respect of such other landmarks. Historic Environment Scotland has not objected to the proposed development in respect of its effect on the setting of any historic asset.

Criterion 4: The extent to which the proposal affects the amenity of key recreational routes and ways

3.220 Mr Mason acknowledged that criterion 4 would not be fully met, since the proposed development would have significant adverse effects on certain core paths, which are listed as a type of "key recreational route". I agree with Mr Mason. In doing so, I acknowledge that recreation is not the sole purpose of the designation of core paths. They are a system of paths intended to be sufficient for the purpose of giving the public reasonable access throughout the local authority's area. They can, as SNH sets out in its guidance, simply satisfy the basic path needs of local people for getting about, as well as for recreation.

3.221 In the threshold for criterion 4, there is a requirement that the proposed development should not "overwhelm or significantly detract" from the route. I interpret "significantly detract" to mean something less than "overwhelm". The effect is to be judged in the context of the whole feature though, taking into account its sensitivity to such effects. The proposed development would not necessarily fall below the threshold if, for instance, there was a significant adverse effect at one viewpoint. An "overwhelming" effect would have greater weight as a consideration than an effect that only "significantly detracted" from the feature to which the criterion relates.

⁹⁵ CD 076 [Sensitivity Appraisal](#) page 89.

3.222 There are a number of core paths in the vicinity of the proposed development⁹⁶. The ES acknowledges a significant effect upon core path CA10.11 from Achavanich to Munsary and on open stretches of core paths through the Rumster⁹⁷ forest and the Toftgun forest⁹⁸.

3.223 Mr Steele criticises the ES for not identifying significant visual effects upon three core paths. He supplied additional photographs in respect of the effect on these paths. I have already noted effects on two, the Back Path (CA10.12) and the path from the Bayview Hotel to the Harbour Road (CA10.15). It appears to me that passage rather than recreation is the main purpose of these two paths. Though I have no doubt they are also used for recreation, I consider that their primarily utilitarian nature means their sensitivity to impacts on their amenity as recreational routes is low. The proposed development would only have an impact at the Bayview Hotel end of the path from Harbour Road. I do not consider that the proposed development would significantly detract from the amenity of either as recreational routes.

3.224 As regards the third, the path to the coastguard lookout and Brethren Well (CA10.01), the proposed development would be intermittently visible, rather more than five kilometres inland. It would not be visible from the viewpoint marked on the ordnance survey map, nor from the Brethren Well itself. The main interest is in views out to sea and along the coast. The offshore turbines and Burn of Whilk would also be seen from the path. However, the additional effect of the proposed development would be limited. I do not consider it would have a significantly detract from the path's amenity either individually or cumulatively.

3.225 I therefore find that the proposed development would meet the criterion except in relation to several core paths at a distance of up to three kilometres or so from its boundary.

Criterion 5: The extent to which the proposal affects the amenity of transport routes

3.226 The ES reported significant effects upon the A99 between Latheron and Mid-Clyth and upon minor roads in the vicinity of the development site. It reported no significant effects on the A9 or any other road beyond 10 kilometres from the proposed development. I accept this broad assessment. I consider that the viewpoint survey is representative of the degree of effect upon the road network within 10 kilometres.

3.227 I have rejected Mr Steele's assessment that the A99 and the route to the Grey Cairns of Camster are to be treated as having a higher sensitivity as a consequence of the NC500 designation. I have taken a similar view in respect of the route to the Grey Cairns (a "hidden gem" of the NC500).

3.228 The degree of effect that the proposed development would have between Latheron and Mid-Clyth would vary, and would not be uniformly significant. This is demonstrated by viewpoint at Burrigill (viewpoint 7). I agree with Mr Mason's evidence that, for a traveller along the route from Latheron to Lybster the natural focus of views would be ahead and to the right, along the coast and out to sea. The proposed turbines would be on the left set back from the road. For a traveller from Wick to the south west, the proposed development would be more conspicuous from the turn in the road just before Occumster. I agree with Mr

⁹⁶ The relevant sections of the core path plan are provided in documents [THC 09](#), [10](#) and [11](#).

⁹⁷ Although the ES refers to the "Golticlay Forest", the Rumster forest, immediately south west of the proposed development, is evidently what is meant.

⁹⁸ [ES volume 2 Main text](#), table 7.11

Mason though that the turbines would appear as a rational group, and would be set in a wide landscape. I do not consider that in either direction the proposed development would significantly detract from the A99's appeal.

3.229 I find that the proposed development would significantly detract from the visual appeal of the C1053 and of other local roads, including the roads to Achow, Upper Lybster and Roster. In this sense, the proposed development does not meet the criterion. It would, though, be unusual for a commercial windfarm to avoid having such an effect on some roads.

3.230 Overall therefore, I find that the proposed development would fail to meet the criterion only in respect of local roads.

Criterion 6 The degree to which the proposal fits with the existing pattern of nearby wind energy developments

3.231 As regards criterion 6, I agree with the council's officers that the proposed development is visually separated from other schemes within the Sweeping Moorland and Flows Landscape Character Type. In its height and proportions, it would not be perceived as out of keeping with existing development. Its density and spacing is such that stacking and irregular-spacing effects are not greater than would be expected for the proposal's size. In its particular siting at the edge of LCT CT4, it is not contrary to the Sensitivity Appraisal's recommendations. Its siting and design minimises cumulative effects taking account of its proposed scale. I consider that the criterion is met.

Criterion 8 The extent to which the proposal maintains the apparent landscape scale and/or distance in the receptors' perception

3.232 As regards criterion 8, although the proposed development would be seen on the skyline from Lybster, I do not consider the skyline is prominent. From Upper Lybster and other scattered settlements to Lybster's north, the proposed development would generally be seen in the context of the Sweeping Moorland landscape, to which it would be subordinate in scale. I consider that the design minimises adverse effects on scale and distance, and the criterion is met.

Criterion 10 The extent to which the proposal affects the distinction between neighbouring LCTs in areas where variety of character is important to appreciation of the landscape

3.233 The proposed development is entirely located in the larger-scale CT4 Sweeping Moorland LCT. I do not consider it would affect the distinction between the CT4 and CT2 landscape.

3.234 Council officers suggested that the view of the proposed development from Borgue (viewpoint 17) would have an effect contrary to criterion 10. While I acknowledge that there may be some such effect, I consider it would be limited given the distance and set back of the proposed development from the coastal landscape.

3.235 I find the criterion overall to have been met.

Visual effects on dispersed settlements near Lybster

3.236 A number of the objections received in respect of the proposed development referred to adverse visual effects on Lybster, particularly cumulative effects. Although I

have addressed such effects upon the settlement of Lybster as defined in the development plan, I understand the concerns expressed by objectors to go wider than just the effects upon the defined settlement. Councillor Sinclair, for instance, refers to “Lybster and its scattered settlements” being surrounded by windfarm development⁹⁹. Mr Nigel Shelton referred to the area of Lybster including small farms and crofts and specifically Upper Lybster¹⁰⁰.

3.237 Mr Steele, in giving evidence for the council, also argued that there was an effect of encirclement of the Lybster and Upper Lybster (defined to include Upper Lybster itself, Roster, Achow and Oslay). The council argued that, although the scattered settlements are not relevant in respect of an assessment of the proposed development against OWESG criterion 1, the visual effect upon them is a material consideration¹⁰¹. I agree. I am not convinced, though, that it is correct to treat all these settlements as a single receptor, as Mr Steele and the council appear to do.

3.238 I have considered effects at viewpoints 2, 3, 4, 5, 7, 8 and 9 all outside the Lybster settlement boundary within the “room” in the landscape described in the Sensitivity Appraisal between Ben-a-Chielt and the Hill of Mid-Clyth. In my view, my findings in respect the level of effect at those viewpoints are representative of the visual effects upon the scattered settlements and individual houses north and west of Lybster.

3.239 In their daily lives, people in the scattered communities will need to travel to the shops, school and other facilities in Lybster. They, and residents of the village of Lybster, will often have to travel to Wick. In doing so, they will encounter views of the proposed development and other windfarms in the area. There are some places, such as Roster, where the adverse visual effects would be of a high degree, but that is not universal in all the scattered settlements around Lybster. This is not to minimise the significant adverse visual effects in the area.

3.240 If Ministers’ policy objectives in respect of renewable energy, and wind energy in particular, are to be realised, there will inevitably be some significant visual effects as a consequence of development. A higher degree of protection in policy is accorded to defined settlements than to houses lying outside settlement boundaries. The community separation distance in the spatial framework provided in SPP table 1 relates to settlements defined in the development plan. OWESG makes a similar distinction. Generally speaking, a significant effect on a defined settlement will be a matter of greater weight in a decision than an effect on a single house or a scattering of houses.

Overall conclusions on landscape and visual effects

3.241 The proposed development would have significant landscape and visual effects. In my view, though, those effects are relatively confined for a development of the proposed scale. I do not find them disproportionate to a development of the proposed scale. Although the proposed development does not fully meet two of the OWESG design criteria, it broadly complies overall with both SNH and Highland Council guidance on siting and design. The applicant has sought, through design, to provide reasonable mitigation for

⁹⁹ [Councillor Andrew Sinclair – statement at evening session](#)

¹⁰⁰ [Mr Nigel Shelton – statement at evening session](#)

¹⁰¹ [Council closing submissions](#), paragraph 41

landscape and visual effects where they arise, in accordance with the requirement of the Electricity Act 1989 schedule 9.

The council's evidence and the extent of its objection

3.242 Mr Fraser, the applicant's counsel, argued that evidence given by Mr Steele, the council's witness, at the inquiry and also certain of the council's closing submissions go beyond the objection that the council made. In closing, he states that, "whatever Mr Steele's views may be, the council's objection is limited to the matters raised in its formal reasons for objection."

3.243 There are aspects of Mr Steele's evidence that the applicant could not easily have anticipated from a consideration of the council's objection. These include his evidence on the proposed development's effect on landscape, its visual effects on the Grey Cairns of Camster, the cumulative visual effect on Lybster in combination with other existing developments, or his evidence in respect of whether the proposed development was located on the landscape transition between LCTs CT4 and CT2.

3.244 Mr Fraser, the applicant's counsel, dealt with a number of such points in his cross-examination of Mr Steele. The applicant did not, however, object to the council's case at the time the council's inquiry statement was submitted, at the time Mr Steele's written evidence was submitted or in the course of oral evidence. Mr Fraser has not suggested that Mr Steele's evidence is not material to the decision that Ministers have to make.

3.245 Ministers, in taking their decision on the proposed development, must take account of all material considerations. I have therefore sought in this report simply to address the matters raised in Mr Steele's evidence directly and to assess them insofar as they are relevant to the decision that Ministers must take.

3.246 Mr Fraser also noted that the council had not led evidence on the acceptability of the proposed development's landscape and visual effects. I understand from the fact the council objected that it considers the proposed development's landscape and visual effects to be unacceptable. I have considered the degree of effects in this chapter. I will consider their acceptability in my conclusions.

CHAPTER 4: ORNITHOLOGY

Introduction

4.1 The effects of the proposed development on ornithology are assessed in ES chapter 10¹⁰². This was supplemented by the 2017 FEI chapter 10¹⁰³ which responded to matters raised by SNH¹⁰⁴, RSPB Scotland¹⁰⁵ and others in the consultation on the ES. The ornithological effects of the proposed enabling works to the C1053 road were assessed in sections 3.9 and 3.10 of the 2018 AEI¹⁰⁶. I subsequently made a request for information to verify findings in the environmental information submitted by the applicant¹⁰⁷. The applicant and RSPB provided further written submissions in response¹⁰⁸.

4.2 The applicant has also provided a draft habitat management plan (HMP)¹⁰⁹ for the application site and draft construction environmental management plan (CEMP)¹¹⁰. The HMP includes proposals for a change in land use at the application site from that proposed in the East Caithness Land Management Plan (LMP). Instead of re-stocking the centre of the site with broad-leafed peatland-edge woodland, the HMP proposes to restore an additional 213 hectares to peatland. It also sets out measures, including sward management, restocking of keyholded sites for rapid canopy closure and bird deterrents, to dissuade raptors from breeding within 500 metres of the turbine envelopes during the proposed development's operation. The CEMP includes (in chapter 8) draft species protection plans, including a plan for hen harriers.

4.3 The environmental information submitted by the applicant identified no significant effects upon ornithology, following mitigation.

4.4 The council initially objected in respect of the proposed development's effect on osprey. It subsequently withdrew this objection and agreed with the applicant that the proposed development, taking into account the effects of the works to the C1053, was acceptable in respect of considerations relating to ecology and ornithology including impacts on protected species (including osprey) and designated sites.

4.5 I had arranged a hearing session in respect of the proposed development's effect upon osprey. The applicant provided a hearing statement¹¹¹ for that hearing session, but no other party did so. I therefore did not hold the hearing and accepted the statement as written evidence.

Main points for Scottish Natural Heritage (SNH)

4.6 Scottish Natural Heritage, by its letter dated 4 August 2017, withdrew its initial objection to the proposed development subject to certain conditions being imposed. It

¹⁰² [CD 004b ES Vol 2a](#) Main report, chapter 10

¹⁰³ [CD 007a, 2017 FEI Vol 1](#) chapter 10

¹⁰⁴ [SNH response to ES – 13 January 2017](#)

¹⁰⁵ [RSPB response to ES – 16 December 2016](#)

¹⁰⁶ [2018 AEI](#)

¹⁰⁷ [Request for verification of ES findings](#)

¹⁰⁸ [Applicant written submission](#); RSPB written submission 19 December 2019 (not published); [Applicant response to RSPB](#) 9 January 2020

¹⁰⁹ [2017 FEI supplementary document – draft Habitat Management Plan](#)

¹¹⁰ [2017 FEI supplementary document – draft Construction Environment Management Plan](#)

¹¹¹ [Hearing statement on osprey](#)

advised that Ministers are required to carry out appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (referred to below as “the Habitats Regulations”) in respect of the proposed development’s likely effects upon the Caithness and Sutherland Peatlands Special Protection Area (SPA) and East Caithness Cliffs SPA.

Caithness and Sutherland Peatlands SPA

4.7 Hen harrier, short-eared owl and merlin are qualifying interests of the SPA. The proposal is likely to have a significant effect in terms of the Habitats Regulations on breeding hen harrier, short-eared owl and merlin from the SPA through construction-related disturbance and collision risk during operation. An appropriate assessment of the proposed development’s effects under the Habitats Regulations is required.

4.8 The risk of disturbance to breeding raptors can be mitigated by avoiding carrying out construction works during the breeding season or, if this is not possible, by carrying out pre-construction surveys for breeding hen harrier, short-eared owl and merlin following best-practice guidance with any necessary mitigation implemented to avoid disturbance.

4.9 A hen-harrier winter roost was identified in surveys for the proposed development. Birds using the roost may be displaced from it. The roosting birds are, however, unlikely to be SPA birds. Wintering hen harriers generally disperse widely from their breeding areas. A precautionary approach should be taken, though, that the roosting birds are SPA birds. Nonetheless, their displacement would be unlikely to have an adverse effect upon the SPA population due to the relatively infrequent use of the roost (which suggests alternative roosts are available).

4.10 The collision risk to hen harrier, short-eared owl and merlin identified in the ES can be mitigated by applying the principles in the draft HMP, in particular the removal of peatland-edge woodland proposed in the East Caithness LMP, by applying management measures to sward height, and long-term sward monitoring.

4.11 Subject to the identified mitigation measures, the proposed development would not adversely affect the integrity of the SPA.

East Caithness Cliffs SPA

4.12 Herring gull and great black-backed gull are qualifying interests of the East Caithness Cliffs SPA. Individuals of these species were observed at the application site. The proposed development would be likely to have a significant effect in terms of the Habitats Regulations on herring gulls and great black-backed gulls from the SPA as a consequence of collision risk. The Scottish Ministers should carry out appropriate assessment under the Habitats Regulations in respect of these effects.

4.13 The prediction of a collision rate of 0.8 herring gulls per year in the 2017 FEI is accepted. This brings the cumulative total for the SPA to 24 birds per year. Such a cumulative collision rate is unlikely to have an adverse effect upon the SPA herring gull population.

4.14 The predicted collision rate for great black-backed gulls is relatively low. When the number of non-breeding and sabbatical birds is factored in, it would represent around 0.16 breeding adults per year, based on worst-case-scenario estimates in the ES. There were very few flights recorded in the non-breeding season and none at collision-risk heights. On

the basis of the information provided, it can be concluded that the proposed development would not, either on its own or in combination with other projects, affect the great-black-backed-gull population as a viable component of the SPA.

4.15 The proposed development would not adversely affect the integrity of the SPA.

Main points for RSPB Scotland

4.16 RSPB objected to the proposed development. It set out a number of continuing concerns¹¹² following the applicant's provision of the 2017 FEI. These related to potential cumulative and in-combination pressures on Schedule 1/Annex 1/Red-listed birds of conservation concern in the local area of the proposed development, loss of the potential benefit to qualifying interests of the Caithness and Sutherland SPA and other birds of conservation concern associated with the current East Caithness LMP, effects on osprey, and possible under-estimation of the application site's importance to hen harrier, merlin and short-eared owl.

Cumulative and in-combination effects

Herring gull and great black-backed gull:

4.17 Cumulative barrier effects may be a particular concern. An assessment is required of how existing and proposed wind energy schemes might affect gulls' travel between coast and inland areas and any implications for their survival or reproductive fitness.

4.18 In its qualitative assessment of the proposed development's potential barrier effect¹¹³, the applicant assumes that breeding gulls from the East Caithness Cliffs SPA are commuting to one inland foraging site: the Seater landfill. This assumption should be justified. Data on turbine-avoidance behaviour of gulls is limited, and the precautionary principle should be applied. The applicant estimates an additional 2.5% energy requirement for 9.9% of the herring-gull population of the SPA and 1.5% of the great-black-backed-gull population. This additional energy expenditure may become more important as the species increasingly have to forage inland, due to falling fish stocks. Both species are vulnerable. Given that the applicant has identified connectivity with the SPA and an effect on SPA populations, it cannot be concluded with the necessary degree of certainty that there is no likely significant effect arising from the potential barrier effect. An assessment should be made of the effect against the SPA's conservation objectives, particularly as regards species viability and distribution within the SPA.

4.19 The applicant has not carried out an in-combination assessment of the barrier effects. Given the applicant's estimate of an energetic impact on almost 10% of the herring gull population as an individual consequence of the proposed development, the applicant should have gone on to make an in-combination assessment. There is not a justification in SNH guidance for failing to do so. In such an assessment the effect of the offshore windfarms should also be taken into account. Ministers cannot determine with the requisite degree of scientific certainty that there would not be an adverse in-combination effect on the SPA's integrity.

¹¹² [RSPB response to 2017 FEI - 31 July 2017](#)

¹¹³ See [Applicant written submission – 3 December 2019](#)

Arctic skua:

4.20 The habitat available to breeding arctic skua in east Caithness may have been substantially reduced by the cumulative effect from the growing expanse of wind-energy developments and the combination of barrier effects and displacement by turbines. RSPB accepts though that, given the location of arctic skua territories in respect of the proposed development, there would be little scope for barrier effects to nearby breeding individuals.

Golden plover:

4.21 The applicant should have made estimates of the lower- and upper-bound cumulative displacement effect relative to the population of this species in the Caithness and Sutherland Peatlands SPA and the Natural Heritage Zone (NHZ) 5 population. By entering zero values for sites where no data was available, the applicant may have underestimated the cumulative displacement effect on golden plover.

4.22 While the applicant has assessed the cumulative golden-plover displacement impact against the SPA population, it has not provided the necessary underlying data (such as the list of developments and their planning status) to evaluate it. All developments that have a displacement effect upon the SPA population, not just those within 25 kilometres of the proposed development, should have been included for a full and accurate assessment of the impact. Without this information, it is not possible to conclude that there would be no likely significant effect on the SPA.

Cumulative effect on NHZ 5 bird populations

4.23 The assessment in the ES could have underestimated the cumulative effect on bird populations in NHZ 5. The windfarms taken into account in the cumulative assessment were within a 25-kilometre radius of the proposed development. They did not include all windfarms within NHZ 5. Although in further written submissions, the applicant has provided a cumulative assessment of collision impacts for all developments in NHZ 5, information on the developments included in the cumulative assessment has not been provided.

4.24 Most of the bird species in the cumulative assessment are also qualifying features of the nearby Caithness and Sutherland Peatlands SPA or East Caithness Cliffs SPA. Given that NHZ 5 is within connectivity distance for those species, the assessment should be carried out against the SPA population for those species. The effects on those designated sites are not clear and that information is required for the Habitats Regulations assessment.

Underestimation of the site's importance to hen harrier, short-eared owl and merlin

4.25 The applicant could have under-rated the importance of the application site to hen harrier, merlin and short-eared owl. While RSPB acknowledges these would not have nested amongst densely planted conifers, they could have been nesting in hard-to-access felled areas.

Osprey

4.26 The RSPB also remained concerned about the proposed development's effect upon osprey. It welcomed the provision of the artificial nest site. Alison Searl, an officer of

RSPB, however, saw an osprey over the area of the proposed turbines in May 2017. The effectiveness of the artificial nest site in reducing risk is still to be proven.

Negation of benefits that would otherwise be obtained from the East Caithness LMP

4.27 The withdrawal of the forest edge from the Caithness and Sutherlands Peatlands SPA and associated bog restoration proposed as part of the East Caithness LMP would result in benefits for qualifying-interest species of the SPA, which are all open-ground specialists. The presence of the proposed development's turbines is likely to negate most or all of the benefit for the SPA that would otherwise have arisen from the LMP.

4.28 Although RSPB supported the applicant's proposals to discourage raptors from entering the turbine envelopes, such a measure would negate any benefit of increased foraging habitat that would otherwise have arisen. The thirteen turbines within the restored area of blanket bog should be deleted from the proposed development. If consent is granted, a post-consent monitoring programme should be carried out to verify the ES's conclusions with regard to the proposed development's effect on wader species.

4.29 The East Caithness LMP is being updated. The revised version is likely to replace the currently proposed peatland-edge woodland with bog restoration. The applicant's claim that its proposals would increase the area of restored peatland habitat by 66% is therefore incorrect. The benefits of bog restoration can be obtained without the proposed development.

4.30 Any net gain to upland wader species is not guaranteed due to disturbance and displacement effects of the proposed development. A previous study by Sansom et al (2016) identified a marked reduction in golden plover breeding abundance at the Gordonbush windfarm.

4.31 The lessening of potential benefits to some qualifying interests of the SPA is unacceptable. In the absence of a windfarm, there would be no need to dissuade raptors, including hen harrier and short-eared owl from breeding at the site.

Other parties

4.32 A number of other parties raised questions about the proposed development's effect on a range of bird species and habitats, including effects on golden eagle, white-tailed eagle, osprey, buzzards, hen harrier, peregrine, whooper swans, breeding waders, long- and short-eared owl, migrating birds, passerines such as whinchat and crossbill.

Main points for the applicant

The ornithological assessment

4.33 The applicant assessed the effects of the proposed development in accordance with the guidance of SNH, the government's advisor on ecology. It found that the proposed development would have no significant residual effect on any ornithological receptor. Following the 2017 FEI, SNH did not have any outstanding concern either about the quality of the environmental information or the effect on any species or designated area.

4.34 Although RSPB Scotland expressed concerns about the cumulative effect of the proposed development on other bird species, SNH did not share those concerns. SNH advised specifically that there would be no significant effect upon the integrity of either the

Caithness and Sutherland Peatlands SPA or the East Caithness Cliffs SPA. Ministers must have regard to and attach weight to SNH's advice. An approach should be taken to ecological assessment that is proportionate to the scale of the development and complexity of its potential impacts. Although Habitats Regulations assessment is required in respect of the SPAs, and the applicant acknowledges that this requires Ministers to be satisfied beyond reasonable scientific doubt, even Habitats Regulations assessment does not require absolute certainty. It is permissible to work with probabilities and estimates, so long as they are identified, reasoned and precautionary.

Osprey

4.35 Osprey is listed in the Birds Directive annex 1 and in the Wildlife and Countryside Act 1981 schedule 1 as a threatened species. It is a Scottish Biodiversity List priority species and is included on the UK Birds of Conservation Concern Amber List, its status having declined historically, but now having recovered. It remains a rare breeder.

4.36 In 2016 there were estimated to be 216 pairs in Scotland. The most recent modelled estimate of the number of breeding pairs in the two NHZs closest to the proposed development are one in Orkney and North Caithness (NHZ 2) and eight in the Peatlands of Caithness and Sutherland (NHZ 5). Although the proposed development is in NHZ 5, it is close to the boundary with NHZ 2 and many of the waterbodies at which an osprey might forage lie within NHZ 2. Consequently the applicant's assessment considered the effects of the proposed development on the osprey population of NHZ 2 and NHZ 5 combined.

4.37 An osprey nest was found within the application site in the 2016/17 breeding season. This is no longer present, the tree in which it was found having been felled by Forestry Commission Scotland in planned forestry works unrelated to the proposed development. Three osprey nest platforms were erected outside the application site to prevent displacement of the osprey breeding pair from the Golticlay area and to minimise future collision risk of osprey with operating turbines of the proposed development. Osprey pairs occupied two of the three platforms in 2018.

4.38 The osprey nest platforms are located to minimise the number of flights between the nest and the foraging areas that would pass through the proposed development. Given this location of the nest platforms and good practice measures set out in the CEMP and HMP, predicted collision risk is assessed as non-significant. Cumulative collision risk with seventeen other operational, consented or submitted windfarm developments is also non-significant, when provision of the nesting platforms and removal of the nest at the application site is taken into account.

4.39 The nesting platforms are outside the range of 750 metres from the proposed development at which disturbance of ospreys by turbines could occur. If an osprey pair was to return to the application site, and be displaced by the proposed development, that would represent a significant impact of high magnitude upon the regional population. However, there would be little suitable osprey nesting habitat at the development site at the time of construction or during operation of the proposed development. While Rumster Forest might provide a nesting site, sites there would also be beyond the distance at which disturbance can occur.

4.40 No breeding activity or potential displacement effects were recorded at any of the other developments within 25 kilometres. There would be no cumulative displacement effects.

4.41 SNH raised no concern in relation to the assessed cumulative collision or displacement effects, and is taken to agree with the assessment.

Cumulative and in-combination effects

Barrier effects - herring gull and great black-backed gull

4.42 Herring gulls and great black-backed gulls are among the qualifying interests of the East Caithness Cliffs SPA. It is not possible to directly quantify the barrier effect of the proposed development on those species, or consequently its cumulative effect with existing and consented windfarms in Caithness. However, a qualitative assessment may be made of the proposed development's barrier effect.

4.43 A worst-case assumption can be made that the herring gulls and great black-backed gulls of the East Caithness Cliffs SPA traverse the application site due to breeding-season connectivity between it and Seater Landfill Site. This assumption represents a reasonable worst case in the light of typical terrestrial foraging behaviour of these species and observed flight activity at the application site. It is highly precautionary though. Seater Landfill Site is unlikely in fact to be the only foraging location used by gulls from the SPA. There would be no barrier effects for species foraging in the marine environment. If gulls from the SPA feed at a wider range of locations, then a smaller proportion are likely to traverse the application site, and the barrier effect of the proposed development would be less than indicated if the assumption is taken as correct.

4.44 On the basis of this worst-case assumption, the proposed development's turbines may act as a barrier to a small proportion of commuting birds, who may choose to alter their flight paths. Approximately 72% of herring gulls and approximately 78% of great black-backed gulls breeding in the SPA would not need to divert from a straight-line flight between their location in the SPA and the landfill site. Not all gulls would divert around the proposed development (macro-avoidance). It is known that some gulls pass through windfarms avoiding individual turbines or when close to turbine blades. Such meso- or micro-avoidance would have minimal energetic consequences.

4.45 The gulls that do avoid the proposed development as a whole would increase their journey time by at most 4.5 minutes and energy expenditure by 2.5%. This is in the context that a gull of either species might typically forage for 3.3 to 5.2 hours per trip. This worst-case additional energy expenditure would affect individuals on a 7 km length of the SPA's coastline, containing 9.9% of its herring gull breeding population and 1.5% of its great black-backed gull breeding population.

4.46 The consequences would be extremely small even for the worst-affected individuals. The demographic effects are likely to be non-existent or so small as to be undetectable, and are considered to be negligible. In accordance with SNH guidance, negligible residual effects are not carried into cumulative impact assessments. For the purpose of Habitats Regulations Appraisal, it is reasonable to conclude there would be no likely significant cumulative barrier effect on herring gulls and great black-backed gulls breeding in the SPA alone or in combination with other developments.

Barrier effects and displacement – arctic skua

4.47 Arctic skua is acknowledged to be a Scottish biodiversity list priority species and on the red list for birds of conservation concern, having suffered a severe decline in UK

breeding population over 25 years. Scotland is on the southern edge of the species' breeding range. Two arctic skua territories were found to be located within 500 metres of the application site in 2015 and 2016. These breeding pairs are estimated to represent 11.76% of the NHZ 5 population and 7.41% of the median Caithness breeding population.

4.48 The minimum distance between the arctic skua territories and the closest turbine locations was 950 metres in 2015 and 1300 metres in 2016. A study of arctic skua displacement comparing the distribution of breeding territories before and after the construction of the Stroupster windfarm in Caithness (a site that was similar in that it was within commercial forestry that had to be felled before construction) found little effect on the distribution of arctic skua breeding territories. The arctic skua territories in the study were at similar distances from turbine sites to those near the application site. Given the information from this study and the comparatively large distance between the proposed development infrastructure and the breeding territory locations, it is unlikely that birds would be disturbed or displaced during construction or operation.

4.49 The breeding territories of arctic skua were found to the east of the proposed development on its seaward side. Since arctic skua is a marine foraging species, individuals from those territories are unlikely to commute over the proposed development during foraging. There would be no scope for barrier effects to those individuals. The flight activity was consistent with local flights around those territories rather than commuting flights over the proposed development.

4.50 Given that any effects of the proposed development on arctic skua would be no more than negligible, it is not necessary to consider cumulative effects further.

Displacement – golden plover

4.51 For golden plover, the applicant used data provided by SNH for the cumulative impact assessment. The assessment took account of all potential displacement effects for sites within 25 kilometres of the proposed development. It did not add estimated values for displacement at sites where no value was provided in the data, since that could artificially inflate cumulative totals. The cumulative impact (a minimum of 12 pairs) would be non-significant disturbance assessed against the populations of NHZ 2 and 5 taken together or individually. In making this assessment, the applicant followed SNH guidance and advice.

4.52 As regards the proposed development's in-combination effect upon the Caithness and Sutherland Peatlands SPA, the impact of all sites that SNH considered to be linked to the SPA were summed with the estimated impact of the proposed development, then assessed against the SPA population. Just one other development, the Achany Wind Farm, was considered to have impacts upon birds from the SPA. At one other site, Lairg Wind Farm, connectivity with the SPA was stated to be "not recorded" and residual disturbance / displacement / foraging loss was assessed to be "vague" (14 to 28 pairs within a within a 10-kilometre square). It is very unlikely that a three-turbine development such as Lairg would displace 28 pairs. However, assuming this maximum number, the total in-combination effect on SPA birds would be 1.12% of the designated SPA population or 1.82% of the most recently estimated population. On a more realistic assessment, Lairg might result in displacement of four breeding pairs. This would give an in-combination total for displacement of 0.22% of the designated SPA population and 0.36% of the most recently estimated population. This would not represent a significant effect.

4.53 Although it is acknowledged that developments will have entered the planning process since the cumulative / in-combination assessment was submitted, those applications would generally address the cumulative / in-combination effects of the proposed development in their assessment. It is not for the applicant to provide further cumulative / in-combination assessment of applications behind it in the planning process.

Cumulative effects upon NHZ 5 populations

4.54 The ES assessed cumulative effects taking account of developments within a 25-kilometre radius of the proposed development and compared this to the population of NHZ 5. This is a standard method, used so that the number of projects taken into account is manageable, and it was accepted in this case by SNH. It is acknowledged that a cumulative total so derived may not correspond to the NHZ population. SNH compiles a regional spreadsheet with totals for all impacts in NHZ 5. When the proposed development's effects are added to these totals and assessed against the NHZ 5 population¹¹⁴, there is no change in the degree of significance of cumulative impact from that assessed in the ES and 2017 FEI.

Effect of HMP as compared with proposals in East Caithness LMP

4.55 The proposed development may lessen (though not fully negate) potential benefits to some qualifying interests that may have arisen from the peatland restoration proposed in the East Caithness LMP. Areas of the application site adjacent to the SPA may be less suitable for ground-nesting raptors if the proposed development proceeds than they would be if the LMP proposals were carried out. It is a purpose of the HMP to dissuade such raptors from nesting within 500 metres of operational turbines (thereby minimising collision risk).

4.56 The proposed HMP associated with the proposed development may provide additional benefits to certain qualifying interests in addition to those in the LMP. The 66% increase in the area of restored peatland habitat would benefit breeding wader species from the SPA, particularly golden plover and greenshank. The increase in peatland habitats would also provide more suitable foraging areas to support ground-nesting raptors from the SPA breeding population. Such benefits are likely to more-than-offset any potential displacement arising from windfarm infrastructure.

4.57 There has been a dispute about the degree of displacement of upland waders by windfarms. A recent report by Whitfield, Fielding and King concludes that previous assessment of displacement in Sansom et al (2016) is based upon flawed experimental design.

4.58 The additional peatland restoration would also provide benefits other than just to ornithological receptors of the Caithness and Sutherland Peatlands SPA. These include an increase in priority habitat within the vicinity of the SPA, additional carbon sequestration, and contribution to national peatland targets.

4.59 The applicant acknowledges that Forestry and Land Scotland is considering a revision to the East Caithness LMP and that it is possible the revised version would include greater peatland restoration. However, the existing version supplied in evidence still

¹¹⁴ [Applicant further written submission on ornithology](#), see tables 1 and 2

applies, there can be no certainty as to the revised form, and any revision is only likely to take effect in December 2020.

Reporter's conclusions

Methodology

4.60 In general, following submission of the 2017 FEI, there was limited disagreement on methodology between the applicant and other parties. SNH was satisfied with the applicant's assessment, including its methodology.

4.61 There is an outstanding dispute relating to the methodology for cumulative assessment. The RSPB raised a concern about the applicant's consideration of developments only within 25 kilometres of the proposed development in its cumulative assessment while comparing effects with the whole populations of species in NHZ 5. This would not identify the combined effect of all wind-energy developments that might affect the population of each species in NHZ 5. However, I understand that there are limits to what can proportionately be required in terms of assessment in respect of any one particular development. So long as the necessary standard of evidence to identify significant effects upon the species for the purpose of EIA is met, it is not necessary in law to obtain greater certainty.

4.62 I am aware that the applicant's method has been used elsewhere. It was accepted by SNH. The RSPB has not provided any substantive reasoning to support a finding, contrary to the evidence of the ES, that there would be a significant cumulative effect on any particular species at the level of NHZ 5, but only questioned the method of cumulative assessment. I am not convinced that an applicant should be required to provide further information on windfarms more than 25 kilometres from the proposed development to rule out a possibility for which there is no substantive supporting evidence.

4.63 The applicant has, in fact, produced cumulative information, based on data it obtained from SNH, setting out the cumulative collision and displacement effects of the proposed development on NHZ 5¹¹⁵. This serves to confirm the applicant's assessment that there would be no significant cumulative effect for species in NHZ 5. I acknowledge that the applicant has not provided the background data on which the table is based. However, since it merely confirms the outcome of cumulative assessments that I have found were acceptable in any case, I do not consider the submission of further background data is required.

4.64 RSPB's criticism of the in-combination assessment of collision risk in respect of qualifying interests of neighbouring SPAs was not made in its original objection. A specific assessment has been made of in-combination collision risk for hen harrier, herring gull and golden plover as qualifying interests of neighbouring SPAs. This took account of the proposed development's effect with all developments SNH considered would potentially affect those species as qualifying interests of the relevant SPA¹¹⁶. SNH considered the

¹¹⁵ [Applicant further written submission on ornithology](#), see tables 1 and 2

¹¹⁶ For hen harrier, see [2017 FEI](#) paragraph 10.69; for herring gull, see 2017 FEI paragraph 10.119; for golden plover see 2017 FEI paragraph 10.9.

proposed development's individual collision risk for great black-backed gull too low to require in-combination assessment¹¹⁷.

4.65 I reject RSPB's argument that because there is connectivity between the SPAs and NHZ 5, the cumulative effects upon the whole NHZ 5 population should be assessed as an in-combination effect against the designated SPA population. Such an approach would effectively assume that every effect upon the NHZ 5 population would be upon an individual from the SPA. In the absence of evidence to justify using such an assumption, it goes well beyond a reasonable worst-case assessment of impact on the SPAs. I reject RSPB's criticism of the in-combination assessment.

Osprey

4.66 The evidence indicates that the provision of nest platforms in mitigation for the removal of the nest has been successful and that the osprey pair found at the application site in 2016 has relocated to the nest platform. The maintenance of the nest platforms over the life of the proposed development could be secured as part of a species protection plan for osprey required by condition.

4.67 An increase in the collision risk as a consequence of the proposed development would have represented a significant adverse effect upon the species. I accept the applicant's evidence that the collision risk modelling for osprey is based upon the observation of flights of the osprey nesting within the site in 2016. I accept that the nest platforms are located to minimise the likelihood of ospreys flying over the proposed development and the collision risk in respect of ospreys nesting on the platforms would not be significant. The likelihood of ospreys returning to nest on the application site is small, given the lack of suitable nesting sites available there now.

4.68 Given the distance of the nesting platforms from the proposed development and the limited likelihood of ospreys returning to the application site, I accept that risk of displacement of breeding birds would be low and not significant.

4.69 I also accept that, given that no breeding activities or displacement effect were identified in respect of other windfarms within 25 kilometres, the proposed development would have no significant cumulative effect on osprey.

4.70 General measures to prevent disturbance to breeding osprey during the proposed development's construction are set out in the CEMP¹¹⁸. These would take the form of the ecological clerk of works monitoring the location of breeding birds and enforcing an exclusion area to prevent disturbance. The CEMP also requires production of an osprey species protection plan. There is a requirement for a breeding raptor survey set out in the HMP.

Arctic skua

4.71 SNH was satisfied that the proposed development would not have significant effects in these respects. Although the RSPB initially objected in respect of the proposed development's barrier effect upon arctic skua, I note that it now accepts the proposed development would not represent a barrier to breeding pairs at the territories identified near

¹¹⁷ [SNH consultation response dated 13 January 2017](#), paragraph 2.1.2.

¹¹⁸ CD 007(e) Construction Environment Management Plan

the application site. I also accept the applicant's evidence based on a study of the effect of Stroupster windfarm that any effect in terms of displacement of arctic skua would be negligible. I do not find the proposed development would have any significant effect on arctic skua either individually or cumulatively.

Golden plover

4.72 The main dispute between the applicant and RSPB on cumulative golden plover displacement in respect of the NHZ 5 population lies in the treatment of data supplied by SNH, and how apparent gaps in the data should be treated. The applicant has expressed its estimate of the cumulative displacement effect on the NHZ 5 golden plover population as a minimum, and has not put a figure on the maximum effect. Although this approach is criticised by the RSPB, the applicant has set out clear reasons for it. The applicant used the data it considered was the best it had available, and did not add estimated values for sites where no value was provided, because that could artificially inflate cumulative totals.

4.73 The information on the cumulative displacement effect is transparently set out in ES table 10.5.2. Although a figure on displacement for every windfarm site is not provided, the information in the table does not suggest that any effect that might contribute in any substantive way to a cumulative effect has been missed. RSPB has not provided any specific evidence as regards an effect that might have been missed. The proposed development's individual contribution to the cumulative displacement effect on golden plover was estimated to be low (2 pairs or 0.06 % of the estimated breeding population of NHZ 5).

4.74 While I understand RSPB's concern that no figure has been put on a reasonable worst case for the cumulative effect, I also note that SNH accepted the assessment that the cumulative displacement effect on the NHZ 5 population would not be significant. I consider it is possible to make such an assessment without placing an exact figure on the worst-case effect. I accept, on the basis of the information provided in the ES, that the effect would not be significant.

4.75 Golden plover is a qualifying interest of the Caithness and Sutherland Peatlands SPA. The applicant has assessed the in-combination displacement effect on golden plover of the proposed development with other developments that SNH considered to be linked to the Caithness and Sutherland Peatlands SPA¹¹⁹. This was not limited, as RSPB has latterly claimed, to windfarms within 25 kilometres of the proposed development. I accept that the in-combination displacement effect on the SPA's golden plover population would not be likely to be significant.

4.76 The applicant's information on combined effects dates from 2017. I acknowledge that more developments may have entered the planning system. Generally speaking, any development behind the proposed development in the planning system would consider the combined effects of the proposed development. There is no evidence before me of any development having been granted consent that has not been considered in the applicant's in-combination assessment.

¹¹⁹ [Applicant further written submission on ornithology](#)

Hen harrier, short-eared owl and merlin

4.77 The environmental information indicates that no breeding activity of these species was found in surveys within two kilometres of the application site. I accept the evidence in the 2017 FEI that it is unlikely breeding birds of these species would have remained undetected at the application site given the level of survey effort. I also accept it is unlikely hen harrier or short-eared owl would breed in dense conifer woodland.

4.78 SNH was satisfied that construction would not cause a significant disturbance effect if construction activities were carried out outside the breeding season or, if that was not possible, on the basis that pre-construction surveys were carried out first and mitigation measures applied to prevent disturbance if breeding birds were found. A draft species protection plan for hen harrier is included in the draft CEMP. It sets out proposed mitigation measures if breeding hen harriers are identified in pre-construction surveys, in particular the imposition of an exclusion zone on construction activities around the nest location.

4.79 I am satisfied that the proposed mitigation measures in the HMP (the replacement of peatland-edge woodland with peatland restoration, sward management, replanting in keyholed areas for canopy closure and bird deterrence) would mitigate collision risk during the proposed development's operation. SNH advised that collision risk would not be increased to the SPA's raptor population if the principles of the draft HMP were implemented.

4.80 I find overall that there is no likely significant effect on hen harrier, short-eared owl or merlin for the purpose of EIA.

Caithness and Sutherland Peatlands SPA

4.81 I accept SNH's advice that, for the purpose of Habitats Regulations assessment, the proposed development would be likely to have a significant effect upon the SPA as a consequence of construction disturbance to hen harrier, short-eared owl and merlin and as a consequence of collision risk arising during its operation. On the basis of this finding, I consider Ministers are required to carry out an appropriate assessment under the Habitats Regulations.

4.82 Like SNH, I consider that the mitigation measures proposed during construction and operation are sufficient to prevent an adverse effect upon hen harrier, short-eared owl and merlin as qualifying interests of the SPA.

4.83 I find that the evidence demonstrates to the necessary degree of scientific certainty that the integrity of the SPA would not be adversely affected, subject to measures set out in the proposed HMP and CEMP and approval of the final version of those documents before commencement of development.

4.84 Golden plover is also a qualifying interest of the SPA. The environmental information demonstrates that the proposed development would have no likely significant effect individually on golden plover. I have considered above the proposed development's in-combination effect on golden plover and have not found any likely significant effect in terms of the Habitats Regulations on the SPA population.

East Caithness Cliffs SPA

4.85 Herring gull and great black-backed gull are qualifying interests of the East Caithness Cliffs SPA. Individuals of these species were observed at the application site. SNH advised that the collision risk for herring gull and great black-backed gull was such that the proposed development would be likely to have a significant effect for the purpose of the Habitats Regulations on those species as qualifying interests of the SPA. It advised that the Scottish Ministers should carry out appropriate assessment under the Habitats Regulations. I agree that appropriate assessment is required.

4.86 I accept SNH's advice the collision rates for both species are sufficiently low that there would not be an adverse effect upon the population of either species in the SPA either individually or in combination with other developments. The proposed development would therefore not have an adverse effect upon the SPA's integrity in this respect.

4.87 I accept that it would be impracticable to carry out a quantitative assessment of any in-combination barrier effect the proposed development might have with other Caithness windfarms. I find that the applicant's qualitative assessment of the proposed development's individual barrier effect, using the assumption that the Seater Landfill Site is the sole foraging location for individuals from the SPA during the breeding season, is highly precautionary. The SPA lies along the coast and to seaward of the coast from the south west of the proposed development to the east. The Seater Landfill Site lies to the proposed development's north. A straight-line flight for at least some birds flying from the SPA would pass through the application site.

4.88 I accept the applicant's estimate, that on this assumption, there would be an effect on just under 10% of the herring gull population and under 2% of the great black-backed gull population of the SPA. The estimated effect would be an increase in flight times to that sole foraging location of under five minutes. I accept that this would be a negligible effect in the context that gulls of both species typically spend over five hours in foraging flights. I agree with the applicant that the evidence establishes to the necessary degree of scientific certainty that the proposed development would not contribute in any meaningful way to a significant in-combination barrier effect, notwithstanding that the effect with other developments has not been quantitatively assessed. In reaching this conclusion, I have taken into account the highly precautionary nature of the initial assumption and the very small effect on a relatively small proportion of the SPA herring gull and great black-backed gull populations arising on the basis of this assumption.

Effects of the proposed HMP as compared with the East Caithness LMP

4.89 I consider that the current East Caithness LMP is the document I ought to consider as the current land-use plan for the application site. Although the RSPB claims that a revised LMP to be adopted in future would include greater peatland restoration, since that revision is not finalised, there can be no certainty it would be as the RSPB claims.

4.90 Although I consider that the effect of changes from the LMP as a consequence of the proposed development are relevant to Ministers' decision, I do not consider that LMP is to be treated as an environmental baseline for the purpose of Habitats Regulations assessment of effects upon the nearby SPA, any more than it is to be so treated for EIA purposes.

4.91 The applicant acknowledges that the proposed development and the HMP associated with it would reduce certain benefits that would otherwise be obtained from the East Caithness LMP to hen harrier, short-eared owl and merlin, all qualifying interests of the Caithness and Sutherlands SPA. Its claim that the breeding population of these raptors in the SPA would still benefit from increased foraging is not denied by the RSPB.

4.92 I am not in a position to resolve the applicant's dispute with the RSPB as to the degree of benefit the proposed development and its HMP would have to upland waders, which are also qualifying interests of the SPA. Both parties have cited but not provided scientific papers about the degree of the displacement effect of windfarms on upland waders. It seems to me that, as compared with the commercial forest pre-felling, there would be some improvement in habitat and so some benefit for upland waders if the HMP proposals are carried out.

4.93 I therefore find that the RSPB's claim that the proposed development would negate the benefits of the East Caithness LMP for qualifying interests of the SPA is overstated. I make what I consider to be the cautious finding that the overall benefit to such interests would be less.

4.94 However, as the applicant points out, other ecological benefits would arise from the peatland restoration, including increase in priority habitat, increased carbon sequestration and contribution to the Scottish Government's peatland restoration targets.

Other matters

4.95 Although a number of objections were made in respect of other matters relating to ornithology, none of the objectors produced evidence comparable to that provided by the applicant in the environmental information. I do not find any other significant effect would arise for any bird species as a consequence of the proposed development.

CHAPTER 5: ECOLOGY

Introduction

5.1 The effects of the proposed development on ecology are assessed in ES chapter 9¹²⁰. This assessment was supplemented by chapter 9 of the 2017 FEI¹²¹. The ecological and ornithological effects of the proposed enabling works to the C1053 road were considered in sections 3.9 and 3.10 of the 2018 AEI¹²². Section 2 of the 2018 AEI also provides updated survey data for wildcat. The draft HMP¹²³ and draft CEMP¹²⁴ are also relevant.

5.2 In view of the council's objection in respect of the proposed development's effect on Scottish wildcat and representations made to me by other parties at the pre-inquiry meeting, I arranged a hearing in respect of the proposed development's effect on Scottish wildcat. In the event, only the applicant submitted a hearing statement¹²⁵. I therefore did not proceed with the hearing, but accepted the hearing statement as written evidence.

Main points for SNH

5.3 SNH did not object to the proposed development in respect of any effect on wildcat. It acknowledged that the evidence did not show wildcat on the application site during the survey period, but referred to the 2012 location of a possible den more than 200 metres from the application site. It advised that there should be continued monitoring for wildcat during any pre-construction and construction period. If signs of suspected wildcat were found, there should be detailed site-specific mitigation agreed in the form of a species protection plan.

5.4 SNH acknowledged the draft species protection plans provided in the 2017 FEI and recommended that the finalised plan should include precautionary measures if a suspected hybrid or feral cat was thought to be using the application site.

Main points for Forestry Commission Scotland

5.5 Forestry Commission Scotland (FCS) initially objected to the proposed development on the basis that the woodland replacement programme in the HMP did not match the benefits of those in the East Caithness LMP for protected species, as a consequence of removal of the proposal for replanting peatland-edge woodland over the middle of the site. It argued that the peatland-edge woodland would have provided greater benefits for protected species such as otter, wildcat, pine marten and badger. Further, the HMP proposed peatland restoration instead for reasons relating to the windfarm: it sought to discourage nesting of raptors close to the proposed turbines. FCS withdrew this objection when the applicant undertook to carry out replacement planting in respect of the peatland-edge woodland.

¹²⁰ [CD 004b ES Vol 2a](#) Main report, chapter 9

¹²¹ [CD 007a, 2017 FEI Vol 1](#) chapter 9

¹²² [2018 AEI](#)

¹²³ [2017 FEI supplementary document – draft Habitat Management Plan](#)

¹²⁴ [2017 FEI supplementary document – draft Construction Environment Management Plan](#)

¹²⁵ [Applicant hearing statement on wildcat](#)

Main points for the council

5.6 The council initially objected to the proposed development on the basis of its effect on wildcat. It withdrew its objection shortly after the pre-inquiry meeting.

Main points for other objectors

5.7 A number of parties objected in respect of ecological effects of the proposed development, including effects on wild cat, pine marten, polecat, badgers, otters and water vole. Mrs Caroline Window referred to the discovery of a wildcat den in 2012 within the application boundary. Another objector referred to having seen wildcat on land in Upper Lybster.

Main points for the applicant

5.8 ES chapter 9 assessed effects of the proposed development on:

- sites designated for ecology, including the Caithness and Sutherlands Peatlands Special Area of Conservation (SAC) and Shielton Peatlands Site of Special Scientific Interest (SSSI),
- habitats within the application boundary, and
- protected and otherwise notable species including bats, otter, Scottish wildcat, pine marten, water vole and badger, as well as fish, reptiles, amphibians and invertebrates.

It found the potential for a significant adverse effect on bats as a consequence of proposed broadleaf planting making the application site more attractive for foraging for bat species. It proposed mitigation by ensuring that a 50-metre separation distance was established and maintained through the proposed development's operation between high value bat habitat and the turbine blades.

5.9 The ES also found significant positive effects for ecology arising from the restoration of blanket bog and dry modified bog as habitat and for water vole as a consequence of such habitat restoration.

5.10 Along with the 2017 FEI, the applicant supplied a draft habitat management plan (HMP) for the application site and draft construction environmental management plan (CEMP). The CEMP includes (in chapter 8) draft species protection plans (including plans for bats, otter, pine marten, water vole, badgers, and Scottish wildcat) and (in chapter 9) a draft management plan for groundwater-dependent terrestrial ecosystems. The draft HMP set out the methods for peat restoration and proposed restoration of an additional 213 ha of peatland.

5.11 The 2018 AEI identified no significant ecological effects arising from the works to improve the C1053 road for access to the proposed development.

5.12 SNH, the government's advisor on ecology, did not object.

Scottish wildcat

5.13 No evidence of Scottish wildcat was identified in surveys in 2016, 2017 or 2018 within or in close proximity to the application site. A habitat survey along the C1053 road found limited suitability for Scottish wildcat within 200 metres of the road.

5.14 Brief glimpses of cats were recorded in 2012 in Rumster Forest, about 1.5 kilometres from the application site. Wildcat are identified either by examining their pelage (their coat and its markings), genetics or behaviour. It has not been confirmed on this basis that the sightings were of wildcat, and the sightings should not be taken as evidence of wildcat presence.

5.15 The habitats at the application site are of limited suitability for wildcat, partly due to disturbance from forestry operations and recreational use of forest tracks (including use by dog walkers). Wildcats are mainly nocturnal or crepuscular. Since construction activities would mainly be during the day, and given the existing disturbance during the day, it is unlikely they would cause disturbance, displacement or harm to the species. The occasional activity on site for operational maintenance is unlikely to cause any impact.

5.16 A detailed Scottish wildcat species protection plan would be implemented during construction of the proposed development. Even without the mitigation proposed in the plan, it is unlikely there would be significant effects on wildcat as a consequence of the proposed development.

Reporter's conclusions

Scottish Wildcat

5.17 I accept that the application site does not presently provide particularly suitable habitat for wildcat given the absence of suitable habitat for their main prey, rabbits, and the degree of disturbance from ongoing forestry activities and recreation. Although sightings of wildcat in the broad area of the proposed development have been referred to in evidence by various parties, I accept the applicant's evidence that wildcat can only reliably be distinguished from feral domestic cats by an expert and that none of these sightings have been confirmed. I also understand the 2012 sighting referred to in evidence was outside the application site.

5.18 I also accept that the proposed development would not necessarily result in a significant adverse effect upon wildcat even if they were present in the area of the proposed development when construction was taking place. The main measures proposed in the draft wildcat species protection plan include a progressive monitoring programme, a pre-mobilisation wildcat survey and site-specific measures to prevent wildcat being disturbed if found on site. I consider that these, together with other measures in the species protection plan, are sufficient to prevent a significant adverse effect upon wildcat. The species protection plan can be secured as part of the CEMP by condition.

5.19 The applicant has indicated that if a wildcat was discovered on the application site, a licence would be sought for any required works that might affect that species.

5.20 Finally, I accept that the peatland restoration and woodland fringe proposed in the HMP are likely to provide improved habitat for wildcat as compared with that currently existing at the site.

5.21 I conclude that it is not likely the proposed development would have a significant adverse effect on wildcat.

Other ecological receptors

5.22 Although a number of objectors suggested that there would be adverse effects on other protected species and habitats, they did not advance evidence comparable to that provided by the applicant. Subject to the measures in the proposed species protection plans and HMP being secured, I do not consider that a significant adverse effect on any other important ecological receptor is likely.

5.23 I accept that the proposed development would provide a significant beneficial effect in terms of improvement to peatland habitats and for water vole as compared with the application site's present condition.

5.24 The proposals in the draft HMP are not the same as those in the East Caithness LMP. I have no doubt that the draft HMP would have somewhat different effects upon ecology at the site. I accept that the draft HMP is unlikely to provide as great a benefit for certain protected species such as otter, wildcat, pine marten and badger as the existing proposals in the East Caithness LMP, though it may be more beneficial for other protected species, such as water vole.

CHAPTER 6: PEAT AND CARBON BALANCE

Introduction

6.1 The development's impact upon peat present on the site was considered in chapter 11 of the ES¹²⁶ and chapter 11 of the 2017 FEI¹²⁷. The ES was accompanied by a peat slide risk assessment (appendix 11.2)¹²⁸, a carbon balance assessment (appendix 11.3) and peat balance calculations (appendix 11.6)¹²⁹. These were updated in the 2017 FEI by a further peat slide risk assessment (appendix 11.2), a carbon balance assessment (appendix 11.3) and a draft peat management plan (appendix 11.6)¹³⁰.

6.2 Submissions in respect of climate change, carbon balance and peat management were made by SEPA, Mr Peter Batten and the RSPB. The proposed development's effect on peat as a carbon store was also a subject of comment in a number of objections, including the standard objection letter.

6.3 SEPA initially objected in respect of lack of adequate data from peat probing¹³¹. It withdrew its objection on this matter following submission of additional information on the revised layout for the proposed development in the 2017 FEI¹³².

6.4 Mr Peter Batten objected in respect of the carbon intensity of the proposed development. At my request, Mr Batten provided a note with a fuller explanation of his objection¹³³, to which the applicant provided a response¹³⁴. I also allowed Mr Batten to provide a further submission¹³⁵ in respect of references to carbon intensity in the applicant's policy hearing statement¹³⁶, to which the applicant again provided a further response¹³⁷.

6.5 The RSPB, in its response to the 2017 FEI¹³⁸, criticises the carbon payback period for the proposed development as too long.

6.6 SPP paragraph 205 requires that where peat and other carbon-rich soils are present, applicants should assess the likely effects of development on carbon dioxide emissions. It explains that where peatland is drained or otherwise disturbed, there is liable to be a release of carbon dioxide to the atmosphere. It requires that developments aim to minimise this release.

6.7 Although much of the application site has underlying peat, it is not identified in SNH's carbon and peatland map as a nationally important interest in respect of peat¹³⁹. The peat has been degraded by forestry plantation. It is therefore not included among the

¹²⁶ [CD 004b ES Vol 2a](#)

¹²⁷ [CD 007a, 2017 FEI Vol 1](#)

¹²⁸ CD 004e, ES Vol 3 parts [16](#), [17](#) and [18](#)

¹²⁹ CD 004e, ES Vol 3 part [21](#)

¹³⁰ CD 007 FEI Vol 3 parts [3](#) and [4](#)

¹³¹ [CD 023 SEPA 13 December 2016](#)

¹³² [CD 022 SEPA 27 July 2017](#)

¹³³ [CD 146 Carbon intensity note by Peter Batten, 22 April 2018](#)

¹³⁴ [CD 147 Applicant's written submission on carbon intensity, 15 May 2018](#)

¹³⁵ [Peter Batten submission on carbon intensity, 12 October 2018](#)

¹³⁶ [EON policy hearing statement](#)

¹³⁷ [Carbon intensity response to Mr Batten, 9 November 2018](#)

¹³⁸ [CD 025 RSPB letter dated 31 July 2017](#)

¹³⁹ CD 102 SNH carbon and peatland map

group 2 areas of significant protection in the spatial framework for onshore windfarms set out in SPP table 1.

6.8 The Scottish Government's Climate Change Plan¹⁴⁰ includes the following relevant targets:

- 50,000 hectares of peat to be restored by 2020 from a 1990 baseline and 250,000 hectares of peat to be restored by 2030 from the same baseline.
- From 2020 onwards, Scotland's grid intensity will be below 50 grams of carbon dioxide per kilowatt hour.

6.9 The Scottish Government has produced an online carbon calculator for the purpose of assessing a proposed development's net effect on atmospheric carbon dioxide¹⁴¹. The applicant has applied this calculator in its carbon balance assessment. The calculation's reference is **ILIE-M945-KC89**. Results of the carbon calculation for the proposed development's revised layout are shown in the FEI Vol 3 Appendix 11.3¹⁴².

Main points for SEPA

6.10 SEPA initially objected to the proposed development because it considered that the information provided in the ES on peat depths was insufficient to demonstrate how the development layout minimised impact on peat.

6.11 Following submission of the 2017 FEI, which included a revised development layout, additional information on peat depths, peat management and habitat management, SEPA withdrew its objection. SEPA still did not consider the information provided on peat depths clearly demonstrated that the development layout would minimise negative effects on peat: the level of survey information did not meet requirements of SEPA guidance or provide suitable information to assess impacts in the vicinity of turbines T10 and T15 where ground conditions and peat depths were unknown. It noted that peat disturbance could be over 20,000 m³ greater than that estimated, given the lack of information.

6.12 However, SEPA considered that the proposals for peatland restoration, including the area surrounding T10 and T15, would contribute to meeting the Scottish Government's peatland-restoration target. Although SEPA would normally have maintained its objection on the basis of lack of information, it decided to withdraw the objection given the peatland restoration proposals. Its withdrawal was subject to implementation of these proposals and to conditions requiring updated peat-probing information, the provision of a micro-siting layout plan to demonstrate how impacts on peat had been minimised, and the approval of a finalised peat management plan that would be based on the additional peat probing and a revised layout.

Main points for Peter Batten

6.13 In version 23 of the carbon-balance calculation for the proposed development, the expected value was 49.57 grams of carbon dioxide per kilowatt hour. The worst-case value

¹⁴⁰ [CD 048 Scottish Government Climate Change Plan 2018](#)

¹⁴¹ [Online carbon calculator](#)

¹⁴² CD 007 FEI Vol 3 parts [3](#) and [4](#)

was 175 grams per kilowatt hour. There were similar though slightly lower figures in version 24.

6.14 A development such as that proposed, whose expected carbon intensity would only just meet the carbon-intensity target, would not make a material contribution to achieving the Scottish Government's climate-change objectives. The worst-case carbon intensity of 175 grams of carbon dioxide per kilowatt hour was much higher than the government's current carbon-intensity target for energy generation.

6.15 It follows that the applicant should either agree to enhanced peatland restoration or forestry planting to reduce the proposed development's carbon intensity or demonstrate a high level of acceptability against other criteria.

6.16 More stringent targets for climate-change restraint will be required in the light of the Intergovernmental Panel on Climate Change's report of 8 October 2018. The Scottish Government's current target for carbon intensity may therefore be replaced by a more stringent target. Any policy review by the Scottish Government should weigh against a grant of consent.

6.17 Although sites with deep peat were generally within group 2 (areas with significant protection) in Table 1 of Scottish Planning Policy, afforested peat was included within group 3. This was a position opposed by SEPA among others at the time of publication of the draft of SNH's carbon and peatland map¹⁴³.

6.18 The proposed peatland restoration would provide benefits if carried out with public funding on its own without association with the proposed development.

Main points for the RSPB

6.19 The RSPB argued that the payback time estimated (expected to be 1.9 years, though with a worst case of 6.9 years) was relatively long and that further mitigation should be proposed in order to reduce payback time. It welcomed the proposal to undertake bog restoration over a larger area if the windfarm was consented than in its absence, and acknowledged that this may have long-term benefits in respect of carbon savings as well as water quality. It noted, though, that the RSPB has been consulted on a revised version of the East Caithness LMP that would involve peatland-restoration proposals similar to those of the applicant.

Main points for other objectors

6.20 A number of objectors referred to the proposed development's impact upon peat. Some also argued that the proposed development would not produce electricity all the time and that this would limit its contribution to reducing carbon emissions.

Main points for the applicant

Peat disturbance and restoration

6.21 The development layout has been designed to avoid areas of deep peat. The layout was revised to address SEPA's advice as regards minimising effects on peat. The

¹⁴³ CD 102 SNH carbon and peatland map

proposed development would not give rise to any significant adverse effect in respect of peat slide, and would have a significant beneficial effect on carbon balance.

6.22 Limitations in peat-probing data arise from the difficulties of carrying out peat probing on the afforested site without putting staff at risk. The Scottish Government guidance¹⁴⁴ as regards peat probing was followed as far as reasonably practicable. The extent of additional peat probing for the 2017 FEI was discussed with SEPA in advance. SEPA was content that information to their satisfaction could be provided without following the guidelines.

6.23 The proposed development, through implementation of the HMP, would promote restoration of about 534 hectares of degraded peatland. It would thereby contribute to meeting the Scottish Government's target for peatland restoration.

Carbon balance and climate change

6.24 The applicant's calculation of the proposed development's net carbon balance made using the Scottish Government's online carbon calculator shows a carbon intensity for the proposed development that is lower than the Scottish Government's 2020 target for grid intensity. The figure estimated in version 23 of the calculator (to which Mr Batten refers) is 49.57 grams of carbon dioxide emissions for every kilowatt hour of electricity generated.

6.25 The calculation for carbon intensity in the Scottish Government's Climate Change Plan is, however, based upon different inputs from those considered in the carbon calculator. The calculator takes account of carbon losses during production of equipment and construction of the generating station (including drained soil losses, reduction in carbon-fixing potential and losses from felling forestry), and also in providing grid back-up for the windfarm. These carbon losses are not included in the calculation of grid intensity for the target in the Climate Change Plan. That calculation includes only emissions from the burning of fossil fuels in the generation of power (or combined heat and power). In such a calculation, the proposed development would have a carbon intensity of zero. The methodology for calculation of the Climate Change Plan target is set out in the Scottish Government's Report on the Scottish Greenhouse Gas Emissions Annual Target 2010.

6.26 The input into the carbon calculator in respect of peat excavation is a worst-case assessment. In using the carbon calculator, the applicant did not include carbon savings that would be obtained from a number of proposed measures, including the improvement of degraded peatland and compensatory planting. They would reduce the carbon intensity of the proposed development estimated using the calculator.

6.27 The grid-intensity target is only one element of the Scottish Government's Climate Change Plan. The plan also indicates that provision of more wind-energy generating capacity is a key part of the government's strategy.

6.28 A similar case advanced by Mr Batten in the inquiry on the West Garty windfarm was rejected by the reporter.

¹⁴⁴ Scottish Government (2014) Guidance on Developments on Peatland – Site Surveys. Not supplied in evidence.

Reporter's reasoning

Peat disturbance, management and restoration

6.29 I acknowledge that the revised development layout reduces the proposed development's disturbance of the underlying peat from the layout originally proposed. The 2017 FEI figures 11.9a and 11.9b show the proposed layout over estimated peat depths¹⁴⁵. They also provide tables of estimated peat disturbance.

6.30 I accept SEPA's case that it may be possible to reduce the proposed development's impact still further, if it proceeds, once additional peat-probing information becomes available. SEPA has requested that the site design is refined within the approved micro-siting tolerance to ensure that impact on peat is minimised. I consider that this can be secured by condition.

6.31 The peat management plan sets out the applicant's approach to management of peat on site. It includes measures such as use of floating tracks to minimise the volume of peat to be excavated. All peat would be used on site either in site reinstatement or in restoration of degraded peat.

6.32 Subject to a condition requiring the refining of the layout following receipt of additional peat-probing information, I consider that the proposed development would minimise release of carbon dioxide as a consequence of peat disturbance.

6.33 The applicant's peatland restoration proposals represent a change from the East Caithness LMP¹⁴⁶. The applicant has undertaken to provide compensatory planting elsewhere to make up for the loss of the 203 hectares of peatland-edge woodland proposed in the LMP. The applicant proposes in the habitat management plan to restore both the northern and middle sections of the site as peatland (534.79 hectares). I accept that the applicant's peatland restoration proposals contribute to achieving the Scottish Government's target for peatland restoration.

Carbon balance and climate change

6.34 The applicant has acknowledged that there remain uncertainties in respect of the amount of peat that requires to be excavated as a consequence of limitations in the peat-probing data. It has taken account of that uncertainty by applying a worst-case assumption in respect of peat depths and therefore the amount that would be excavated around turbines T10 and T15¹⁴⁷ in its carbon-balance calculation.

6.35 It should be noted that a worst-case peat-disturbance assumption is used to produce the "expected" figure in the carbon-balance calculation. The worst-case carbon-balance calculation then assumes a further increase in peat excavation of 20%. This represents a compounding of two worst-case assumptions, which would seem likely to overstate the proposed development's effects significantly. It is on this that the 6.9-year worst-case estimate of the payback period cited by RSPB is based.

¹⁴⁵ [CD 007b FEI Vol 2 part 6](#)

¹⁴⁶ CD 097 East Caithness Land Management Plan

¹⁴⁷ This worst-case assumption is shown in [2017 FEI Vol 2, figure 11.9b](#).

6.36 I accept that the calculation of carbon intensity of the grid for the purpose of the Scottish Government's target in its Climate Change Plan is made on a different basis from that found in the carbon calculator. Given that the former does not include carbon losses related to manufacture, construction and grid backup, I accept that the carbon intensity of the proposed development would be zero for the purpose of the target.

6.37 I therefore find that the proposed development would contribute to meeting the grid-intensity outcome the Scottish Government seeks.

6.38 The payback period (that is, the period of generation after which the proposed development would start to provide a net benefit in terms of carbon savings) is estimated to be 1.9 years. In my experience, this is not unusually long. The consented Caplich windfarm had a 1.8-year payback period¹⁴⁸, while the consented the Blary Hill windfarm was estimated to have a 2-year payback period¹⁴⁹. Since the applicant's expected figure for the payback period is based upon a worst-case assessment of peat disturbance, the actual figure is likely to be lower.

6.39 In calculating the carbon balance for the proposed development, the applicant took account of an average wind-energy capacity factor for Scotland for the period 2000 to 2015. This represents how much power developments have generated as compared with their installed capacity. Since the capacity factor for the proposed development is likely to be higher than the average, I consider that the use of an average capacity factor in calculating carbon balance is conservative.

6.40 The proposed peatland restoration would provide an additional carbon sink that is not taken into account in the carbon balance calculation.

6.41 The likelihood is that the additional forestry planting, required under a condition of this permission, would also provide an additional carbon sink. The required planting has not been environmentally assessed, though. Consequently, I recommend that Ministers take a cautious approach and take no account of its benefits as a carbon sink in their decision on the present application.

6.42 Notwithstanding this, I find that the proposed development would be likely to have a net environmental benefit in terms of contributing to climate-change mitigation and to the Scottish Government's targets for reduction in carbon emissions. I am not persuaded that turbines should be deleted from the design on account of the impact upon peat or the proposed development's carbon balance.

¹⁴⁸ [CD 116 Report on proposed Caplich windfarm](#), see paragraph 2.123

¹⁴⁹ [CD 130 Report on proposed Blary Hill windfarm](#), see paragraph 8.13

CHAPTER 7: OTHER MATTERS

Traffic, transport and access

Introduction

7.1 Chapter 14 of the ES assessed the effects of the traffic associated with the proposed development on traffic flows. It studied the effect on the A99, A9 and C1053 (beyond which traffic was assumed to dissipate into the network without significant effects) and the effect of abnormal loads on the route from Wick harbour to the site entrance shown on ES Figure 14.1¹⁵⁰. An assessment of the route for abnormal loads, including enabling works, is provided in ES appendix 14.1¹⁵¹.

7.2 The ES identified that works to improve the C1053 were required for it to be suitable for the abnormal loads required for windfarm construction. Those works do not form part of the present application. Nonetheless, on the basis that they could be perceived as forming part of the windfarm project, the applicant agreed to provide an assessment of them in the 2018 AEI. The 2018 AEI considered the environmental effects of the works required to the C1053. I held a hearing on the effects of the C1053 works, in which Mrs Caroline Window and the applicant took part¹⁵². I have incorporated consideration of the various environmental aspects of these enabling works' environmental effects into the relevant chapters of this report.

Main points for the applicant

7.3 As regards the construction phase, the ES considered the potential for severance of communities, increased journey times for non-construction traffic, the potential for pedestrian delay, intimidation and loss of amenity, and effects on road safety. It found no significant effect. It set out a number of measures for incorporation in a transport management plan with the aim of minimising adverse effects of construction traffic. These included proposals for road-condition monitoring and payment of abnormal maintenance costs, arrangements for routing and escorting abnormal loads, for timing restrictions on construction traffic and other deliveries, for road signage, briefing of drivers, speed limits, community and emergency liaison and road cleaning at site access points.

7.4 The ES also found a negligible effect if the six windfarms for which relevant information was available were developed at the same time. Its assessment was that the development of other windfarms at the same time as the proposed development was unlikely. There would therefore be no significant cumulative effect on road networks.

7.5 Very limited traffic was associated with the operational phase. The decommissioning phase would have similar effects to the construction phase, though to a lesser degree. Similar mitigation measures were proposed.

7.6 The 2018 AEI found that the improvement works on the C1053, which would require progressive closure of sections of the road as works proceeded, would cause some lengthened journey times for the local community. These would be increased by up to 8.4

¹⁵⁰ [ES Volume 2b](#), figure 14.1

¹⁵¹ [ES Volume 3](#), appendix 14.1

¹⁵² Both [the applicant](#) and [Caroline Window](#) submitted hearing statements

minutes for the 10 weeks when works took place on the road section between the windfarm entrance and the junction of the C1053 with the Achow road.

7.7 The construction traffic associated with the C1053 improvement works would have a negligible effect on the functioning of road networks. The 2018 AEI identified that if the road improvement works took place in advance of the proposed development, the level of heavy-goods-vehicle traffic during construction of the proposed development would be less than anticipated in the ES.

7.8 The C1053 improvement works would take place within the existing road boundary. There would be no loss of garden space for neighbouring properties or any requirement to move existing facilities such as septic tanks.

7.9 The C1053 improvement works, when complete, are unlikely to change the nature or level of traffic on the road. There are more direct routes from Thurso to Wick than by the C1053. The road would still be a single track, and would not become a 7.5 metre carriageway along its entire length. Vehicle speed following the improvement works is likely to be influenced by forward visibility, as now, and be little changed.

Main points for objectors

7.10 A number of objectors argued that the traffic associated with construction of the proposed development would cause disruption and might have an impact upon emergency vehicles on the A99.

7.11 Caroline Window argued that the road widening works on the C1053 would cause houses by the road to lose garden space, have to move septic tanks and cause loss of peace and tranquillity. During the construction works there would be delays. Although these delays do not sound long when expressed in minutes, at some stages of the works there would be a one-third increase in the journey time for residents living on the road going to Wick, a journey that residents frequently undertake. There would potentially be delay to emergency vehicles. The works would also have adverse effects on wildlife.

7.12 When complete, the road-widening works would change the character of the road. It is at present a rat-run between Lybster and the Causeymire road (the A9). The widening would encourage cars to speed on the C1053.

Reporters' conclusions

7.13 The evidence indicates that construction traffic associated with the proposed development would cause a small temporary increase in traffic on the A9 and A99. There would also potentially be some increase in journey times as a consequence of the increased number of heavy goods vehicles on the road and as a consequence of the movement of abnormal loads. The development of wind-energy infrastructure, supported by national policy, inevitably entails such effects. I do not find any reason to believe that the operation of emergency vehicles would be affected more by the proposed development than by any other large construction project. I accept that, with suitable mitigation, such effects can be minimised and would not be significant.

7.14 As regards the works to the C1053, I accept that there would be some increase in journey times for residents as a consequence of the progressive road closures. The longest envisaged closure, and the closure that would increase certain journey times most,

would be the closure between the junction of the C1053 with the Achow road and the application-site entrance. The increase of 8.4 minutes in journey times would be from Osclay to Achavanich. That stretch of road is largely uninhabited. Inhabitants are more likely to be travelling south to Lybster and to Wick. While I have no doubt that road closures south of Osclay would cause inconvenience to residents, I do not consider that such inconvenience would amount to a significant environmental effect or constitute a reason for the proposed development not to proceed. I do not consider that the effect on the operation of emergency vehicles would be unacceptable in this case either.

7.15 I find below, in considering noise, that the proposed construction works on the C1053 would have significant temporary effects on neighbouring houses as a consequence of construction noise. Given that works are to take place within the boundary of the existing road and its verges, I do not find any other more permanent significant adverse effect on residential amenity, arising from loss of garden space or otherwise.

7.16 I have considered other environmental aspects of the C1053 construction works in other sections of this report and have not found any other significant adverse effect.

7.17 I am not persuaded that the unimproved form of the C1053 currently restricts the level of traffic on it. I do not find that the nature or level of traffic on the C1053 is likely to change as a consequence of the road-widening works.

Historic environment

Introduction

7.18 The effects of the proposed development on the historic environment are assessed in ES chapter 12 and 2017 FEI chapter 12. A description of designated historic assets within the study area and zone of theoretical visibility together with an analysis of their setting and how it contributes to the understanding and significance of the asset is provided in ES technical appendix 12.2. The effects of enabling works on the C1053 are considered in 2018 AEI section 12.

Main points for the applicant

7.19 The applicant's assessment in the ES found no significant effects upon the historic environment.

7.20 Moderate adverse effects were identified for five assets: Appnag Tulloch broch, Golsary broch, Rumster broch, Rhianrivach broch and the Tulloch (Usshilly) broch. Views to a broch are important to their understanding. Brochs are thought to have been built as an imposing status symbol intended to be seen in the landscape. Where they are seen in views with the proposed development, the impression of their dominance in the landscape may be reduced. Brochs did not have external windows and so views from a broch do not contribute to their understanding. The change to the setting arising from the proposed development would have some effect on the understanding of the assets' key characteristics. This would not amount to a substantial loss of understanding.

7.21 The Grey Cairns of Camster are important for the information they provide for funerary practice, architecture and utilisation of their landscape. Their setting is provided by the Camster Burn and the hollow of the valley in which they are situated. The location of the cairns precludes long-distance views to sea or hills. The existing views of the nearby

Camster windfarm do not impact upon the appreciation of the cairns within their landscape or their ritual or funerary purpose. The potential view to blade tips of the proposed development does not adversely affect the understanding of the asset, even taken in combination with views to the Camster windfarm. The effect of the visibility of the proposed development's blade tips is of minor adverse significance.

7.22 The historic assets at the Wag of Forse are domestic in nature. Although there would be views towards the proposed development, these views do not contribute to the understanding of the asset. The effect upon the Wag of Forse and associated assets would be of minor adverse significance.

7.23 The Corr is a category-A listed building and a rare survival of a 19th century traditional Caithness croft house, which expanded into a farmstead settlement. Its setting includes the lower slopes of Ben-a-Chielt and the agricultural land within which it sits. Whilst the positioning of the proposed development would bring a modern element into one aspect of the view, the understanding of the function and reason for the building and the contribution of the wider surrounding landscape would remain.

7.24 The proposed development would not adversely affect the activities of groups such as the Caithness Broch Project, Nybster Broch Project or Dunbeath Preservation Trust. As regards the Caithness Broch Project, the potential for it to better promote the many existing broch sites in Caithness, including those close to the development site, would not be diminished by the proposed development. The Nybster Broch Project's focus of activities is far from the application site. The particular concerns raised regarding the Dunbeath Preservation Trust's activities are addressed by the assessment of impacts on cultural heritage in the ES.

Main points for Historic Environment Scotland (HES)

7.25 The proposed development does not raise any historic environment issues of national significance, and HES did not object. The methodology used in the ES was appropriate for the assessment of impacts for HES's interests.

Main points for the council

7.26 The council did not object on grounds of the proposed development's effect upon the historic environment. Its historic environment team (HET), however, did recommend objecting¹⁵³.

7.27 HET suggested that the ES assessment could underplay some of the impacts. It also stated that it had concerns about the effect upon the Grey Cairns of Camster and the Corr (a category-A listed building). At the Grey Cairns in particular, as the ES found, there is nothing else within the cairns' setting at present to draw the eye. The enclosed setting of the cairns would be significantly affected.

7.28 HET also suggested there might be an adverse effect upon ongoing social and economic initiatives, such as the Caithness Broch Project, seeking to use Caithness's exceptional historic environment to promote tourism in the area and education of local people. This would arise particularly from the proposed development's adverse effect upon the amenity of historic assets.

¹⁵³ The objection is provided with the council's consultation response in [2017 FEI vol 3 appendix 5.2](#)

Main points for other objectors

7.29 Other objectors referred to the potential for adverse effects upon the setting of Achavanich stone circle, the Wag of Forse complex and landscape, Rumster broch, Golsary broch, Appnag broch, Ushilly broch, Achow broch, the Corr listed building complex and the Hill o' Many Stanes.

7.30 The Dunbeath Preservation Trust had submitted an objection to the proposed development on grounds including impact upon the Wag of Forse scheduled landscape¹⁵⁴, but this was subsequently withdrawn¹⁵⁵

Reporter's reasoning

7.31 The assessment of effects on the historic environment involves consideration of how the development might affect intrinsic, associative and contextual characteristics of the asset itself. The effect is not assessed from the perspective of how the proposed development would affect the visitor's amenity at the asset.

7.32 I accept that the windowless form of brochs does suggest that outward views are, at least, of less importance than views to them. Although there is a varying degree of visibility of the proposed development from the brochs at Rumster, Golsary, Appnag Tulloch, Rhianrivach and the Tulloch, the proposed development would have limited impact upon existing views to those brochs or their intervisibility. I do not consider that the evidence supports a finding that the effect on the setting of any of the brochs is significant.

7.33 As regards the Grey Cairns of Camster, I agree with the ES that the existing view to the Camster windfarm does not significantly affect the sense of the cairns' enclosure within their landscape setting. I do not find that the visibility of blade tips of the proposed development would have a significant effect either.

7.34 The assets at Wag of Forse are primarily domestic in nature. While intervisibility of the various elements of the landscape may be important to their understanding, I accept that the longer-distance views are not. I accept that the effect of the proposed development's visibility on their setting would not be significant.

7.35 At the Corr, although almost all the proposed development's turbines would be visible, they would be rather over four kilometres away occupying a limited part of the view. I agree with the assessment in the ES that the proposed development would not greatly affect the understanding of the function and reason for the building or the contribution of the wider landscape to its setting. I do not find the effect upon it would be significant.

7.36 I do not find significant effects upon any other historic sites. I note that, although the Achavanich stone circle and Hill o' Many Stanes are mentioned by objectors, no view to the proposed development is predicted at those sites.

7.37 Given that I have accepted the findings of the ES that there would be no significant effects upon cultural heritage, I consider it follows that there would be no significant adverse effect upon the activities of groups, such as the Caithness Broch Project

¹⁵⁴ [Letter from Dunbeath Preservation Trust](#), dated 29 November 2016

¹⁵⁵ [Email from Ranald C MacAuslan, Chairman, Dunbeath Preservation Trust](#), 13 January 2019

and Dunbeath Preservation Trust, seeking to promote public understanding of and interest in those assets.

Noise

7.38 The applicant's noise assessment is provided in ES chapter 8 and 2017 FEI chapter 8. The assessment covers the construction and operation of the proposed development. A noise assessment is also provided in 2018 AEI section 3.8 for noise associated with the enabling works on the C1053.

Main points for the applicant

7.39 The applicant and council have agreed that the proposed development is acceptable in terms of its effects in respect of infrasound, low frequency noise, wind shear and overall noise during construction, operation and decommissioning¹⁵⁶. The council also did not dispute the applicant's conclusions as regards the enabling works on the C1053 including those in respect of noise¹⁵⁷.

7.40 Noise from the proposed development's construction was not predicted to have any significant effect on any sensitive receptor. With the implementation of best practice measures, adverse noise impacts are unlikely to arise during the construction phase.

7.41 The assessment of noise associated with the proposed development's operation was carried out using principles and guidance set out in ETSU-R-97, as recommended by the Scottish Government Planning Advice Note (PAN) 1/2011. The assessment identified that, when operating unconstrained, the proposed turbines would exceed the lower daytime limit of 35 dB LA90 at two locations, Bulreanrob and Gamekeeper's Cottage. They would also exceed the council's preferred lower night-time limit of 38 dB LA90 at those properties. The applicant has proposed a noise-management scheme including mode management of turbines. This would allow the noise limits to be met.

7.42 Construction noise generated by enabling works on the C1053 would exceed threshold values calculated from the relevant British Standard and so have a significant effect upon some residential properties on the road. The works would progress along the road, and so any such effect would only be for a very short period of time. Some mitigation is possible, for instance, by using mobile or semi-permanent noise barriers located close to construction activities. Residents would also be warned in advance of when noisy works would take place and the likely duration. They could also be timed to take place at the least sensitive times of day and works could be phased to allow respite from noise. Other best practice mitigation measures could be applied. High noise can be acceptable when necessary to reduce time taken on works.

Main points for other parties

7.43 A standard letter of objection submitted by many of the objectors referred to noise impacts of the proposed development upon amenity as a reason for objecting to it. One objector referred to the potential effect of turbine noise upon animals. Certain objectors also referred to the effect of the works upon the C1053 as having an adverse effect upon residents' amenity.

¹⁵⁶ [Statement of agreed matters](#) paragraph 5.1(e)

¹⁵⁷ [Statement of agreed matters](#) paragraph 7

Reporter's reasoning

7.44 The council, which has a statutory role with regard to the regulation of noise nuisance, has not objected to the proposed development.

7.45 I accept that noise from the proposed development's construction would not have any significant effect.

7.46 The evidence demonstrates that the proposed development can be operated so that it does not exceed noise limits calculated in accordance with the principles in ETSU-R-97. Noise limits have also been calculated to allow headroom for other potential development, should it be consented.

7.47 No evidence has been provided to me of any specific instance of distress suffered by animals as a consequence of windfarm noise, or any standards applied to the protection of animals from such noise. I have previously observed both farm animals and wild animals within commercial windfarms and near other sources of artificial noise, such as roads. I do not wholly dismiss the possibility that animals might be disturbed in some circumstances by noise from a windfarm. However, in the absence of any cogent evidence as to the likelihood of such an effect occurring or its degree, I do not find that it can be a consideration of any substantial weight in Ministers' decision.

7.48 As regards noise from enabling works on the C1053, I accept that there would be temporary significant effects on residential receptors from construction noise. Such effects from construction noise would be likely to last for only a short time at any given receptor. I consider that, with best-practice mitigation measures, including those outlined in the 2018 AEI, the effects of construction noise, although temporarily significant, would not be unacceptable.

Forestry

Introduction

7.49 The East Caithness LMP¹⁵⁸ is the current forestry plan for the application site and represents what the future land use at the application site is likely to be if the proposed development does not go ahead. The draft HMP¹⁵⁹ includes the applicant's proposals for the application site's management for forestry should the proposed development go ahead. The applicant has also undertaken to replant 232 hectares of forest off the application site, at the Ardverikie Estate or elsewhere.

7.50 Forestry Commission Scotland initially objected to the proposal¹⁶⁰ but subsequently withdrew its objection¹⁶¹ in view of the applicant's compensatory planting proposal.

¹⁵⁸ CD 097 East Caithness Land Management Plan

¹⁵⁹ [2017 FEI supplementary document – draft Habitat Management Plan](#)

¹⁶⁰ [Letter from John Risby, FCS, dated 31 July 2017](#)

¹⁶¹ [Email from John Risby, FCS, dated 18 September 2018](#)

Main points for the applicant

7.51 A small amount of woodland would be either lost or not replaced to make way for the proposed development's infrastructure.

7.52 The East Caithness LMP proposed harvesting the central, northern and eastern parts of the plantation at the application site between 2016 and 2020. It then proposed the restoration of the northern part of the site to peatland and the central part to peatland-edge woodland. The applicant's HMP instead proposes restoration of both the northern and central parts of the site as peatland, with a feathered woodland fringe running along the edge of the retained and replanted area of commercial forest to the south. This would have ecological and hydrological benefits including greater connectivity for the adjacent special area of conservation (SAC).

7.53 The applicant has agreed with Scottish Forestry to provide compensatory planting for woodland lost or not replanted as a consequence of establishment of the proposed development's infrastructure and also for the peatland-edge woodland replaced by peatland restoration in the HMP's proposals.

Main points for Forestry Commission Scotland (FCS)

7.54 FCS had decided to restore 212.39 hectares at the centre of the site as peatland-edge woodland as part of the East Caithness LMP. The applicant's purpose in proposing peatland restoration instead of the peatland-edge woodland previously planned in the LMP was related to the proposed development (to discourage nesting raptors). It is therefore appropriate to require compensatory planting for the peatland-edge woodland. FCS agreed with the applicant on a condition that would ensure there was sufficient compensatory planting.

Main points for others

7.55 A number of objectors objected to the effect upon amenity and recreation of the felling of the forest.

Reporter's reasoning

7.56 The Scottish Government's Control of Woodland Removal Policy includes a presumption in favour of protecting woodland. It provides that woodland should only be permitted to be removed if removal would achieve significant and clearly defined additional public benefits. In the present case, the applicant has proposed compensatory planting for all the woodland that would not be replaced as a consequence of the proposed development, including woodland lost as a consequence of the applicant's proposals for peatland restoration in its HMP. The proposed development therefore complies with the Control of Woodland Removal Policy.

7.57 It is not possible at this stage to carry out environmental assessment of the compensatory planting that is to be carried out outside the application site. This can be done when the scheme for compensatory planting is put forward for approval. For the purpose of their decision on the present application, I recommend Ministers make the conservative assumption that, with the compensatory planting, there would be no overall beneficial effect on forestry.

7.58 I do not consider that the commercial forestry currently being felled at the application site was an environment of high amenity for recreation or other activities. Since felling of the central and northern parts of the forest at the application site was proposed in the East Caithness LMP, I do not consider that effect of the felling on the amenity of the paths through the application site can be attributed to the proposed development.

Socio-economics, recreation and tourism

Introduction

7.59 The applicant assessed the proposed development's effect upon socio-economic, tourist and recreational resources at the application site and adjacent areas in ES chapter 13. There is also consideration of any such effects the C1053 enabling works might have in 2018 AEI section 3.13.

Main points for applicant

7.60 Attitude surveys carried out in 2008 and 2011 have indicated only a minority of people react negatively to windfarms or would avoid an area with windfarms. Economic studies carried out in 2012 and 2016 have found no measurable economic impact of windfarms on tourism and no relationship between the development of onshore windfarms and tourism employment at the level of the Scottish economy, at the level of the local-authority area or in areas immediately surrounding windfarms.

7.61 The applicant made an assessment of the proposed development's effect upon tourism, including specific tourist attractions and resources (such as tourist accommodation, attractions, and core paths and other marked trails), and upon the local jobs market within a 20 kilometre study area around the proposed development. It found that, during construction, job creation and local expenditure associated with the proposed development would have a minor (non-significant) beneficial effect upon the local economy and jobs market. The adverse effect of additional tree removal for the proposed development, given the context of the existing East Caithness LMP, would be negligible. There would be a reduction in visitor enjoyment in respect of a number of tourism resources including accommodation in Lybster and paths at Rumster, Lybster, Toftgun and Achavanich arising from adverse impact of construction on amenity of the wider area and as a consequence of an adverse impact on travel times from slow-moving loads. This would lead to a minor (non-significant) adverse effect upon tourism. Decommissioning would have similar effects.

7.62 During operation, fewer jobs would be created than during construction and the beneficial effect on the jobs market would be negligible.

7.63 The applicant offers contributions to a community fund of £5000 per megawatt of installed capacity in the proposed development (estimated at just over £8 million over the proposed development's lifetime). The economic effect would not be significant.

7.64 The adverse effect of the operating windfarm upon accommodation providers, taking account of the possibility that views of a windfarm might make accommodation less attractive, is estimated to be minor and not significant. The only identified visitor attraction judged to be sufficiently close to the proposed development for there to be any effect was Lybster golf course. There is no evidence that there would be an adverse effect though. The overall adverse effect upon identified tourist attractions is estimated to be negligible.

Similarly, given that no significant adverse effect has been found in respect of historic attractions, the adverse effect on their tourism value is assessed as negligible.

7.65 The proposed development would be screened from many core paths and other marked trails within ten kilometres. There would be an effect on the settings of core paths in Rumster and Toftgun and on the path from Achavanich to Munsary. Taking the low magnitude of effect and the medium tourism value of these paths, the adverse effect would be minor and non-significant.

7.66 In mitigation of the adverse construction effects, the applicant proposes a “Meet-the-Developer Day” to inform businesses about opportunities associated with the proposed development. The transport management plan would mitigate adverse effects of construction traffic on tourism.

7.67 No significant effects upon tourism were identified as a consequence of the works to the C1053.

7.68 Taking account of the effect of consented or proposed windfarms within 35 kilometres of the proposed development, no likely significant cumulative effect is identified.

Main points for others

7.69 A number of objectors referred to adverse effects the proposed development would have upon tourism and tourist attractions, including the NC500 route, and recreation, including walking, cycling and horse-riding within the application site itself. A bed-and-breakfast proprietor reported that several of her customers had said the Caithness scenery was being ruined by the number of wind turbines concentrated in such a small area. One objector referred to using the C1053 as a route along which she would ride her horse. Although the council did not advance an objection in respect of the proposed development’s socio-economic effects, its evidence did refer to use of minor roads in the area for cycling.

Reporter’s reasoning

7.70 I accept, given the evidence of the objections, that there is some use of the application site for recreation, including horse-riding, walking and cycling. Little detailed evidence has been provided to me of the degree of such use. There are no core paths within the application site itself. On the occasions I visited the application site itself, I found few cars in the car park on the C1053 and met no one in the forest itself. Other than the car park and forestry roads themselves, I found no facilities in the application site that would evidently have encouraged walking, cycling or horse-riding. When I walked through the application site I did not find the walk generally notable for its views or amenity.

7.71 The ES does not refer to any restriction on use of paths in the application site during construction. It may well be that the amenity of such paths would be affected by construction activities. If such effects were to occur, I do not consider that they would be significant, given that no core path, waymarked route or route to any notable location would be affected.

7.72 Following construction, the presence of wind turbines would not actually prevent use of the application site for walking or cycling, though I accept that some people would prefer not to walk or cycle through a commercial windfarm. It may be that there would be some adverse effect on horse-riding. Some horse-riders might not wish to take their horses

close to turbines. There is no substantial evidence that the application site is popular with horse-riders. I consider though that there are other areas available in Caithness, including in the Rumster Forest, where these activities can take place and that are similarly attractive.

7.73 No party advanced evidence on the wider socio-economic effects of the proposed development comparable to that of the applicant. I accept that the local expenditure and employment involved in construction is likely to have some non-significant beneficial effect. I also accept that there may be some non-significant adverse effects upon tourism as a consequence of adverse effects on amenity and upon traffic flow on public roads.

7.74 As regards the effect on tourism of operational turbines, the economic studies the applicant cites indicate that there is no evidence of a measurable effect from the presence of windfarms. This is not the same as saying that there is evidence of no effect. I understand the claim that there is an adverse effect upon tourism to be that it is a secondary effect arising from adverse effects on landscape and amenity, particularly visual amenity. The evidence before me does not suggest that a well-designed and well-located windfarm would have a significant adverse effect upon tourism.

7.75 The proposed development, once complete, would undoubtedly have significant adverse effects upon landscape and visual amenity. This includes a significant adverse effect upon a relatively short section of the A99, which forms part of the NC500 tourist route. I have not found that those effects are of a degree that is disproportionate to the scale of the proposed development. I also take into account that the proposed development would not have significant adverse effects on the historic environment, but would affect the amenity of a number of core paths including, most significantly, those in Rumster Forest and between Achavanich and Munsary. The proposed development would also be seen, at some distance, from parts of Lybster golf course.

7.76 Overall, I consider that the applicant's assessment that, during the proposed development's operation, a non-significant adverse effect would arise for tourism is reasonably conservative, and I accept it.

Water environment

7.77 The proposed development's effect on the water environment is considered in ES chapter 11 and 2017 FEI chapter 11. The C1053 enabling works' effect on the water environment is considered in section 3.11 of the 2018 AEI.

7.78 The standard objection letter and a number of individual objectors referred to the potential for adverse effects on the water environment as a consequence of the proposed development, though gave little in the way of specifics as to how such an adverse effect might arise.

7.79 The ES reports that following a survey by questionnaire of local properties, no private water supply was found to be within 250 metres of the proposed development's infrastructure. It did not identify any effect upon any designated site or any effect on flood risk associated with the proposed development. The ES identifies a number of moderate and major effects to watercourses within the application site that could occur during construction and operation, if no mitigation is applied. It proposes a set of standard mitigation measures to address these risks. The measures to mitigate risk of adverse effects on the water environment during construction are set out in the CEMP. It assessed these measures as reducing the risks so that the effect would not be significant.

7.80 SEPA, the government's advisor on flooding and water pollution, did not object in respect of the proposed development's effect on the water environment. The council, which also has responsibilities for management of flood risk, did not object to this aspect of the proposed development either.

7.81 I do not find that the proposed development would be likely to have any significant adverse effect upon the water environment.

Shadow flicker

7.82 Shadow flicker is an effect that can arise inside a building when the moving shadow of a rotating wind turbine periodically passes over a constrained opening, such as a window. This effect is considered in ES chapter 18, which finds that there would be no likely significant effect given the distance of the proposed development from any residential building.

7.83 A number of objectors referred to the potential for adverse shadow flicker effects, including the standard objection letter. None produces evidence comparable to that in the ES.

7.84 The Scottish Government's planning advice on onshore wind turbines¹⁶² indicates that shadow flicker should not be a problem where separation is provided between wind turbines and dwellings of - as a general rule - 10 rotor diameters. The turbines of the proposed development would be more than 10 rotor diameters from the nearest property.

7.85 I do not find that any significant effect would be likely to arise as a consequence of shadow flicker.

Other matters

7.86 As regards aviation, discussed in ES chapter 16 and 2017 FEI chapter 16, the mitigation sought by NATS Ltd., the Ministry of Defence and HIAL can be secured by condition. I accept consequently that there would be no significant effect upon aviation.

7.87 An objector suggested that the proposed development would have an adverse effect on the dark skies of Caithness. The proposed development is not in a dark sky park. The four visible red lights on the turbines are required to have a brightness of 32 candela. Mr Mason's evidence during the landscape and visual inquiry session was that this was a similar level of brightness to a car headlight. Although the lights would indicate the windfarm's presence, I do not consider that they would have a significantly adverse effect upon observation or perceived brightness of the stars over most of the sky.

7.88 Although some objectors asserted that the proposed development could have an adverse effect upon human health, including mental health, no substantive or detailed evidence was advanced that would support this. I have considered the proposed development's effect on residential amenity, both as a consequence of its visual effects and of noise generated. I am not persuaded, in view of my findings, that the proposed development is likely to have any significant effect on human health.

7.89 The applicant has proposed a shared-ownership scheme in which up to 49 percent of the ownership of the operating company would be offered to an entity owned

¹⁶² [CD 068 Scottish Government Onshore Turbines Planning Advice, 28 May 2014](#)

by the local community (a “community vehicle”). Generally speaking, the future ownership of a proposed development is not a material consideration in determining an application. I find the applicant’s offer to be lacking in detail. The offer appeared to be solely an investment opportunity. There was no evidence of any capacity-building in the local community as a result of any such shared ownership, such as in planning or management of a wind-energy development. In reaching my recommendation on the proposed development, I therefore give no substantial weight to the shared-ownership offer.

7.90 A number of objectors have referred to the requirement for a grid connection for the proposed development and the effects it would have. No proposal has yet been advanced for such a connection. The effects of any such proposal, including its cumulative effects with the proposed development, can be considered at the time that an application is made for it.

7.91 I understand that the community of Lybster was previously consulted upon and voted in favour of the development of three wind turbines on land belonging to the LLCCDC. Nonetheless, the proposed development must be considered on its own merits. I do not consider the manner in which LLCCDC reached an agreement with the applicant in respect of the form of the proposed development or the making of the application to be material to Ministers’ decision.

7.92 Although objectors referred to the potential for other forms of power generation, such as gas and nuclear power (including thorium reactors), I do not consider that the existence of other forms of generation adds or detracts from the proposed development’s own merits.

7.93 Although objectors made reference to the possibility of an adverse effect upon house prices in the area, the nationality of the applicant’s owners, the current cost of electricity in Caithness and to profits said to be made by windfarm developers, these are not material considerations in Ministers’ decision.

CHAPTER 8: ENVIRONMENTAL IMPACT ASSESSMENT

8.1 I have provided a description of the proposed development in paragraphs 1.5 to 1.9 of this report. Chapter 10 of this report sets out my recommendations for Ministers' decision and other chapters of this report set out my reasons for that recommendation and the considerations I have taken into account. I have set out at paragraphs 1.35 to 1.41 the opportunities for public participation in decision-making. I have summarised the environmental information to the degree necessary in respect of each topic of this report. The results of consultations and information gathered following public notification of the ES and additional information is set out in this report's chapter 1.

8.2 In chapter 9 and appendix 3 of this report, I have set out my recommendations for conditions to be applied to any consent, should Ministers determine that it should be granted.

8.3 In chapter 3, I found that the proposed development would have significant landscape and visual effects. These included significant landscape effects upon LCT 1 (Sweeping Moorland), LCT2 (Moorland Slopes and Hills), part of LCT 1A (Flat Peatland) within five kilometres of the proposed development, and part of LCT15 (Coastal Crofts and Farms) between the proposed development and the A99. They also included significant visual effects, represented by effects at viewpoints 2, 3, 4, 5, 6, 8, 9 and 10. I accept on the basis of the evidence set out in chapter 5 that the proposed development would have significant positive effects for ecology arising from the restoration of blanket bog and dry modified bog as habitat and for water vole as a consequence of such habitat restoration. In chapter 7 I found that the works to the C1053 road are likely to have temporarily significant effects in terms of noise on houses immediately neighbouring the road. I have set out reasoning relating to my findings on the significance of environmental effects in respect of each topic.

8.4 I have not identified any mitigation measures in respect of the proposed development's significant landscape and visual effects other than such as are comprised in its design and siting. As regards construction works to the C1053, those are to be the subject of a separate permission, which would deal with any necessary conditions for mitigation of effects. I consider that the standard good-practice measures set out in the 2018 AEI are appropriate. It is likely they can be secured under the Control of Pollution Act 1974, if not under a condition of any permission issued in respect of the works.

8.5 I have recommended conditions that would secure the appointment of a planning monitoring officer and an ecological clerk of works. These appointees would have the roles respectively of monitoring compliance with conditions of the proposed development and monitoring compliance with the applicant's ecological and hydrological commitments during construction of the proposed development. The ecological clerk of works would have powers to stop works for purposes related to ensuring commitments are kept. The proposed conditions also include a requirement for survey of post-construction road conditions on certain roads used by construction traffic. The habitat management plan required under condition is also to include monitoring measures within it.

8.6 I consider that, at the date of this report, my conclusion on significant effects is up to date.

8.7 The effects of compensatory planting required under condition 17 of this consent, which may take place at Ardverikie Estate or elsewhere, are not fully identifiable at this

stage. I consider that the effects of planting can be considered at such time as detailed proposals are advanced under condition 17.

CHAPTER 9: PROPOSED CONDITIONS

Introduction

9.1 I have set out in appendix 3 to this report my recommendation as regards conditions Ministers should apply to the proposed development, should they decide to grant consent.

9.2 The applicant and the council provided an agreed statement¹⁶³ with substantial agreement on the conditions they considered should apply to the proposed development, should consent be granted. My recommendation substantially adopts the conditions agreed between the applicant and the council. There were two points of disagreement between the parties, which I deal with below.

9.3 The applicant and council also agreed¹⁶⁴ that the grant of consent could be subject to:

- A planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 for revocation of the existing permission for the Rumster Forest Wind Farm. A draft of such an obligation has been supplied¹⁶⁵.
- An agreement under section 96 of the Roads (Scotland) Act 1984 on wear and tear of roads.

Points of disagreement between the council and applicant

Planning condition 20: Redundant turbines

9.4 The introductory part of condition 20 requires information on export of electricity to the grid to be kept and provided on request to the council. Part (i), agreed by both parties, would have the effect that if any one or more of the proposed turbines should stop exporting electricity to the grid for a period of six months, it must either be repaired or removed according to a scheme submitted within a specified period and approved by the council.

9.5 Part (ii), proposed by the council but opposed by the applicant, requires that, if half or more of the turbines ceased to export electricity to the grid for a 12-month period, then the proposed development would be decommissioned in accordance with an approved scheme, unless otherwise agreed by the council.

9.6 The council argued that part (ii) was necessary since the balance between the benefits and impacts of the scheme would be significantly changed from that proposed in circumstances where half the turbines had failed or had been removed. The design strategy would likely no longer be delivered and the visual impact would consequently be likely to be increased. The council also pointed out that there was discretion contained in the condition for it to allow retention of the remaining turbines, notwithstanding the failure of half or more.

9.7 The applicant argued that the condition was unnecessary and unreasonable. Although most proposed conditions followed the model provided by Heads of Planning, this

¹⁶³ [CD 111 Statement of agreed matters – conditions of consent and deemed planning permission – revised 5 October 2018](#)

¹⁶⁴ [CD 110 Statement of agreed matters, section 9](#)

¹⁶⁵ [APP 008.001 LLCCDC draft section 75 unilateral undertaking](#)

condition's part (ii) did not. The figure of half the turbines was arbitrary. Contrary to the council's claim, if there were fewer turbines, the development would be likely to have less of a visual impact. It would not necessarily be the case that if half the turbines were removed, the design strategy would not be delivered.

9.8 I agree with the applicant that part (ii) is unnecessary. No evidence has been submitted to demonstrate that there is any likelihood that half the turbines of the proposed development could fail and not be replaced, let alone that this would be likely to have an adverse visual effect that would justify the removal of the remainder. In the absence of such evidence, it appears to me unlikely such a situation would arise. I also agree that the effect of part (ii) would be arbitrary, since it applies without regard to any actual visual effects of the residual development.

Planning condition 24: financial guarantee

9.9 The council took the view that, in addition to the requirements of condition 24, the decommissioning financial guarantee should be secured in a planning obligation. The applicant argued that this was unnecessary.

9.10 It is a standard approach now, as shown by the Heads of Planning model conditions¹⁶⁶, to include a requirement for a decommissioning financial guarantee in conditions. Once the proposed development is commenced, proposed planning condition 24 would be enforceable against the owner of the land. I consider that including a requirement for such a guarantee in a planning obligation would simply be duplication. I therefore reject the council's view on this point.

Other issues relating to conditions

9.11 In condition 5 on micro-siting, I have added requirements at new letters (f) and (g) regarding the micro-siting of certain tracks to reflect undertakings to protect cultural heritage features given in ES chapter 12.

9.12 In condition 10 on construction environment management, I have added to the requirements for the Peat Management Plan at number (ix) a requirement that the plan should include a scheme for micro-siting proposed infrastructure to minimise its effect upon peat. This scheme would be informed by additional peat-probing. This reflects the basis upon which SEPA withdrew its objection in respect of the proposed development's effect on peat.

9.13 Also in condition 10, I have introduced express provisions to ensure that the requirements sought by SNH in respect of the protection of hen harrier, short-eared owl and merlin are included in the construction environment management document. I have also added a specific provision to ensure that a plan for pre-construction surveys for protected species is included.

9.14 The version of condition 12 agreed between the council and applicant was as follows:

"There shall be no Commencement of Development until a concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 under which the Company is responsible for the repair of any damage to the local road network that can reasonably be

¹⁶⁶ CD 105 Heads of Planning Model Conditions for section 36 consents

attributed to construction related traffic [sic]. As part of this agreement, pre-start and post-construction road condition surveys must be carried out by the Company, to the satisfaction of the Roads Authority(s). It will also require the submission of an appropriate financial guarantee, bond or alternative form of security acceptable to the planning authority in respect of the risk of any road reconstruction works.”

9.15 I consider such a condition is problematic in several respects. First, the roads authority has an existing statutory power under section 96 of the Roads (Scotland) Act 1984 to recover certain costs in respect of the effects of excessively heavy or other extraordinary traffic on roads. The requirement in the condition to enter into an agreement to address such costs duplicates this statutory power and therefore is unnecessary. Second, I understand the requirements for the agreement set out in the condition to go beyond what the section 96 power would allow the roads authority to recover. Section 96 allows the roads authority to recover “extraordinary expenses [that] have been, or will be, incurred by them in maintaining the road by reason of damage caused to it by excessively heavy or other extraordinary vehicles or traffic”. Whether expenses are extraordinary is determined with reference to the average expense of maintaining the road or other similar roads in the roads authority’s area. The condition would provide for recovery of any cost that could reasonably be attributed to construction traffic, not only such extraordinary expenses. In my view, for a condition to go beyond what a statutory power provides would be unreasonable.

9.16 Section 96 includes the option for the operator of the traffic and the roads authority to reach agreement for composition of the operator’s liability. Such an agreement can make provision for an associated bond. To require provision for a bond under a condition appears to me to anticipate any such agreement.

9.17 I therefore do not consider that condition 12 should include a requirement for an agreement to be entered into or for a bond to be provided as part of such an agreement. I do consider a condition that requires pre- and post-construction road surveys to be carried out to ascertain damage to the road as a consequence of the proposed development would meet the tests for imposition of a condition. I have retained that requirement in the condition.

9.18 I have amended condition 18 on peat landslide risk management so that it reflects the recommendation of AM Geomorphology that there should be regular reporting of risk analysis to the council.

9.19 I have amended condition 22 on aviation lighting, inserting a maximum brightness of 32 candelas for such lighting to reflect the aviation lighting assessment provided as part of the environmental information.

9.20 I draw to Ministers’ attention that there is a list of definitions with the proposed conditions. These include a definition of the term “the development”. This definition will require to be adjusted to refer to the description of the development contained in their decision, should they grant consent.

Planning obligation

9.21 The council and applicant agreed a form of planning obligation for revocation of the existing permission for the Rumster Forest wind farm¹⁶⁷. Although it is unlikely that the

¹⁶⁷ [APP 008.001 Draft s 75 undertaking by Latheron, Lybster and Clythe Community Development Company](#)

Rumster Forest wind farm would proceed if the proposed development proceeds, I consider that the issue of the undertaking by the landowner, the Latheron, Lybster and Clythe Community Development Company, would eliminate the possibility of significant cumulative effects arising that have not been environmentally assessed. Given that the undertaking is both specific in its purpose and in a broadly agreed form, I consider that the giving of the undertaking need not be required before a grant of consent but can be required under a suspensive condition. In this way, the issue of consent would not be delayed while a finalised form of the undertaking is concluded, executed and registered.

CHAPTER 10: CONCLUSIONS AND RECOMMENDATIONS

10.1 Of the matters referred to in the Electricity Act 1989 schedule 9, the only dispute between the applicant and the council was in respect of the proposed development's visual effect and – though this was not expressly the subject of the council's objection – certain aspects of its landscape effects. The proposed development does have significant adverse landscape and visual effects. I have not found that these effects, as the council had claimed, are disproportionate to the type and scale of the proposed development.

10.2 There is strong support for renewable-energy development, including onshore wind energy, in the government's energy and climate-change policies. The Scottish Government has adopted new targets for installed renewable generation capacity and reduction of carbon-dioxide emissions, and these are challenging. It is an inevitable consequence of this national policy that there will be significant adverse landscape and visual effects arising from development supported by the policy, including wind-energy development like that proposed. An assessment of whether the landscape and visual effects are acceptable must take this into account.

10.3 I have not found that the proposed development would have any significant adverse effect upon any bird or animal species or upon any area designated for its conservation value or any other receptor of conservation value.

10.4 I have found that the proposed development would contribute to meeting both national renewable-energy targets and national targets for reduction in greenhouse gases.

10.5 As regards SPP, the proposed development is agreed by the council and applicant to be in a category 3 area, an area where the policy provides that such development is likely to be acceptable. I have considered the proposed development against the factors set out in SPP paragraph 169. I have not found significant adverse effects in any respect other than the significant landscape and visual effects identified in chapter 3 of this report and the temporary noise effects of enabling works to the C1053 road. These must be balanced against the proposed development's effect on greenhouse gas emissions and the scale of its contribution to renewable-energy targets. I find that the balance lies in favour of the proposed development.

10.6 As regards SPP policy favouring of development that contributes to sustainable development, I find that the proposed development:

- provides renewable-energy infrastructure and supports climate-change mitigation;
- is well-designed to take account of the constraints while mitigating adverse effects;
- makes efficient use of existing capacities of land and minimises waste, including by reusing peat excavated to make way for infrastructure;
- is consistent with the principles for sustainable land use in the Scottish Land Use Strategy, insofar as they are relevant: leaving aside factors already dealt with, the decommissioning proposals would mean the site would not be left derelict at the end of the development's life;
- is designed and sited such that it does not have significant adverse effects on cultural heritage;
- although it has significant adverse landscape effects, has sought to minimise them by its siting and design and thereby protect natural heritage; and
- does respond to the issues, including economic issues, presented by the requirement for renewable energy and for climate change mitigation.

Overall, therefore, I consider that the balance of costs and benefits favours the proposed development and that it is sustainable.

10.7 As regards HWLDP policy 67, the proposed development would contribute to the meeting of renewable-energy targets and would not be likely to have a significant effect on the local or national economy, positive or negative. The only issue that arises in respect of OWESG is the proposed development's compatibility with the landscape and visual criteria in paragraph 4.17 and with the guidance in the Sensitivity Appraisal. As regards the criteria, I have found that only two are not fully met. Overall, having taken account of the factors listed in policy 67, I do not consider that the proposed development's location, siting and design is significantly detrimental overall. Balanced against the proposed development's benefits, I find that its adverse landscape and visual effects and its adverse effects in respect of noise from enabling works on the C1053, are acceptable. I therefore find that it complies with policy 67.

10.8 I find the considerations in respect of HWLDP policy 28, insofar as it is relevant, to be similar to those for policy 67. In contributing to renewable-energy targets and climate-change mitigation, the proposed development does promote the environmental wellbeing of the people of Highland. The generation of waste is minimised. Although there are adverse effects upon residential amenity, they are not such as are unacceptable in such development. There would be no significant adverse effect on habitats, freshwater systems, cultural heritage or air quality, and effects on landscape have been minimised through siting and design in accordance with council guidance. The proposed development complies with the principles of sustainable design. I find that the proposed development complies also with that policy.

10.9 Overall, as regards the development plan, I consider that policy 67 is the lead policy for renewable-energy development. Since the proposed development complies with that policy and is compatible with other plan policies, I find that it complies with the development plan.

10.10 I consider that the applicant has undertaken reasonable mitigation in designing the proposed development in respect of its effects upon the natural beauty of the countryside and other matters Ministers are required to take into account by schedule 9 of the Electricity Act.

10.11 Taking into account the proposed development's contribution to meeting the aims of national energy and climate change policy, I find that on balance its adverse effects are acceptable and it should be granted consent.

Recommendation

10.12 I therefore recommend that consent under section 36 of the Electricity Act 1989 and deemed planning permission be granted. If the Scottish Ministers agree with this recommendation, I recommend also that the conditions proposed in Appendix 3 should be attached.

Robert Seaton

Reporter

APPENDICES

Appendix 1: Document lists

[Core document list](#)

[Applicant document list](#)

[Council document list](#)

[Joanne Bowd and Janet Cowin statement and photographs](#)

Appendix 2: Statement of common ground, inquiry precognitions, hearing statements, written submissions, closing submissions and appearances

[Note of pre-inquiry meeting](#)

[Revised procedure notice for the inquiry 26 June 2018](#)

[Statement of agreed matters](#)

[Statement of agreed matters - conditions](#)

Inquiry session on landscape and visual effects

- [Inquiry statement for the applicant](#)
- [Inquiry statement for the council](#)
- [Report on landscape and visual effects by Jonathan Mason, witness for the applicant](#)
- [Report on landscape and visual effects by Mark Steele, witness for the council](#) and [figures](#)
- [Precognition of Jonathan Mason](#)
- [Precognition of Mark Steele](#)

The applicant was represented by Vincent Fraser QC. He called as a witness Jonathan Mason CMLI, technical director at Axis PED Ltd.

The council was represented by James Findlay QC. He called as a witness Mark Steele CMLI, Mark Steele Consultants Limited.

Hearing sessions

[Hearing session agendas](#)

Policy

- [Hearing statement for the applicant](#)
- [Hearing statement for the council](#)

The applicant was represented at the hearing by Vincent Fraser QC and David Bell, Director - JLL

The council was represented at the hearing by James Findlay QC and Simon Hinson, Principal Planner – Major Projects

Residential visual amenity

- [Hearing statement for the applicant](#)
- [Hearing statement for Joanne Bowd and Janet Cowin](#)

The applicant was represented at the hearing by David Bell and Jonathan Mason

Joanne Bowd and Janet Cowin represented themselves at the hearing.

Enabling works to the C1053 road

- [Hearing statement for the applicant](#)
- [Hearing statement for Caroline Window](#)

The applicant was represented at the hearing by Corey Simpson (EIA lead), John Redding (traffic and transportation advisor) and Tim Britton (principal acoustic consultant)

Caroline Window was represented at the hearing by herself and Captain David Bowley

Conditions

There were no hearing statements for the conditions hearing. The parties supplied a [statement of agreed matters on conditions](#) (CD 111) which set out their areas of agreement and differences.

The applicant was represented at the conditions hearing by Vincent Fraser QC and David Bell

The council was represented at the conditions hearing by James Findlay QC and Simon Hinson

Written representations made to DPEA

Osprey and wildcat:

- [Applicant written submission on osprey](#) (submitted as hearing statement)
- [Applicant written submission on wildcat](#) (submitted as hearing statement)

Peat and carbon balance:

- [Written submission by Peter Batten on carbon intensity](#), 22 April 2018
- [Applicant response to written submission by Peter Batten](#), 15 May 2018
- [Further written submission by Peter Batten](#), 12 October 2018
- [Applicant response to further written submission by Peter Batten](#), 9 November 2018

Closing submissions

- [Closing submission for the applicant](#)
- [Closing submission for the council](#)
- [Closing submission for Joanne Bowd and Janet Cowin](#)
- [Closing submission for Caroline Window](#)

Further written submissions post-inquiry

[Request for further written submissions](#) on implications for parties landscape and visual cases of the National Landscape Character Assessment (NLCA)

- [Applicant submission on NLCA](#)
- [Council submission on NLCA](#)
- [Applicant reply to council submission on NLCA](#)
- [Council reply to applicant submission on NLCA](#)

[Notice for verification of environmental information](#) submitted in respect of effects on bird species and special protection area

- [Applicant submission](#)
- RSPB Scotland response (not on public website)
- [Applicant reply to RSPB Scotland](#)

Appendix 3: Recommended conditions

Conditions of section 36 consent

1. Duration of the Consent

The consent is for a period of 25 years from the date of Final Commissioning. Written confirmation of the date of Final Commissioning shall be provided to the Scottish Ministers no later than one calendar month after the event.

Reason: To define the duration of the consent.

2. Commencement of development

The Commencement of Development shall not occur later than five years from the date of this consent, or such other longer period as the Scottish Ministers may direct in writing following a request by the Company.

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

3. Non-assignation

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

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

Conditions of deemed planning permission

1. Duration of the deemed planning permission

The Planning Permission is granted for a period of 28 years from the date of Final Commissioning, comprising an operational period of up to 25 years from the date of Final Commissioning and a period of up to 3 years for decommissioning and site restoration. Written confirmation of the Date of Final Commissioning must be provided to the planning authority no later than one calendar month after the event

Reason: to define the duration of the planning permission

2. Design and operation of turbines

No turbines shall be erected until details of the proposed turbines have been submitted to, and approved in writing by, the planning authority. These details shall include:

- i. the make, model, design, of the turbines to be used; and
- ii. the external colour and/or finish of the turbines to be used (including towers, nacelles and blades) which should be non-reflective pale grey semi-matt.

Furthermore:

- a. the turbines must have internal transformers; and
- b. the hub height for turbine T10 (the location of which is shown on the Site Layout Plan) shall not exceed 70 metres.

Thereafter, development shall progress in accordance with these approved details and, with reference to part ii above, the turbines shall be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned

Reason: To ensure that only the turbines as approved are used in the development and are acceptable in terms of visual, landscape, and environmental impact considerations

3. Advertisement on infrastructure

None of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings / enclosures, ancillary buildings or above-ground fixed plant shall display any name, logo, sign or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the planning authority.

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

4. Design of substation and ancillary equipment

There shall be no Commencement of Development in respect of the control building, substation and / or ancillary infrastructure until final details of the location, layout, external appearance, dimensions and surface materials of all buildings, compounds, parking areas, as well as any external lighting (excluding aviation lighting), fencing, walls, paths and any other ancillary elements of the development, have been submitted to, and approved in writing by, the planning authority. Thereafter, development shall progress in accordance with these approved details. For the avoidance of doubt, details relating to the control building and substation buildings shall include additional architectural design, landscape and visual appraisal, carried out by suitably qualified and experienced people, to ensure that they are sensitively scaled, sited and designed

Reason: To ensure that all ancillary elements of the development are acceptable in terms of visual, landscape, noise and environmental impact considerations.

5. Micrositing

All wind turbines, buildings, masts, borrow pits, areas of hardstanding and tracks shall be constructed in the location shown in table 4.2 of the 2017 FEI. Wind turbines, buildings, masts, borrow pits, areas of hardstanding and tracks may be adjusted by micro-siting within the Site. However, unless otherwise approved in advance in writing by the planning authority (in consultation with SEPA and SNH), micro-siting is subject to the following restrictions:

- a. No wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (AOD), than the position shown on the Site Layout Plan;
- b. No wind turbine or related hardstanding shall be moved more than 50m from the position shown in table 4.2 of the ES and no mast or access track shall be moved more than 50m from the position shown on the Site Layout Plan;
- c. No buildings, temporary construction compound or borrow pits shall be moved more than 100m from the position shown on the Site Layout Plan;
- d. No micro-siting shall take place with the result that infrastructure (excluding floating tracks or hardstanding) is located within areas of peat of greater depth than the original location;
- e. No micro-siting shall take place within areas hosting Ground Water Dependent Terrestrial Ecosystems as identified in the ES;
- f. No micro-siting of the access track between turbine T13 and the construction compound shall be undertaken westwards;
- g. No micro-siting of the access track to turbine T18 shall be undertaken northwards such as to impact upon the shieling hut of Clashmore;
- h. With the exception of water-crossings, no element of the proposed development should be located closer than 50m from the top of the bank of any watercourse; and
- i. All micro-siting permissible under this condition must be undertaken under the direction of the Environmental Clerk of Works (ECoW).

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

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

6. Borrow pits – scheme of works

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

- a. A detailed prioritisation plan for all borrow pits on site which shall provide detail on which borrow pits are required or likely to be worked and the sequence in which they will be opened up;
- b. A 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, including measures to prevent surrounding areas of peatland and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
- e. A programme of implementation of the works described in the scheme; and
- f. Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period, to include topographical surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles.

The approved scheme shall thereafter be implemented in full.

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

7. Borrow pits – blasting

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

- i. Details on ground vibration limits at agreed blast monitoring locations;
- ii. Limitations on blasting to between the hours of 10.00 to 16.00 Monday to Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on national public holidays, unless otherwise approved in advance in writing by the planning authority.

Thereafter the approved scheme shall be implemented

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

8. Planning monitoring officer

There shall be no Commencement of Development until the planning authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant to assist the planning authority in monitoring compliance with the terms of the deemed planning permission and conditions attached to this consent ("PMO"). The terms of appointment shall:

- a. Impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
- b. Require the PMO to submit a monthly report to the planning authority 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 this consent at the earliest practical opportunity.

The PMO shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post-construction restoration works.

Reason: To enable the development to be suitably monitored to ensure compliance with the consent issued.

9. Ecological clerk of works

There shall be no Commencement of Development unless the planning authority has approved in writing the terms of appointment by the Company of an independent Ecological Clerk of Works (ECoW) in consultation with SNH and SEPA. The terms of appointment shall:

- a. Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the environmental statement and other information lodged in support of the application, the Construction and Environmental Management Plans approved in accordance with condition 10, the Habitat Management Plan approved in accordance with condition 15, any species protection plans identified in the Environmental Statement or 2017 FEI and other plans approved (“the ECoW works”);
- b. Require the ECoW to report to the Company’s nominated construction project manager 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 planning authority summarising works undertaken on site;
- d. Have power to stop the job / activities being undertaken within the Site when a breach or potential breach of environmental legislation occurs to allow for a briefing of the concern to the Company’s nominated construction project manager; and
- e. Require the ECoW to report to the planning authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity.

The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post-construction restoration works approved.

No later than 18 months prior to decommissioning of the Development or the expiration of this planning permission (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and any aftercare phases of the Development to the planning authority for approval in consultation with SNH and SEPA. The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration and any aftercare phases of the Development.

Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development

10. Construction environment management

There shall be no Commencement of Development until a finalised Construction Environmental Management Document is submitted to and agreed in writing by the planning authority in consultation with SEPA and other appropriate consultees as appropriate. The document shall be based upon the draft Construction Environment Management Plan submitted to Scottish Ministers in June 2017. The document shall include provision for:

- An updated Schedule of Mitigation (SM). This should take account of the mitigation measures set out in the ES, and in particular, in ES table 19.1, and any update or amendment to these, or any additional mitigation measure proposed in the 2017 FEI, 2018 AEI or in details approved under these conditions;
- Processes to control / action changes from the agreed Schedule of Mitigation; and
- The following specific Construction and Environmental Management Plans (CEMPs):
 - i. Details of the construction works, construction methods and surface treatment for all hard surfaces and tracks;
 - ii. Method of construction of the crane pads;
 - iii. Method of construction of the turbine foundations;
 - iv. Method of working cable trenches;
 - v. Method of construction and erection of the wind turbines and meteorological masts
 - vi. details of watercourse crossings designed to accommodate a 1-in-200-year flood event plus a 20% allowance for climate change;
 - vii. Residual Forest Waste Management Plan;
 - viii. details of the temporary site compounds, for the storage of materials and machinery, including the areas designated for offices, welfare facilities; fuel storage and car parking;
 - ix. Peat Management Plan – to include details of all peat stripping, excavation, storage and reuse of material in accordance with best practice advice published by SEPA and SNH. The Peat Management Plan shall include a scheme for adjustment of the location of development infrastructure within its micro-siting tolerance permitted under condition 5 so as to minimise impacts upon peat. The Plan should also set out how sensitive peat areas are to be marked out on-site to prevent any vehicle causing inadvertent damage. The Peat Management Plan shall be informed by further peat probing in the vicinity of turbine numbers 10 and 15.
 - x. Water Quality Management Plan - highlighting drainage provisions including monitoring / maintenance regimes, water crossings, surface water drainage management (SUDs) and development and storage of material buffers (50m minimum) from water features, unless otherwise agreed in writing by the planning authority in consultation with SEPA;
 - xi. Public Water Supply Protection Measures Plan;
 - xii. Pollution Prevention Plan
 - xiii. Site Waste Management Plan
 - xiv. Construction Noise Mitigation Plan.
 - xv. Species Protection Plan(s): - including hen harrier, osprey and Scottish wildcat.
 - xvi. A plan for pre-construction surveys for legally protected species.
 - xvii. A plan for mitigation of effects on Ground Water Dependent Terrestrial Ecosystems.

The relevant CEMPs shall provide that construction work must, where possible, avoid the bird-breeding season (15 March to 31 August inclusive). In cases where this is not possible, the CEMPs shall provide that pre-construction surveys for breeding hen harrier, short-eared owl and merlin must be carried out within the Site boundary and 750 metres beyond following best-practice guidance. Mitigation measures identified in the CEMPs or identified following the survey must be implemented to avoid disturbance. The CEMPs

shall provide that the survey method is to be subject to consultation with Scottish Natural Heritage before the survey is carried out.

The species protection plan for hen harrier shall provide that regular monitoring of the hen-harrier roost site identified during baseline surveys will be conducted during the non-breeding season (1 September to 31 March inclusive). It shall further provide that when this roost is observed to be occupied, mitigation measures identified in the species protection plan will be implemented to minimise risk of construction-related disturbance to hen harriers using the roost.

The pre-construction survey for legally protected species must be carried out at an appropriate time of year for the species, at a maximum of 12 months preceding commencement of construction, and a watching brief must then be implemented by the Ecological Clerk of Works (ECoW) during construction. The species that must be surveyed for include (but are not limited to) breeding birds, wild cat, otter, pine martin and water vole. The area that is surveyed must include all areas directly affected by construction plus an appropriate buffer to identify any species within disturbance distance of construction activity and to allow for any microsite needs;

- Provision of a communication plan to ensure all contractors are aware of the possible presence of protected species frequenting the Site and the laws relating to their protection;
- The notification and a stop-the-job commitment requirements set out below:
 - Should an otter holt be found during construction, all works within 200m of the holt shall stop immediately and the SNH Golspie office must be notified and asked for advice.
 - Should a wild cat den be found during construction, all works within 200m of the den shall stop immediately and the SNH Golspie office must be notified and asked for advice.
 - Should any water vole activity be found during construction, all works within 10m of the nearest burrow shall stop. Work may progress if it is in excess of 10m of the nearest burrow, otherwise work shall stop immediately and the SNH Golspie office must be notified and asked for advice;
- Site Construction Decommissioning Method Statement highlighting restoration / reinstatement of the working areas not required during the operation of the Development, including temporary access tracks required for construction only, borrow pits, construction compound, storage areas, laydown areas, and other temporary construction areas. 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; and
- a Construction Method Statement for the approval of the planning authority in consultation with SNH and SEPA incorporating the mitigation measures set out in the Peat Landslide Risk Assessment provided as part of the 2017 FEI.

Unless otherwise agreed in writing by the planning authority, the development shall then proceed in accordance with the approved Construction Environment Management Document.

Reason: To secure the final detailed information on the delivery of all on-site mitigation projects relating to the development's construction and to protect the environment from the effects of construction and operation of the development

11. Construction traffic management

There shall be no Commencement of Development until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved by, the planning authority in consultation with the relevant roads authority(s) and Transport Scotland. The CTMP, which shall be implemented as approved during all period of construction and decommissioning, must include:

- i. A description of all measures to be implemented by the Company in order to manage traffic during the construction phase (including routing strategies), with any additional or temporary signage and traffic control undertaken by a recognised suitably qualified traffic management consultant;
- ii. The identification and delivery of all upgrades to the public road network, including but not limited to upgrades to the local and trunk road network, to ensure that it is to a standard capable of accommodating construction traffic relating to the Development (including the formation or improvement of any junctions leading from the Site to the public road) to the satisfaction of the roads authorities, including:
 - Access by abnormal indivisible loads will be via the A99 and C1053 only;
 - An initial route assessment report for abnormal loads and construction traffic, 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;
 - An assessment of the capacity of existing bridges and other structures along the construction access routes to cater for all construction traffic, with upgrades and mitigation measures proposed and implemented as necessary;
 - 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 in attendance;

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. The approved works shall be completed prior to any abnormal indivisible load delivery to the Site for the Development.

- iii. A risk assessment for the transportation of abnormal loads to the Site during daylight hours and hours of darkness;
- iv. A contingency plan prepared by the abnormal load haulier. The plan shall be adopted only after consultation and agreement with the Police 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.
- v. A procedure for the regular monitoring of road conditions and the implementation of any remedial works required during construction / decommissioning periods.

- vi. 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 roads maintained by the local roads authority shall take place outwith peak times on the network, including school travel times, and shall avoid times of local community events.
- vii. A detailed delivery programme for abnormal load movements, which shall be made available to the planning authority and community representatives.
- viii. Details of any upgrading works required at the junction of the Site access and the public road. 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.
- ix. 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 Highland Council, as roads authority.
- x. Wheel washing measures to ensure water and debris are prevented from discharging from the Site onto the public road;
- xi. Appropriate reinstatement works shall be carried out, as required by Highland Council, at the end of the turbine delivery and erection period.
- xii. Measures to ensure that construction traffic adheres to agreed routes.

Reason : To maintain safety for road traffic and the traffic moving to and from the development, and to ensure that the transportation of abnormal loads will not have any detrimental effect on the road network

12. Road conditions surveys

There shall be no Commencement of Development until the planning authority has approved a scheme proposed by the Company for pre-start and post-construction condition surveys of roads upon which there is likely to be excessively heavy or other extraordinary traffic associated with the Development's construction. The scheme shall be carried out as approved by the planning authority.

13. Community liaison group

There shall be no Commencement of Development until a community liaison group is established by the Company, in collaboration with the planning authority and the Latheron, Lybster and Clyth Community Council. The group shall act as a vehicle for the community to be kept informed of project progress and, in particular, should allow advanced dialogue on the provision of all transport-related mitigation measures and to keep under review the timing of the delivery of turbine components. This should also ensure that local events and tourist seasons are considered and appropriate measures to co-ordinate deliveries and work with these and any other major projects in the area to ensure no conflict between construction traffic and the increased traffic generated by such events / seasons / developments. The liaison group, or element of any combined liaison group relating to this development, shall be maintained until the wind farm construction has been completed and is fully operational.

Reason: To assist project implementation, ensuring community dialogue and the delivery of appropriate mitigation measures for example to minimise potential hazards to road users, including pedestrians, travelling on the road networks.

14. Outdoor-access management plan

There shall be no Commencement of Development until an Access Management Plan has been submitted to, and agreed in writing by, the planning authority. The plan should ensure that public access is retained within the Site during construction so far as possible subject to health and safety requirements, and thereafter that existing levels of public access are not restricted as a result of the operational phase of the wind farm. The plan as agreed shall be implemented in full, unless otherwise approved in writing with the planning authority

Reason: In the interests of securing and enhancing public access rights

15. Habitat management plan

There shall be no Commencement of Development unless a habitat management plan has been submitted to and approved in writing by the planning authority in consultation with SNH. The habitat management plan shall be based on the principles of the draft Habitat Management Plan (June 2017) and shall set out proposed habitat management within the Site during the period of construction, operation, decommissioning, restoration and any aftercare of the Site, and shall provide for the maintenance, monitoring and reporting of sward height across any permanent, long term, open areas within the Site that are within up to 500m of wind turbines.

The approved habitat management plan will include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the habitat plan objectives. In particular, the approved habitat management plan will be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted to the planning authority for written approval in consultation with SNH and SEPA.

The approved habitat management plan shall be implemented in full, subject to any such approved updates.

Reason: In the interests of good land management and the protection of habitats

16. Programme of archaeological works

No intrusive works shall commence until the planning authority has approved the terms of a programme of archaeological works to be observed during construction of the Development, to include measures to be taken to protect and preserve any features of archaeological interest in situ where practicable and the recording and recovery of archaeological features which cannot be so preserved. The approved scheme of archaeological works shall thereafter be implemented in full.

Reason: To ensure the protection or recording of archaeological features on the site.

17. Compensatory planting

There shall be no Commencement of Development until a compensatory planting plan has been submitted to and, following consultation with Scottish Forestry, approved in writing by the planning authority. The compensatory planting plan must provide for compensatory planting of no less than 232 hectares to replace existing forest areas that are to be removed to accommodate the Development. It must include as a minimum:

- a. details of the proposed planting at Ardverikie estate, including:
 - i. The location of any and all area(s) to be planted,
 - ii. The landowners and occupiers of the land to be planted; and
 - iii. Copies of the land agreements in place with the relevant landowner(s) which allow delivery of the compensatory planting;
- b. If the compensatory planting will not take place Ardverikie estate, the following details (which must be submitted to and approved by the planning authority):
 - i. The location of any alternative area(s) to be planted;
 - ii. The landowners and occupiers of the land to be planted; and
 - iii. Copies of the land agreements in place with the relevant landowner(s) which allow delivery of the compensatory planting.
- c. detail of the associated timescales for implementing the compensatory planting including any phasing. Compensatory planting shall be completed no later than two years following the Commencement of Development;
- d. detail of any statutory consents required to carry out the compensatory planting;
- e. proposals for the maintenance, for a minimum period of 10 years, and the establishment of a replanting scheme. These proposals shall include details of the frequency of checks, suitable triggers for any necessary replacement planting, the timing of replacement planting, fencing, ground preparation and drainage;
- f. proposals for reporting to the planning authority and Scottish Forestry on compliance with timescales for obtaining the necessary consents and thereafter for implementation of the Compensatory Planting Plan.

The approved Plan shall be implemented in full, unless otherwise agreed in writing by the planning authority after consultation with Scottish Forestry.

Reason: To ensure compensatory planting is carried out to compensate for woodland lost as a consequence of the proposed development in compliance with the Scottish Government Policy on Woodland Removal.

18. Peat landslide management

There shall be no Commencement of Development until a detailed peat landslide risk assessment, addressing the construction phase of the development and post-construction monitoring, has been approved in writing by the planning authority.

The peat landslide risk assessment shall comply with best practice contained in “Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments” published by the Scottish Government in January 2007, or such replacement standard as may be in place at the time of submission of the peat landslide

risk assessment for approval. The peat landslide risk assessment shall include a scaled plan and details of any mitigation measures to be put in place.

The approved peat landslide risk assessment shall thereafter be undertaken in full, with any pre-construction mitigation implemented prior to Commencement of Development. Prior to Commencement of Development, the Company shall appoint and pay for an independent and suitably qualified geotechnical engineer acceptable to the planning authority, the terms of whose appointment (including specification of duties and duration of appointment) shall be approved by the planning authority.

Where and to the extent recommended by the peat landslide risk assessment, the Company shall undertake monitoring of ground conditions during the construction phase of the Development. If a risk of peat failure is identified, the Company shall undertake any remediation work as may be considered necessary by the geotechnical engineer. Monitoring results shall be fed into risk-analysis reports, which during the period of construction shall be submitted to the planning authority at intervals stated in the peat landslide risk assessment.

Reason: To minimise the risk of peat failure arising from the Development

19. Television reception mitigation

There shall be no Commencement of Development unless a Television Reception Mitigation Plan has been submitted to, and approved in writing by, the planning authority. The Television Reception Mitigation Plan shall provide for a baseline television reception survey to be carried out prior to the installation of any turbine forming part of the Development, the results of which shall be submitted to the planning authority.

For the avoidance of doubt the scheme shall include, but not be limited to:

- details of publication and publicity for the scheme;
- a reasonable timescale for investigation of any claims;
- details for reporting mechanism to the planning authority the number of complaints / claims; and
- details of the length of the operation of the mitigation scheme.

The approved Television Reception Mitigation Plan shall thereafter be implemented in full. Any claim by any individual person regarding television picture loss or interference at their house, business premises or other building, as a result of the Development made during the period from installation of any turbine forming part of the Development to the date falling twelve months after the date of Final Commissioning, shall be investigated by a qualified engineer appointed by the Company and the results shall be submitted to the planning authority. Should any impairment to the television signal be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is no worse than the baseline television reception.

Reason: To ensure local television services are sustained during the construction and operation of this development

20. Redundant turbines

The Company shall, at all times after the date of Final Commissioning, record information regarding the monthly supply of electricity to the national grid from the Site as a whole and electricity generated by each individual turbine within the development and retain the information for a period of at least 12 months. The Company shall make such of that information as may be reasonably required for the purposes of verifying that electricity has been exported from any one or more of the turbines available to the planning authority within one month of any request by them.

If any one or more of the wind turbines hereby permitted cease to export electricity to the grid for a continuous period of 6 months, unless otherwise agreed in writing with the planning authority, then a scheme shall be submitted to the planning authority for its written approval within 3 months from the end of that 6 month period for the repair or removal of those turbines. The scheme shall include a programme of remedial or repair works to the relevant turbine(s) and requirements for monthly reporting to the planning authority on progress with such works. If the said turbine(s) have not begun exporting electricity to the grid within a period of 6 months from approval of the said scheme, unless otherwise agreed in writing with the planning authority, then a scheme shall be submitted to the planning authority with a programme for removal of the relevant turbines and associated above-ground works approved under this permission and the removal of the turbine foundations to a depth of at least 1 metre below ground and for site-restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.

This condition shall not apply if outages are outwith the Company's control or are a consequence of any emergency or requirement of National Grid. In these instances the planning authority shall be informed of the turbine shutdowns, reasons for the turbine shutdowns and timescales for the outages within 5 working days of the turbines being switched off.

Reason: To ensure appropriate provision is made for turbine(s) requiring repair or for turbine(s) which require decommissioning

21. Aviation safety

There shall be no Commencement of Development until the Company has provided the planning authority, Ministry of Defence, Defence Geographic Centre and NATS with the following information, and has provided evidence to the planning authority of having done so:

- the date of the expected commencement of each stage of construction;
- the height above ground level of the tallest structure forming part of the Development;
- the maximum extension height of any construction equipment; and
- the position of the turbines and masts in latitude and longitude.

Reason: in the interests of aviation safety

22. Aviation lighting

There shall be no Commencement of Development until the Company has submitted a scheme for aviation lighting for the four cardinal turbines of the wind farm to the planning authority for written approval. The aviation lighting shall be of a maximum brightness

of 32 candelas. No aviation lighting other than that described in the scheme may be applied at the Site, other than as required for health and safety, unless otherwise agreed in advance and in writing by the planning authority. No turbines shall be erected on the Site until the scheme has been approved in writing. The Development shall thereafter be operated fully in accordance with the approved scheme.

Reason: in the interests of aviation safety

23. Site decommissioning, restoration and aftercare

There shall be no Commencement of Development until an Interim Decommissioning and Restoration Plan (IDRP) for the Site has been submitted to, and approved in writing by, the planning authority in consultation with SEPA. Thereafter:

- i. not later than 3 years prior to the decommissioning of the Development, the IDRP shall be reviewed by the Company, to ensure that the IDRP takes account of best practice in decommissioning prevailing at the time and ensures that site specific conditions, identified during construction of the Site, and subsequent operation and monitoring of the Development are given due consideration. A copy shall be submitted to the planning authority for its written approval, in consultation with SNH and SEPA; and
- ii. not later than 12 months prior to the decommissioning of the Development, a detailed Decommissioning and Restoration Plan (DRP), based upon the principles of the approved interim plan, shall be submitted to, and approved in writing by, the planning authority, in consultation with SNH and SEPA.

The IDRP and subsequent DRP shall include (unless otherwise agreed in writing with the Planning Authority and in accordance with legislative requirements and published best practice at time of decommissioning) details about the removal of the Development, including where necessary details of a) justification for retention of any relevant elements of the Development, b) the treatment of disturbed ground surfaces, c) management and timing of the works, d) environmental management provisions and e) a traffic management plan to address any traffic impact issues during the decommissioning period. The DRP shall be implemented as approved. If a Final DPR is not approved by the planning authority in advance of the decommissioning, the Interim IDRP shall be implemented, unless otherwise agreed in writing by the planning authority.

Reason: To ensure that all wind turbines and other redundant development are removed from site at the end of the Development's permitted life in the interests of safety, amenity, environmental protection and securing planning control.

24. Financial guarantee

There shall be no Commencement of Development until:

- i. Full details of a guarantee, bond or other financial provision to be put in place to cover all of the decommissioning and Site restoration measures outlined in the Decommissioning and Restoration Plan approved under condition 23 of this permission have been submitted to, and approved in writing by, the planning authority; and

ii. Confirmation in writing by a suitably qualified independent professional that the amount of financial provision proposed under part (i) above is sufficient to meet the full estimated costs of all decommissioning, dismantling, removal, disposal, Site restoration, remediation and incidental work, as well as associated professional costs, has been submitted to, and approved in writing by, the planning authority; and

iii. Documentary evidence that the guarantee, bond or other financial provision approved under parts (i) and (ii) above is in place has been submitted to, and confirmation in writing that the financial provision is satisfactory has been issued by, the planning authority.

Thereafter, the Company shall:

i. Ensure that the guarantee, bond or other financial provision is maintained throughout the duration of this permission; and

ii. Pay for the guarantee, bond or other financial provision to be subject to a review five years after the Commencement of Development and every five years thereafter until such time as the wind farm is decommissioned and the Site restored.

Each review shall be:

- a) conducted by a suitably qualified independent professional; and
- b) published within three months of each five year period ending, with a copy submitted upon its publication to both the landowner(s) and the planning authority; and
- c) subject to approval in writing by the planning authority either without amendment or, as the case may be, following amendment to the planning authority's reasonable satisfaction.

Where a review approved under part (c) above recommends that the amount of the guarantee, bond or other financial provision should be altered (be that an increase or decrease) or the framework governing the bond or other financial provision requires to be amended, the Company shall make such an alteration within one month of receiving that written approval, or another timescale as may be agreed in writing by the planning authority, and in accordance with the recommendations contained therein.

Reason: To ensure financial security for the cost of the restoration of the site to the satisfaction of the planning authority

25. Salmon

No works shall take place within 50m of a water course during salmon-spawning season (from November to February (inclusive)) without the prior approval of the planning authority

Reason: In the interests of nature conservation to avoid impact on salmon.

26. Water quality and fish-population monitoring

There shall be no Commencement of Development until an integrated hydrochemical and macroinvertebrate scheme for water quality monitoring and monitoring fish populations during construction has been submitted to and approved in writing by the planning authority. This shall include, but not necessarily be limited to:

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

Thereafter, any mitigation identified shall be implemented

Reason: To secure monitoring that will identify any adverse effect of the development on water quality or river species and to secure mitigation should such an effect arise.

27. Sustainable drainage systems

There shall be no Commencement of Development until full details of all surface water drainage provision within the Site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Third Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the planning authority. Thereafter, only the approved details shall be implemented and all surface water drainage provision shall be completed prior to the date of Final Commissioning.

Reason: To ensure that surface water drainage details are provided timeously and comply with the principles of SUDS; in order to protect the water environment

28. Noise

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

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

(B) No electricity shall be exported on a commercial basis to the grid until the Company has submitted to the planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this

condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority.

(C) There shall be no Commencement of Development until a Noise Measurement and Mitigation Scheme has been submitted to, and approved in writing by, the planning authority. The scheme shall include:

- A framework for the measurement and calculation of the rating level of noise immissions from the wind farm (including the identification of any tonal component) to be undertaken in the event of a complaint in accordance with ETSU-R-97 and its associated Good Practice Guide and Supplementary Guidance Notes.
- A framework for implementing the curtailment measures as outlined described in chapter 8 of the 2017 FEI, where necessary to ensure the values in Tables 1 and 2 are not exceeded.

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

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

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

(E) The Company shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions within 2 months of the date of the written request of the planning authority, unless the time limit is extended in writing by the planning authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the planning authority on the request of the planning authority. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise immissions.

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

(G) Within one week of the planning authority receiving an assessment which identifies that the wind farm noise levels are exceeding any of the limits in Tables 1 & 2 attached to this condition, the Company will implement mitigation measures in accordance with the approved Noise Measurement & Mitigation Scheme.

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

Note: For the purposes of this condition, a “dwelling” is a building within Use Class 9 of the Use Classes Order or any other dwellinghouse which lawfully exists or had planning permission at the date of this consent.

Table 1: Between 07:00 and 23:00 hours (Noise Level in dB LA90, 10-min)

Location	Standardised Wind Speed at Ten Metres Height, m/s, within the Site averaged over 10-minute periods								
	4	5	6	7	8	9	10	11	12
	LA90 Decibel Levels								
Bulreanrob	34.8	34.8	34.5	34.1	35.0	36.4	37.5	38.1	38.5
Camster Lodge	35.0	35.0	35.0	35.5	36.2	36.5	36.6	36.6	36.6
The Log House	34.5	34.5	35.8	37.2	38.3	38.9	39.1	39.1	39.0
Gamekeepers Cottage	34.4	37.4	40.1	41.9	43.2	43.8	43.9	43.6	43.4
Roadside Cottage	35.0	35.0	35.0	36.3	37.7	38.7	38.7	38.7	38.7
Plover Hill	35.0	35.0	35.0	35.5	35.9	36.3	36.3	36.3	36.3
Lane House	35.0	35.0	35.0	35.0	35.3	36.7	38.1	39.5	40.7

Table 2: Between 23:00 and 07:00 hours (Noise Level in dB LA90, 10-min)

Location	Standardised Wind Speed at Ten Metres Height, m/s, within the Site averaged over 10-minute periods								
	4	5	6	7	8	9	10	11	12
	LA90 Decibel levels								
Bulreanrob	37.9	37.9	37.8	37.6	37.5	37.4	37.3	37.8	39.0
Camster Lodge	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0
The Log House	37.8	37.7	37.3	36.6	36.2	35.9	35.7	37.7	40.4
Gamekeepers Cottage	38.0	38.0	41.1	40.6	39.6	38.8	39.2	41.3	43.8
Roadside Cottage	37.8	37.6	37.5	36.9	35.8	34.4	35.9	38.8	38.7
Plover Hill	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0
Lane House	38.0	38.0	38.0	38.0	38.0	38.0	38.0	39.7	41.4

Table 3: Coordinate locations of the properties listed in tables 1 and 2

Location	Easting	Northing
Bulreanrob	321994	938554
Camster Lodge	326126	941780
The Log House	322658	937864
Gamekeepers Cottage	322737	938804
Roadside Cottage	326186	939618
Plover Hill	324639	937695
Lane House	326171	938570

Note to Tables 1 & 2: The wind speed standardised to 10 metres height within the Site refers to wind speed at 10 metres height derived in accordance with the method given in the attached Guidance Notes

Note to Table 3: The geographical coordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies

29. Radar mitigation: NATS

No part of any turbine shall be erected above ground until a Primary Radar Mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the planning authority in order to avoid the impact of the Development on the Primary Radar of the Operator located at Alanshill and associated air traffic management operations.

2. No part of any Turbine shall be erected above ground until the approved Primary Radar Mitigation Scheme has been implemented and the Development shall thereafter be operated fully in accordance with such approved Scheme.

For the purpose of parts 1 and 2 above:

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

"Primary Radar Mitigation Scheme" or "Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the Allanshill primary radar and air traffic management operations of the Operator.

Reason: To ensure aviation safety and that the proposed development's operation does not disrupt air traffic.

30. Wildcat monitoring

There shall be no Commencement of Development until the planning authority has approved in writing a scheme for post-construction monitoring to safeguard Scottish wildcat during the operational period of the Development, at locations where there is suitable habitat within the Site. This post-construction monitoring scheme shall provide for monitoring, during the wildcat breeding season, to take place in Year 1, 5, 10, 15, and 25 from Final Commissioning, or such other frequency as may be approved by the planning authority following consultation with Scottish Natural Heritage, and shall include regular reporting to Scottish Natural Heritage of the findings of the agreed monitoring and identify any mitigation which may be required if Scottish Wildcat is confirmed to be present on the Site.

Reason: To enable the impact on wildcat to be suitably monitored

31. Revocation of planning permission for the Rumster windfarm

There shall be no Commencement of Development until the relevant landowners of the Site have given an undertaking agreeing to the revocation of existing planning permission for a windfarm within the Site. The undertaking shall be in the form of the draft provided by the Company as an inquiry document (reference APP 008.001) or with such variations as have been agreed in writing by the planning authority.

3. Definitions relating to conditions

Definitions	
2017 FEI	means the further environmental information submitted in June 2017
2018 AEI	means (a) the additional environmental information comprising an aviation lighting assessment submitted 1 June 2018 and (b) the additional environmental information relating to wild cat and the C1053 enabling works submitted 8 June 2018
Consent	means the consent granted under section 36 of the Electricity Act 1989 to construct and operate the generating station, which forms part of the Development, and any reference to Consent shall not be taken to include the deemed planning permission unless otherwise stated
Commencement of Development	Means the initiation of any development pursuant to the consent and/or the deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997 but excluding the Permitted Preliminary Works.
Company	Means E.ON Climate & Renewables UK Developments Limited (Company Number 03758407) or in substitution its permitted assignees who are in possession of a letter of authorisation from the Scottish Ministers in accordance with Consent Condition 3.
Development	Means the wind powered generating station and ancillary development located within the Site as described in [paragraph X of this decision]
ES	means the Environmental Statement submitted by the Company in October 2016

Final Commissioning	Means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling thirty six months from the date of Commencement of Development.
Guidance Notes	Means the guidance notes to condition 28 on noise provided in section 4 of this appendix
Permitted preliminary works	means (i) any site investigation or other preparatory works or surveys which do not involve breaking ground and/or which are required for the purpose of satisfying or discharging any pre-commencement obligations under the planning conditions, and (ii) the provision of any temporary contractors' facilities within the Site which are necessary for (i) above
Planning permission	means the deemed planning permission for the Development granted by direction under section 57 of the 1997 Act
Site	means the area of land delineated by the outer edge of the red line on the Site Layout Plan
Site Layout Plan	means Figure 4.1 as included with the 2017 FEI (drawing number G 170515 FEI 4.1 v1)

4. Guidance Notes for Noise Conditions

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

Guidance Note 1

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

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

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

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

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

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

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

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

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10 minute noise measurements and corresponding values of the 10- minute 10-metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the 10- metre height mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance

measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

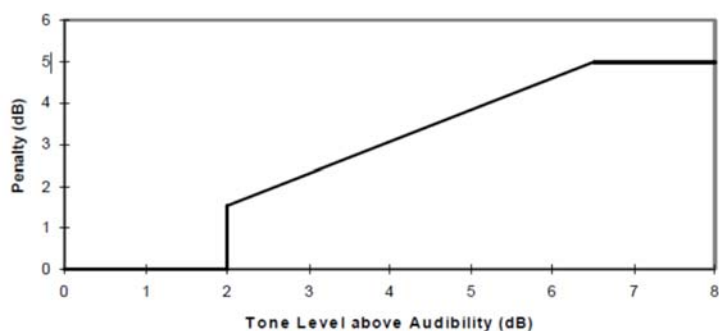
(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that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

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

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

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

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



Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the planning authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The Company shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L_3) at each integer wind speed within the range requested by the planning authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The wind farm noise (L_1) at this speed shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

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

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L_1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the Development fails to comply with the conditions.