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Electricity Division

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13 July 2015

Dear Mr Sage

**APPLICATION FOR CONSENT AND DEEMED PLANNING PERMISSION
FOR THE CONSTRUCTION AND OPERATION OF LIMEKILN WIND
POWERED ELECTRICITY GENERATING STATION IN THE PLANNING
AUTHORITY AREA OF THE HIGHLAND COUNCIL.**

Application

I refer to the Application made by Infinergy Limited (the “Company”) dated 11 May 2011 for consent under section 36 of the Electricity Act 1989 (“the Electricity Act”) to construct and operate Limekiln Wind Farm located south of Creag Leathan, Limekiln Estate, Reay in Caithness. The application was for a development which would have the potential generating capacity of 75MW consisting of 24 wind turbines, 15 with a maximum blade tip height of 139m and 9 with a maximum blade tip height of 126m.

In July 2013 the Company submitted Additional Information (“AI”) relating to ecology, peat, forestry, landscape & visual, cultural heritage and socio economic benefits. In April 2014 AI in respect of an updated cumulative assessment and an updated peat stability survey was submitted by the Company and in July 2014 AI relating to residential amenity visualisations was submitted by the Company.

Consultation

In accordance with statutory requirements, advertisement of the Application and Environmental Statement was made in the local and national press and they were placed in the public domain, and the opportunity given for those wishing to make representations to do so.

Under Schedule 8 of the Electricity Act, the relevant Planning Authority is required to be notified in respect of a section 36 consent application. Notifications were sent to Highland Council as the Planning Authority, as well

as to Scottish Natural Heritage and the Scottish Environment Protection Agency. A wide range of relevant organisations were also consulted.

Prior to the Public Local Inquiry, the Company submitted AI in July 2013, April 2014 and July 2014. As required, this information was advertised in local newspapers giving the opportunity to those who wanted to make representations to do so.

In addition to representations by the Planning Authority, SNH and SEPA, a total of 583 public representations were received of which 566 were objections and 17 in support . A summary of consultation responses and third party representations is contained in page 4 and pages 19, 20 and 21 of PLI Report.

Public Local Inquiry (PLI)

The Highland Council objected to the application and did not withdraw their objection and in accordance with the terms of paragraph 2(2)(a) of Schedule 8 to the Electricity Act a PLI was held.

A pre-examination meeting was held on 6 March 2014 and the PLI subsequently held from 25 to 28 August 2014 in the Weigh Inn, Thurso, Caithness. Closing submissions were exchanged in writing, with the final closing submission (on behalf of the Company) being lodged on 29 September 2014.

The Reporters conducted unaccompanied site inspections prior to the pre-examination meeting and prior to, during, and after the PLI.

The PLI Report was received by Scottish Ministers on 20 February 2015.

No claims for expenses were made by parties.

Environmental matters

The Scottish Ministers are satisfied that the applicable procedures regarding publicity and consultation laid down in the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the EIA Regulations") have been followed.

The Scottish Ministers' Considerations

The Scottish Ministers have considered fully and carefully the application, including the Environmental Statement, the AI, consultation responses, public representations, as well as the findings, conclusions and recommendations of the Reporters and all other material information.

The PLI Report contains the Reporters' findings, reasoning and conclusions. Paragraphs 12.27 and 12.28 of Chapter 12 of the PLI Report contain the Reporters' overall conclusions.

The Scottish Ministers' Determination

Scottish Ministers agree with the Reporters' findings, reasoning and conclusions and adopt them for the purposes of their own decision and consequently, **refuse the application for consent** under section 36 of the Electricity Act for construction and operation of the 24 turbine, 75MW Limekiln Wind Farm.

In accordance with regulation 10 of the EIA Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land to which the application relates is situated.

Copies of this letter have been sent to the Planning Authority. This letter will also be published on the Scottish Government's Local Energy & Consents website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent.

The rules relating to the judicial review process can be found on the website of the Scottish Courts at <https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12>.

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

Yours sincerely



Sue Kearns
Head of Local Energy and Consents
A member of the staff of the Scottish Ministers

Report to the Scottish Ministers



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

Report by Lindsey Nicoll and Scott M Ferrie, reporters appointed by the Scottish Ministers

- Case reference: WIN-270-1
- Site Address: land 1137 metres south of Creag Leathan, Limekiln Estate, Reay, Caithness
- Application by Infinergy 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 Limekiln Wind Farm
- Dates of inquiry/ hearing sessions: 25-28 August 2014

Date of this report and recommendation: 20 February 2015



INVESTOR IN PEOPLE



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Appendices [attached as separate documents]

Appendix 1: Note of pre-examination meeting

Appendix 2: Schedule of documents

Appendix 3: Appearances

Appendix 4: Statement of common understanding

Appendix 5: LVIA inquiry session:
a. inquiry statements
b. precognitions

Appendix 6: Wild land inquiry session:
a. inquiry statements
b. precognitions
c. exchange of submissions on competency of THC wild land objection
d. applicant's emails regarding further visualisations

Appendix 7: Planning and energy policy hearing session:

- a. hearing statements

Appendix 8: Conditions hearing session:

- a. hearing statements
- b. proposed conditions
- c. Local Economic Benefit Scheme (APP-R2)
- d. Mr Young's submission on the Local Economic Benefit Scheme

Appendix 9: Further written submissions:

- a. representations made regarding Further Environmental Information (April 2014)
- b. representations made regarding Further Environmental Information (July 2014)
- c. further written submissions by the parties on
 - (i) ornithology
 - (ii) forestry
 - (iii) hydrology and hydrogeology
 - (iv) carbon balance and peat management

Appendix 10: Closing submissions

Appendix 11: Proposed conditions

Appendix 12: Participants in evening session on local amenity impacts; statements submitted

The construction and operation of Limekiln Wind Farm at land 1137 metres south of Creag Leathan, Limekiln Estate, Reay, Caithness

• Case reference	WIN-270-1
• Case type	Application for consent (S36 Electricity Act 1989) and deemed planning permission (S57 Town and Country Planning (Scotland) Act 1997)
• Reporters	Lindsey Nicoll and Scott M Ferrie
• Applicant	Infinergy Limited
• Planning authority	The Highland Council
• Other parties	Scottish Natural Heritage; Reay Area Windfarm Opposition Group; John Muir Trust; Mr Webster; and Mr Young
• Date of application	December 2012
• Date case received by DPEA	29 November 2013
• Method of consideration and date	Inquiry sessions 25-28 August 2014 Hearing sessions 28 August 2014
• Date of report	20 February 2015
• Reporter's recommendation	Refuse S36 consent and deemed planning permission

The Site:

The application site is located about 1.5 kilometres to the south of the village of Reay, in Caithness. The site extends to approximately 1,140 hectares and largely comprises a commercial plantation of coniferous woodland. The site is bounded to the north by undulating moorland and semi-improved agricultural land with Reay village and dispersed settlement beyond. To the east lies further coniferous woodland. The land to the west and south is largely open moorland. The locally prominent Beinn Ratha is located about 1.2 kilometres to the west of the site boundary.

Description of the Development:

The proposed development would have a potential generating capacity of 75 MW. The main components of the proposed development are: 24 wind turbines (15 with a maximum blade tip height of 139 metres; and 9 with a maximum blade tip height of 126 metres) and turbine foundations; 2 borrow pits; new vehicular access from the A836 at Bridge of Isauld; hardstanding areas including crane pads; new and upgraded on-site access tracks (approximately 19.4 kilometres); watercourse and service crossings; temporary works

including construction compound; and control building and sub-station (if required) and cabling within the site.

Consultations and Representations:

Scottish Natural Heritage (SNH), although not objecting, advised that the proposed development would “result in a range of significant adverse landscape and visual impacts, some of which are capable of mitigation”. SNH subsequently led evidence at the inquiry at our request, based on the wild land impacts of the proposal. The Scottish Environment Protection Agency (SEPA) withdrew its initial objection, subject to mitigation on a range of matters. Marine Scotland did not object to the proposal, subject to conditions. Halcrow undertook a Peatslide Hazard and Risk Assessment of the proposal on behalf of ECDU and advised that the available information did not provide a sufficiently robust assessment of the peat landslide risk. Caithness West Community Council objected to the proposal based on landscape and visual impacts, community impact and cumulative impact. The Reay Area Wind Farm Opposition Group made representations on a range of local impacts which would arise from the proposal. Although the John Muir Trust did not initially object to the application it changed its position to one of objection on publication of SPP and the SNH mapping of wild land. RSPB did not initially object, but before the inquiry lodged an objection in regard to impacts on golden eagle.

A range of other consultees either had no objection, or no objection subject to conditions.

566 letters of objection were received. The grounds of objection include: adverse landscape and visual impact, including cumulative impact; impact on the setting of Reay; adverse impact on wildlife and habitats; traffic impacts; shadow flicker; noise impacts; adverse health impacts; adverse tourism impacts; cultural heritage impacts; recreational impacts; impacts on peatland; carbon balance; adverse economic impact; inadequate Environmental Statement; and alternative technologies available/ necessity/ impact on bills and fuel poverty/ impact on property values.

17 letters of support were received. The grounds of support include: reduction in carbon emissions; achievement of local and national energy targets; local economic impacts; no/ few adverse impacts; and community benefits.

The Highland Council objected to the proposal for the following reason:

The application is contrary to the Highland wide Local Development Plan (Policy 67) in that there would be a significant detrimental impact on the visual amenity and landscape character of the area. This is due to: the size of the turbines and the effect upon the village of Reay and the wider area; the cumulative impact on the area when considered along with Forss I and II and Baillie wind farms; the impact on the A836 tourist route between Thurso and Tongue; and the effect on the Caithness Lochs SPA.

The council later clarified that, following further consideration of the position of SNH, it withdrew reference to the effect on the Caithness Lochs SPA. The council did, however, pursue at the inquiry an additional line of objection based on the wild land impacts of the proposal.

CHAPTER 12: OVERALL CONCLUSIONS AND RECOMMENDATIONS

National policy

12.1 There is no dispute between the applicant and the council as to the seriousness of climate change and its potential effects; the seriousness of the need to cut carbon dioxide emissions; and the seriousness of the UK and Scottish Government's intentions regarding deployment of renewable energy generation.

12.2 There is no doubt that the proposal is supported, in principle, by UK and Scottish Government policies which seek to meet ambitious targets for renewable energy generation in the drive to reduce carbon emissions, and which expect onshore wind to make a significant contribution to that objective.

UK energy policy

12.3 The UK Renewable Energy Strategy sets out how 15% of UK energy is to be provided by renewable sources by 2020. That will include more than 30% of electricity generated coming from renewables; much of this from onshore and offshore wind. The UK Renewable Energy Road Map (2011) and Road Map Update (2013) state that onshore wind, as one of the most cost effective and proven renewable energy technologies, has an important part to play in a balanced UK energy policy.

12.4 However, the UK Government is committed to ensuring that projects are built in the right places, with the support of local communities, and that they deliver real local economic benefits.

Scottish policy context

12.5 The 2020 Routemap for Renewable Energy in Scotland (2011) and Update (2013) reflect the Scottish Government target of the equivalent of 100% of Scotland's electricity demand to be supplied from renewable sources by 2020, with an interim target of 50% by 2015. The update advises that 40.3% of gross electricity consumption was delivered by renewable sources in 2012.

12.6 The Renewable Energy Report by Audit Scotland (2013) notes that achievement of the 2020 target will require the continued expansion of wind technology and that average annual increases in installed capacity need to double.

12.7 The Scottish Government remains fully committed to the development of renewable energy, including onshore wind, to meet the "challenging but achievable" target of 14-16 GW by 2020.

National Planning Framework

12.8 National Planning Framework (NPF) 3 states that the Scottish Government vision for Scotland is, amongst other things, as a low carbon place "arising from our ambition to be a world leader in low carbon generation, both onshore and offshore". It recognises strong public support for wind energy as part of a renewables mix, but that opinions can vary depending on location, scale, proximity and impacts. It goes on to state that "We want to

continue to capitalise on our wind resource...In time we expect the pace of onshore wind energy development to be overtaken by a growing focus on our significant marine energy opportunities...”

12.9 Overall, it supports the development of wind farms in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. In regard to wild land specifically, it is stated that “We also want to continue our strong protection for our wildest landscapes – wild land is a nationally important asset”.

Scottish Planning Policy

12.10 SPP introduces a policy presumption in favour of development that contributes to sustainable development. This is to entail, amongst other things, supporting the delivery of energy infrastructure; supporting climate change mitigation; and protecting the natural heritage, including landscape. The planning system should support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity.

12.11 Paragraph 215 of SPP states that, in areas of wild land, development may be appropriate in some circumstances. It is further stated that wild land areas are very sensitive to any form of intrusive human activity and have little or no capacity to accept new development. We have concluded that, for proposals located outside a wild land area, any significant adverse effects on the qualities of the wild land area would have to be weighed in the planning balance, giving due weight to the status of wild land areas as a nationally important asset.

12.12 Spatial frameworks for onshore wind, identifying those areas likely to be most appropriate for onshore wind farms, should be included in development plans. Wind farm proposals should, however, continue to be determined whilst those frameworks and associated policies are being prepared. Table 1 on page 39 of SPP sets out the approach to be followed in such frameworks. The current application site does not overlap with any of the designations or assets, and the proposed turbines would be outwith the 2 kilometres buffer around settlements set out in Groups 1 and 2 of Table 1. We acknowledge the proposed spatial frameworks to be a development planning tool, but note that the application site would fall under Group 3: Areas with potential for wind farm development, where wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

12.13 The general location of the application site is therefore consistent with the approach to spatial frameworks set out in SPP 2014. However, the merits of each proposal require to be carefully assessed against the range of environmental, community and cumulative impacts which are set out in paragraph 169 of SPP.

12.14 In the preceding chapters we have discussed the likely environmental effects of the proposal. In relation to the relevant considerations listed in paragraph 169 of SPP we find, subject to mitigation controlled by condition where relevant, that:

- there would be slight beneficial socio-economic benefits, arising largely from the construction of the scheme, but also from its ongoing operation;

- there would be a modest, but worthwhile, reduction in greenhouse gas emissions and a significant contribution to renewable energy targets;
- excepting our conclusions on wild land impacts, in regard to which we lack adequate evidence, there would be no unacceptable cumulative impacts in combination with other wind farms;
- the impacts (including visual impact, residential amenity, noise and shadow flicker) on nearby communities would not be severe;
- the significant landscape and visual impacts would be experienced in a relatively limited area, and the wind farm would not have an overbearing or dominant effect on any residential properties;
- we accept that the impact on that part of the wild land area to the east of the ridgeline of Beinn Ratha would be significant but do not consider that this impact alone would make the proposed development unacceptable. We do not, however, have sufficient information to enable us to be satisfied that the proposal would not have an adverse impact on the qualities of the East Halladale Flows wild land area as a whole;
- the proposal would not have a significant adverse impact on ornithology, ecology, habitats and species²³⁶;
- there would appear to be a very favourable carbon balance, which would be further improved with a 30 year operational life;
- there would be adverse impacts on the visual amenity of local core paths and NCR1;
- the proposal would not have a significant adverse impact on the historic environment;
- there is no convincing evidence before us that appropriately sited wind farms result in detrimental impacts on tourism. In this regard, we conclude that there would be significant cumulative visual effects along limited stretches of the A836 tourist route, but where the perceptions of travellers is already strongly influenced by a range of other uses in the landscape and where the proposed wind farm would not appear significantly out of place;
- the agreed mitigation measures would avoid any adverse impact on aviation safety and on telecommunications and other infrastructure assets;
- the adverse impact on road traffic, including on the trunk road network, would be minor and short term;
- the proposal would not have an adverse impact on hydrological or hydrogeological interests; and
- decommissioning and restoration could be safeguarded by appropriate planning conditions.

Web-based guidance on onshore wind turbines

12.15 Based on those considerations, we conclude that the proposal meets the terms of the Scottish Government's web-based guidance in regard to impacts on wildlife and habitat, ecosystems and biodiversity, impact on communities, aviation matters, historic environment, road traffic, cumulative impact and decommissioning. Due to our findings on wild land, however, we have insufficient information to safely conclude that the proposal is consistent with advice on landscape impact.

²³⁶ In Chapter 6 we conclude that, subject to the imposition of conditions discussed in that chapter, there would be no adverse effect on the integrity of the Caithness and Sutherland Peatlands SPA/ SAC or the Caithness Lochs SPA, but draw attention to the need for Ministers to carry out an appropriate assessment in terms of the Habitats Regulations.

The development plan

12.16 We are content that the Caithness Local Plan, although remaining partly in force, contains no continuing elements of relevance to assessment of this proposal.

Highland-wide Local Development Plan

12.17 In regard to the development plan, therefore, the proposal stands to be assessed against the policies of the HWLDP.

12.18 There is no dispute that Policy 67: Renewable Energy Developments is the principal policy of the HWLDP relating to the assessment of such proposals. It is the sole policy referred to by the council in its objection to the proposal. The policy states that renewable energy developments should be well related to the source of the primary renewable resource that is needed for their operation. The council will consider the proposal's contribution towards meeting renewable energy targets, together with positive or negative effects on the local and national economy. Subject to balancing with these considerations the council is to support proposals where it is satisfied that they would not be significantly detrimental overall, either individually or cumulatively, having regard to a range of considerations. Proposals are also to be assessed against the other policies of the plan and the Highland Renewable Energy Strategy and Planning Guidelines (although it was conceded for the council that this document has largely been superseded and should be afforded minimal weight).

12.19 We conclude that the proposed development is well-related to the necessary wind resource. It would make a significant contribution towards meeting renewable energy targets. There would be slight beneficial impacts on the local and Scottish economies.

12.20 In regard to the relevant considerations listed in Policy 67, and drawing on our findings set out throughout this report, and summarised at paragraph 12.14 above we find, other than for one consideration, that the proposal would not give rise to any detrimental impacts, either singly or cumulatively, sufficient to outweigh the benefits of the proposal. Wild land is not specifically listed as a consideration in Policy 67, but we are satisfied that references to natural heritage features and to landscape and visual impacts are sufficiently wide-ranging to encompass impacts on wild land.

12.21 We conclude that there is insufficient information to enable us to be satisfied that the proposal would not have an adverse impact on the qualities of the East Halladale Flows wild land area as a whole. We are consequently unable, in the planning balance required by Policy 67, to safely attribute the degree of impact on that nationally important resource. In these circumstances, we are unable to find the proposal to be consistent with Policy 67.

12.22 There is no specific policy relating to wild land in the HWLDP, the adoption of which predated NPF3 and SPP. However, wild land is referred to in Appendix 2 in the definition of natural, built and cultural heritage features under the heading "Features of local/ regional importance." Policy 57 applies to the natural, built and cultural heritage and provides that for features of local/ regional importance, development will be allowed if it can be satisfactorily demonstrated that it would not have an unacceptable impact on the natural environment, amenity and heritage resource. As that has not been demonstrated, we find the proposal to be inconsistent with Policy 57.

12.23 Otherwise we find no significant tension with the other relevant policies of the HWLDP set out in Chapter 2 of this report. We conclude, however, that the proposal has not been demonstrated to be fully consistent with the development plan overall.

Supplementary planning guidance

12.24 There is not as yet any relevant supplementary guidance forming part of the development plan. The Highland Renewable Energy Strategy and Planning Guidelines (HRES) was approved by the council as supplementary planning guidance. Although largely overtaken by the council's Interim Supplementary Guidance – Onshore Wind Energy, parts of the HRES remain in place, particularly, policy V2 on Wild Land. That provides that the indirect effects of renewables development, especially wind farms, located outwith areas with qualities of wildness but visible from them, are to be taken into account, especially if viewing distances are relatively close. The proposal is inconsistent with this guidance.

12.25 The council's Interim Supplementary Guidance: Onshore Wind Energy was approved in March 2012. The council and the applicant agree that the application site is mostly located within a 'Stage 3: Area of search', but that the northern part of the site falls within a 'Stage 2: Areas with potential constraints'. The council states this to be due to the proximity of the northern part of the site, where no turbines would be located, to the settlement area of Reay and Achvarasdal. We find however, that the weight to be afforded to this guidance must be reduced as it has been overtaken by SPP and is to be replaced by updated supplementary guidance.

Electricity Act 1989

12.26 Schedule 9 of the Act requires Ministers to have regard to the desirability of preserving natural beauty, conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. With the exception of the preservation of natural beauty we are satisfied that, with the imposition of the conditions discussed in chapter 11, the granting of consent would not result in significant adverse impacts as regards those matters. For the reasons that we explain in chapter 4 we do not have sufficient information to be satisfied that the proposed development would not have a significant adverse impact on the East Halladale Flows Wild Land Area.

Overall conclusions

12.27 In paragraph 12.14 we draw together our conclusions on the benefits that the wind farm would offer and our assessment of the environmental impacts of the proposal. Leaving aside the potential impact on wild land, we conclude in paragraph 12.20 that the proposal would not give rise to any detrimental impacts, either singly or cumulatively, sufficient to outweigh the benefits of the proposal. However, due to the fact that it has not been demonstrated that the proposal would not have a significant adverse impact on the East Halladale Flows Wild Land Area we conclude that the proposed development is not fully supported by national policies which promote the development of onshore wind farms in appropriate locations and which recognise wild land as a nationally important asset. For the same reason it is inconsistent with the those policies in the development plan and with supplementary planning guidance which afford protection to wild land.

12.28 We have given careful consideration as to whether the uncertainties regarding the potential impacts on wild land are sufficient to outweigh the positive benefits of the proposal and our conclusions that, in other respects, the environmental impacts of the proposal are acceptable. On balance, we conclude that they are and that significant weight should be attached to the policies protecting wild land.

12.29 We draw Ministers' attention to an exchange of legal submissions between the applicant and THC regarding the competency of the council's objection on grounds of impact on wild land and the weight to be attached to that objection²³⁷.

Recommendations

12.30 We therefore recommend that consent under Section 36 of the Electricity Act 1989 should be refused. Consequently, we recommend that there be no direction that planning permission is deemed to be granted under Section 57 of the Town and Country Planning (Scotland) Act 1997.

12.31 If Scottish Ministers disagree with our recommendations and are minded to grant Section 36 consent and direct that planning permission is deemed to be granted, we recommend that this should be subject to the conditions set out in Appendix 11 to this report.

Lindsey Nicoll
Chief Reporter

Scott M Ferrie
Principal Reporter

²³⁷ Appendix 6