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Decision by Stephen Hall , a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2150
- Site address: Tom nan Clach, Highland
- Appeal by Nanlach Limited against the decision by the Highland Council
- Application for planning permission dated 27 August 2015 refused by notice dated 26 January 2016
- The development proposed: Erection of 13 wind turbines and associated infrastructure
- Application drawings (from Environmental Statement)
  - 1.3 Site Layout
  - 3.3 Turbine Elevation
  - 3.4 Foundation Design
  - 3.5 Access Tracks
  - 3.6 Access tracks Design
  - 3.7 Watercourse Crossings
- Dates of site visit by Reporter: 24 and 25 May 2016

Date of appeal decision: 28 October 2016

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## Decision

I allow the appeal and grant planning permission subject to the 23 conditions listed at the end of the decision notice. Attention is drawn to the four advisory notes at the end of the notice.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan the main issues in this appeal are:
  - The contribution towards the achievement of renewable energy generation targets;
  - Landscape and visual impact; and
  - The impact on heritage assets, in particular Lochindorb Castle.

## Opening remarks

3. Planning permission already exists for an alternative proposal to develop a wind farm of 17 turbines (110 metres to blade tip) on land at Tom nan Clach (appeal reference PPA-



270-2043). The principle of the use of the land at Tom nan Clach for the development of a wind farm is therefore established.

4. In this decision I primarily consider the benefits, impacts and overall acceptability of the new 13 turbine proposal in its own right, rather than the significance or otherwise of the difference in impact compared to the permitted scheme. It cannot be the case that successive applications can necessarily 'ratchet up' the scale of a development on the basis that the difference in impact from a permitted proposal is small. That said, there are many similarities between the two proposals and it is material to the consideration of this appeal that the overall level of impact associated with the permitted scheme has been found to be acceptable (albeit in the slightly different circumstances pertaining in 2012).

5. The proposal that is the subject of this appeal contains fewer turbines than the permitted scheme. Proposed hub heights are the same, but the blade lengths are longer resulting in the greater height to blade tip. The arrangement of the turbines is different with no turbines having the same precise location as the permitted scheme. The proposed access track follows a similar alignment to that in the permitted scheme for much of its length, but is somewhat shorter and omits a northern branch close to the turbine array.

#### The development plan

6. The development plan for the site is comprised of the Highland-wide Local Development Plan, the Inner Moray Firth Local Development Plan and supplementary guidance associated with these plans. Most of the policies of relevance to the consideration of this appeal are contained in the Highland-wide plan, though the Inner Moray Firth plan did confirm an amended boundary for the Drynachan, Lochindorb and Dava Moors Special Landscape Area within which the proposal sits.

7. The principal policy relating to the development of wind farms is Policy 67 of the Highland-wide plan. This calls for renewable energy developments to be well related to renewable resources, and states that considerations will include the contribution towards renewable energy targets and effects on the local and national economy. The policy offers general support for renewable energy developments provided they are not significantly detrimental overall, either individually or cumulatively, to a range of factors. These factors include: natural, built and cultural heritage features; species and habitats; landscape and visual impact; amenity at sensitive locations including recognised visitor sites; the amenity of users of core paths or other established public access; and tourism and recreation interests. Proposals are also to be assessed against the Highland Renewable Energy Strategy and planning guidelines.

8. A range of other policies are referred to in the council committee report for the application, and in the council's reasons for refusal. These policies largely relate to matters separately covered in Policy 67. Given that Policy 67 is targeted specifically at renewable energy developments, I consider it to be the main development plan policy of relevance to this appeal. However also of note are:

- Policy 55 relating to the protection of peat;
- Policy 57, which requires any significant adverse effects on ancient monuments to be clearly outweighed by social or economic benefits of national importance; and

- Policy 61, which requires development to reflect the landscape characteristics and special qualities identified for the area in the Landscape Character Assessment. The particular importance of applying this principal in designated special landscape areas is referred to in the supporting text.

9. Neither the Highland Renewable Energy Strategy, nor the Onshore Wind Energy Interim Supplementary Guidance have been adopted as statutory supplementary guidance forming part of the development plan. The Renewable Energy Strategy dates from 2006 and is largely superseded due to changes in national policy and the emergence of the interim supplementary guidance. The Onshore Wind Energy guidance has recently been submitted to Scottish Ministers by the council with a view to its being adopted shortly as statutory supplementary guidance. Although not yet a part of the development plan, the guidance can nevertheless be given some weight due to its advanced state of preparation. It also assists in the interpretation of Policy 67.

10. The Onshore Wind Energy guidance identifies the appeal site as falling within a 'Group 2' Area of significant protection (apparently due to the presence of deep peat). The guidance cross-refers to the statement in Scottish Planning Policy that wind farms may be appropriate in Group 2 areas in some circumstances, and that further consideration will be required to demonstrate that any significant effects on the qualities of these areas can be substantially overcome. The guidance also includes a set of detailed criteria to be used in assessing proposals and relating to such matters as respecting the existing pattern of nearby wind energy development, the perception of landscape scale and distance, and the distinctiveness of landscape character.

#### Economic impact/ renewable energy generation

11. The proposed wind farm would generate up to 39 megawatts of renewable electricity, and therefore make a meaningful contribution towards achieving Scotland's renewable energy targets. This is also expected to be a particularly efficient scheme with a capacity factor (i.e. the proportion of the installed capacity that is estimated to actually be produced) of 45.3%, as opposed to a Scottish average of 28% and a factor of 35.7% for the permitted scheme. Thus the proposal appears well located and designed in terms of harnessing the wind resource as sought by Policy 67.

12. As well as the direct financial investment, the Environmental Assessment estimates that the development could support 17 jobs across Scotland, including 9 in the Highlands. I have no reason to doubt these estimates. Impacts on tourism are less certain with various studies being highlighted by parties indicating differing impacts from wind farms on tourist experiences. The proposed wind farm would be visible from several locations that may be expected to be visited by tourists including Lochindorb, the Dava Way and (at some considerable distance) the Cairngorm Mountains. The visual impact on visitors to these locations is discussed below. However overall I am satisfied that on balance the local and national economy would benefit from the development, and that this aspect of Policy 67 is thus satisfied.

#### Landscape Impact

13. The site is located within the Open Uplands landscape character type, very close to the boundary with the similar Rolling Uplands landscape character type to the west. The key characteristics of these areas are described in the relevant landscape character assessments as large scale, smooth, rounded hills with summits of similar height which collectively form broad/ expansive, undulating upland plateaux. It is also noted that a general absence of elements which indicate scale make it difficult to judge distance and size in this landscape, and that there is a strong perception of remoteness. The Moray and Nairn assessment notes that the perception of wind turbines may conflict with the feeling of wildness in the remoter regions of this landscape. The Inverness assessment notes that wind farms are unlikely to dominate the large scale open areas of this landscape character type, but will tend to be highly visible within the open surroundings, possibly also affecting the sense of remoteness.

14. I consider that this large scale, smooth, open landscape is capable of absorbing wind farm development relatively easily, certainly in comparison to more intimate landscapes. The proposed development occupies the summit and northern flanks of the hill of Tom nan Clach in a relatively compact grouping. It thus relates quite well to the underlying landform as advised at paragraph 3.26 of the Scottish Natural Heritage guidance on Siting and Designing Wind Farms in the Landscape. While I accept that the sense of remoteness will be compromised to some extent, the principle of wind farm use here is established and the area has not been designated as wild land. I therefore find the impact of the development on the upland landscape within which it is situated to be acceptable.

15. The proposal would also be visible from a number of other landscape character types, those of most potential significance, in my view, being the Narrow Wooded Valley area to the north-east, and the Strathdearn Hills area south-east of Lochindorb. The Moray and Nairn assessment refers to the intimate scale and enclosed feel of the Narrow Wooded Valley landscape. The proposed wind farm would sit clearly apart from this intimate landscape, and in any event I consider that the high levels of woodland cover in this area would, in reality, significantly limit visibility of the proposed wind farm.

16. The Cairngorms assessment refers to the remote feel of the Strathdearn Hills landscape. In parts of this area this feel would be affected to some extent by the construction of the wind farm as illustrated for instance by viewpoint 14 (Lochindorb), albeit at distances of 10 to 20 kilometres from the development. However the turbines would not be visible from most of this area, and overall I accept the finding of the Environmental Assessment that the effect on the Strathdearn Hills landscape as a whole would not be significant.

17. In general, there is an absence of scale indicators in the relatively uniform rolling moorland within which the proposal is located. As a result the size of the turbines and their distance from the viewer is not readily apparent in many views. The turbines of the currently proposed scheme are taller than those of the permitted scheme and so are likely to have a more widespread impact. However because there are fewer turbines than in the permitted scheme, the impression from many viewpoints may be of a smaller wind farm (albeit one that is visible and prominent over a wider area).

18. In terms of landscape designations, the proposal sits within the Drynachan, Lochindorb and Dava Moors Special Landscape Area. Among the special qualities

identified for this area by Highland Council are references to the boundless sense of scale and space, and to the openness and simplicity of the landscape. The area is deemed sensitive to the introduction of further structures that could compromise the sense of isolation, extensive panoramas and impression of wildness. As noted above, I consider that this type of landscape can accommodate wind farms relatively well, and that the siting of the proposed wind farm relates quite well to the underlying landform. Because wind farms are visually permeable, they do not greatly disrupt the extensiveness of panoramic views. However the sense of wildness and isolation would be reduced to a degree, and for this reason I conclude that the proposal would have some negative impact on the special qualities of the special landscape area.

19. The Cairngorms National Park boundary lies some six kilometres to the south of the wind farm site. The boundary in this area consists of a ridge of relatively undistinguished hills from which the upper parts of the proposed turbines would be visible to the north (as illustrated by viewpoint 2). In my view, the value of this ridge to the landscape of the national park is as an enclosing feature to the valley of the River Dulnain to the south and to the park as a whole. Therefore this ridge has an important landscape role as viewed from the south. However I do not consider that views northwards from this ridge play a significant part in defining the landscape character of the park. Because there is a respectful separation from the park and turbines are not seen to loom over it or dominate parts of it, the Park's setting should not be unduly harmed.

20. The proposal would also be visible from the heart of the national park from the Hills of Cromdale east of Grantown on Spey (viewpoint 4), Geal-charn Mor above Aviemore (viewpoint 7) and the northern edge of the central Cairngorm massif (viewpoint 3 Ptarmigan Restaurant), which is also part of the Cairngorm Mountains National Scenic Area. I consider these views to be core to the landscape experience of the park. However at distances of 26, 22 and 33 kilometres respectively, the wind farm would form a very small component of the landscape experience from these points, even in clear weather. For these reasons I do not consider there would be a significant adverse impact on the landscape character of the national park or the national scenic area.

21. The proposal would be visible to the north-east from some limited areas within the Monadhliath Wild Land Area. The closest of these areas would be around Carn Dubh 'Ic an Deoir approximately 16 kilometres from Tom nan Clach. At this distance a compact wind farm at Tom nan Clach would form a small but perceptible component of the view. However I consider this would have only a very small additional effect on the wildness attributes of the area due to the small proportion of the Wild Land area affected and the existence of other larger wind farm developments closer to the Wild Land area. Visibility from the Cairngorms Wild Land Area is at over 25 kilometres. At this distance the wind farm would be a very minor feature, which I consider would have little appreciable impact on the wildness attributes of the Cairngorms.

### Visual Impact

22. The immediate locality of the proposed wind farm (within around five kilometres) is remote and very sparsely populated. The people who would experience the turbines in this area are likely to be mainly estate workers, grouse shooters and local residents using the minor roads in the locality. The experience of the latter (albeit from a distance of around six

kilometres) is illustrated by viewpoint 5. At these distances, modern wind turbines will inevitably appear as large sometimes dominating structures. However due to the relatively small number of people involved, and the good landscape fit as discussed above, I find the visual impact in the immediate vicinity to be acceptable.

23. Of the few residential properties nearby, those in the Streens area sit on the floor of the Findhorn valley and would have very limited if any visibility of the turbines. At a distance of four kilometres to the south-west, Balvraid Lodge would be largely screened from the development by landform and forestry. Only two blade tips would apparently be visible. For these reasons I do not consider the visual impact on residential property to be significant.

24. The zone of theoretical visibility maps show that the proposal would mainly be seen from locations to the north-east and south-west and from the northern edge of the Cairngorm Mountains and the Hills of Cromdale. In terms of roads, users of the B9007 would experience visibility of the turbines for around five kilometres at a distance of around eight kilometres (viewpoint 6). Although oblique to the direction of travel, the turbines would be prominent skyline features. They would form a relatively compact group, though the rather irregular spacing is not particularly successful in this view. However the wind farm would be seen in the context of the uniform rolling plateau that I have already concluded has good landscape capacity to absorb wind farm development. I therefore do not consider that the wind farm would appear as a discordant or jarring feature in views from the B9007.

25. Views from the A939 (viewpoint 13) are similar, but at a greater distance of around 13 kilometres. Similar considerations apply as for the B9007. The visual impact is lessened by the increased distance, but may be expected to be experienced by more people on this busier road. Overall I am not concerned about the visual impact from this point.

26. Of more concern is the impact on users of the A9(T) (and adjacent rail line) (illustrated by viewpoint 10). The opportunity to view the proposed wind farm would exist for only a short stretch of the A9(T) and railway as they cross the valley of the River Findhorn on elevated bridges. It may be expected that travellers will be moving at speed and so the views will be of short duration. However as the main transport route from the south to Inverness and the northern Highlands, the view may be experienced by a very large volume of people.

27. Whether travelling north or south, users of this corridor experience relatively enclosed views of moorland and forestry to the north and south of the Findhorn bridges. However from the bridges views up and down Strathdearn open up offering strongly contrasting and attractive prospects of the settled and more intimate Findhorn Valley. I consider it likely that many people's eyes are naturally drawn down Strathdearn at this point. Several turbines of the proposed wind farm would appear as prominent skyline features at the natural termination of this vista. They would have something of an overbearing appearance over this part of Strathdearn (from this particular elevated viewpoint) and would challenge the existing focus of the view which is currently on the attractive valley floor features. As the comparative photomontages show, the turbines of the current proposal appear noticeably larger than those in the permitted scheme. For these reasons I consider the visual impact from this viewpoint to be particularly unfortunate.

28. In terms of recreational users, I consider the greatest potential for significant visual impacts to be on visitors to Lochindorb, users of the Dava Way and hillwalkers in the Cairngorms National Park. As has been highlighted by many objectors, Lochindorb has a strongly evocative character including a sense of great tranquillity and isolation. The drama of the place is increased by the presence of the ruins of Lochindorb Castle on an island in the loch.

29. From the minor road to the east of the loch the turbines would appear as a relatively compact linear array on the skyline, albeit with some unfortunate gaps and stacking from some vantage points. An intervening ridge restricts visibility to some extent and provides a sense of separation between the turbines and the immediate setting of the loch. At this distance (over eleven kilometres) there would be no sense of the turbines having a dominating or overbearing impact. Nevertheless the wind farm would be a prominent feature that would compete with the castle for visitors' attention. As the comparative photomontages demonstrate, the proposed turbines form a significantly wider grouping in these views than the permitted scheme.

30. Views of the turbines relative to Lochindorb Castle would change as visitors moved along the lochside road. The worst case scenario where the turbines stand directly behind the castle is illustrated by viewpoint 15. However there is no parking place or other special reason why visitors should linger at this particular spot. Overall I consider that the erection of the turbines would detract in a meaningful way from the visitor experience at Lochindorb. (The impact on the setting of Lochindorb Castle as an ancient monument is considered below.)

31. The Dava Way is a long distance footpath that crosses Dava Moor and would experience views of the proposed wind farm for a short section to the south of Dava for about one kilometre. Tom nan Clach appears as a low featureless rounded hill within the expanse of elevated moorland to the west. It does not currently contribute greatly to the landscape quality of this part of the Dava Way. Rather I expect walkers' eyes to be drawn towards the hills of the central Cairngorms to the south. The wind farm could disrupt Dava Moor's general sense of space and bleak beauty to some extent, but at a distance of 15 kilometres, it would be a relatively minor skyline feature, and the turbines in this view would have a pleasingly regular spacing. It is also the case that the turbines would be visible for a very small proportion of the entire Dava Way footpath. For these reasons I am not unduly concerned about the visual impact on the Dava Way.

32. The hills of the Cairngorms National Park are generally highly frequented by hillwalkers, who will be drawn in part by the views to be had of a relatively undeveloped natural landscape. However the ridge of high land that forms the northern boundary of the Park, including the summit of Carn Glas Choire is rather featureless, and I doubt if it is much visited. Similarly on my site inspection I found little evidence (for instance of footpaths or cairns) to indicate that Gorton Hill above Grantown on Spey is much visited.

33. Visibility of the proposed wind farm from more frequented hills within the Park is limited to high land 22 kilometres or more away from Tom nan Clach, notably the Hills of Cromdale, Geal-charn Mor and the northern edge of the Cairngorm massif itself. From these locations, the wind farm could be seen in clear weather as an insignificant distant

feature within an expanse of rolling moorland. Overall I do not consider that there would be any significant adverse effect on recreational users of the National Park.

### Cumulative landscape and visual impact

34. Concerns have been expressed regarding the cumulative effect of the proposed wind farm and other proposed, consented and existing wind farms on Strathdearn and on the Cairngorms National Park. A number of wind farms have been constructed or permitted north of Strathdearn, but in most cases the cumulative zones of theoretical visibility maps indicate that there are limited locations in Strathdearn from which both the Tom nan Clach proposal and another wind farm would be visible, and these locations tend to be on higher unpopulated land.

35. I consider the greatest potential for cumulative impact in Strathdearn would be associated with the Moy and Kyllachy schemes. In both cases there are parts of the floor of Strathdearn and in the A9 corridor that could experience views of one or both of these wind farms and the Tom nan Clach turbines. In the case of Kyllachy, these views will generally be in a different direction from those of Tom nan Clach, whereas Moy and Tom nan Clach may appear in the same view.

36. I consider that the construction of the Tom nan Clach wind farm would increase the overall visibility of wind farms from Strathdearn, though not to the point of there being any sense of encirclement. A clear separation from existing wind farms would be maintained, as would the existing pattern of wind farm developments in the area being located on the high plateau tops, maintaining the clear distinction with the settled strath. Although turbine heights may differ, the cluster form of Tom nan Clach is similar to the design approach taken for other wind farms in the area, and so there would be little perceptible incongruity in design. Overall I am satisfied that no significantly adverse cumulative impacts would arise in Strathdearn.

37. As established above, the proposed wind farm would be an insignificant distant feature when viewed from the more frequented hills within the Cairngorms National Park. A number of other distant wind farms are also visible within the rolling moorland plateau to the north-west of the Park, and the Tom nan Clach scheme would add to this, and to the emerging linear pattern of well-spaced wind farm developments in this part of Scotland. Given the scale of the National Park I do not believe that any sense of encirclement would be apparent from any point within the Park.

### Built and cultural heritage

38. The principal concern with regard to built and cultural heritage is the potential impact on the setting of Lochindorb Castle, which is a designated ancient monument. I consider that the nature of the castle's defensive siting means that its setting clearly extends to cover the loch and loch shores. However I do not believe the setting could be said to extend to the skyline at Tom nan Clach some eleven kilometres away, especially as the intervening low hills of Carn nan Clach Garbha and Carn Bad a' Churaich provide the immediate topographical bowl within which the loch and castle lie. While the turbines would be prominent visible features, they would not have any overbearing or dominating effect over the castle. For these reasons I do not consider that the setting of Lochindorb Castle would



be adversely affected by the proposal. I consider the visual impact upon the experience of visitors to Lochindorb separately above.

### Other Matters

39. I note the concerns expressed by the Royal Society for the Protection of Birds regarding potential impact on golden plover. However the view of Scottish Natural Heritage, as expressed in its letter of 9 October 2015, is that “the likely impacts on golden plover from this development are less than we thought probable for the consented scheme”. On this basis I am not unduly concerned about impacts on golden plover.

40. Regarding peat disturbance, I note that the Scottish Environment Protection Agency withdrew its initial objection following the receipt of further information, and is content that this matter can be covered by means of conditions.

41. Regarding off-site road improvements, the detail of these is not specified in the application. However I note that a programme of road improvements connected with the permitted scheme has been agreed by the council and deemed by it not to require separate environmental impact assessment. I therefore consider it likely that an acceptable programme of works associated with the similar currently proposed scheme could also be agreed.

42. From the evidence submitted I conclude that other matters, including noise, access and pollution of watercourses, either do not arise, have been adequately addressed by the proposal, or can be adequately mitigated through conditions.

### Overall Conclusions regarding Compliance with the Development Plan

43. The core development plan policy against which the proposal needs to be assessed is Policy 67 of the Highland-wide Local Development Plan. In terms of the factors listed in this policy, I have concluded above that the proposal would be well related to the wind resource, contribute meaningfully towards meeting renewable energy generation targets and have a positive effect on the local and national economy. It would not harm the setting of Lochindorb Castle ancient monument or have an unduly negative impact on landscape character. The most significant adverse effects of the development that I have identified are the visual impacts on travellers on the A9 and adjacent railway at Strathdearn, and on visitors to Lochindorb. Policy 67 contains a requirement to balance the various considerations, and in this case I consider compliance with Policy 67 to amount to a judgement as to whether the benefits of the development, such as the generation of renewable electricity, outweigh the adverse impacts noted above. Given that the adverse impacts are largely limited to visual effects, and that these are highly localised, I conclude on balance that the proposal complies with Policy 67.

44. In terms of other policies of the development plan, given that the Scottish Environment Protection Agency has withdrawn its objection regarding peat, I am content that unnecessary disturbance, degradation or erosion of peat can be avoided and that the proposal therefore complies with Policy 55: Peat and Soils. I have concluded that the setting of Lochindorb Castle as an ancient monument will not be compromised, and I have identified no other unacceptable impacts on the natural, built or cultural heritage. I

therefore conclude that the proposal complies with Policy 57: Natural, Built and Cultural Heritage. I have found the impact of the development on the upland landscape within which it is situated to be acceptable. The proposal therefore complies with Policy 61: Landscape.

45. I have identified no conflict with any other policies in the development plan. I therefore conclude overall that the proposed development complies with the provisions of the development plan.

#### Other material considerations

46. National Planning Framework 3 and Scottish Planning Policy support the expansion of renewable energy generation capacity. Paragraph 169 of Scottish Planning Policy sets out a number of criteria to consider in relation to energy infrastructure, including net economic impact, the contribution towards renewable energy targets, the effect on greenhouse gas emissions, cumulative impacts, landscape and visual impacts, impacts on the historic environment and impacts on tourism and recreation. These factors are largely considered above, but it is clear that national policy expects possible impacts on the landscape, visual receptors and the historic environment to be balanced against possible environmental and economic benefits.

47. Paragraph 174 of Scottish Planning Policy refers to the repowering of existing wind farms. Because no wind farm exists on this site at present, I am not clear that this policy applies to this development. However I have acknowledged and taken account of the fact the principle of the use of this land for a wind farm is established.

48. Scottish Planning Policy also introduces a presumption in favour of sustainable development. Paragraph 29 states that this includes giving due weight to net economic benefit and supporting the delivery of energy infrastructure, as well as protecting the landscape. The thrust of national policy is therefore to give due weight to the range of factors contributing to sustainable development. In this case, I consider the significant potential for energy generation is sufficient to justify the limited level of adverse impact that the development would cause.

49. As noted above, the draft supplementary guidance: Onshore Wind Energy identifies the appeal site as falling within a 'Group 2' Area of significant protection. This is apparently due to the presence of deep peat, but as noted above this issue does not appear to be a significant constraint in this case. The matters covered by the various criteria contained in the guidance are largely also covered in general terms by the provisions of Policy 67 of the local development plan, and where relevant are discussed above. Paragraph 4.66 states that the Council supports the principle of repowering in appropriate circumstances. I have identified no conflict with the draft supplementary guidance.

50. Regarding potential environmental effects, I have considered the matters raised in the environmental statement and in objections and consultation responses, and am satisfied that the proposed wind farm would not have any unacceptable effects on the environment.

#### Conditions

51. Suggested lists of conditions, for use in the event of the appeal being allowed, have been submitted by the council and the appellant. Given the council's responsibility for the enforcement of these conditions, I have adopted the council's wording where possible. However I have amended these where necessary, including to improve precision and accord with the principles set out in Circular 4/1998: The Use of Conditions in Planning Permissions.

52. Regarding the requirement to submit a draft Decommissioning and Restoration Plan in advance of the development, I consider this would have some purpose in identifying the likely expectations at an early stage. I am content to include a condition requiring the submission of turbine details as this will provide further certainty (alongside the restrictions imposed by other conditions) that the turbine design is acceptable. I am also content to require further details of the substation and welfare buildings, as these elements of the development can themselves have particular visual and landscape impacts.

53. The council has suggested that a legal agreement could be used to secure financial bonds to address site restoration and wear and tear on the public road and contributions towards an eagle management plan. I prefer to deal with these matters by means of suspensive conditions.

### Overall Conclusion

54. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Stephen Hall*

Reporter

### **Conditions**

1. For the avoidance of doubt, unless amended by the terms of this permission, the development shall be constructed and operated in accordance with the provisions of the application, the submitted plans, and the Environmental Statement. This permission shall be for 13 turbines, with a maximum height to tip of 125m, access tracks and crane hardstandings, met mast and three borrow workings to be sited as shown on the Proposed Development Site Layout Plan (Environmental Statement Figure 1.3) dated 17.08.2015, with the turbines located at the co-ordinates specified within Table 3.1, Chapter 3, of the Environmental Statement unless otherwise agreed under Condition 15 of this permission.

**Reason:** In order to clarify the terms of permission.

2. This planning permission shall expire and cease to have effect after a period of 30 years from the date when electricity is first exported from any of the approved wind turbines to the electricity grid network (the "First Export Date"). Upon the expiration of a period of 25 years

from the First Export Date, the wind turbines shall be decommissioned and removed from the site, with decommissioning and restoration works undertaken in accordance with the terms of Condition 4 of this permission. Written confirmation of the First Export Date shall be submitted in writing to the planning authority within one month of the First Export Date.

**Reason:** Wind turbines have a projected lifespan of 25 years, after which their condition is likely to be such that they require to be replaced, both in terms of technical and environmental considerations. This limited consent period also enables a review and, if required, reassessment to be made of the environmental impacts of the development and the success, or otherwise, of noise impact, species protection, habitat management and mitigation measures. The 30 year cessation date allows for a 5 year period to complete commissioning and site restoration work.

3. No development shall start on site until evidence of a bond or other financial provision to cover all decommissioning and site restoration costs is in place has been submitted to and agreed by the planning authority. Such agreed bond, or other such provision, shall be maintained throughout the duration of the development but will be subject to five yearly review in consultation with the planning authority.

**Reason:** To safeguard the proper restoration of the site.

4. No development shall commence until a draft Decommissioning and Restoration Plan (DRP) for the site has been submitted to, and approved in writing by, the planning authority in consultation with SNH and SEPA. Thereafter:

- i. No later than 3 years prior to the decommissioning of the development, the draft DRP shall be reviewed by the Wind Farm Operator and a copy submitted to the planning authority for their written approval, in consultation with SNH and SEPA; and
- ii. No later than 12 months prior to the decommissioning of the development, a detailed DRP, based upon the principles of the approved draft plan, shall be submitted to, and approved in writing by, the planning authority, in consultation with SNH and SEPA. For the avoidance of doubt, unless otherwise stated within this decision notice, the DRP shall include the removal of all above-ground elements of the development, all new access tracks, the treatment of disturbed ground surfaces, management and timing of the works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. The detailed DRP shall be implemented as approved.

**Reason:** To ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration of the site, in the interests of safety, amenity and environmental protection.

5. The Wind Farm Operator shall, at all times after the First Export Date, record information regarding the monthly supply of electricity to the national grid from each turbine within the development and retain the information for a period of at least 12 months. The information shall be made available to the planning authority within one month of any request made by them. In the event that:

- i. any wind turbine installed and commissioned fails to supply electricity on a commercial basis to the grid for a continuous period of 6 months, then the wind turbine in question shall be deemed to have ceased to be required. Under such circumstances, the wind turbine,

along with any ancillary equipment, fixtures and fittings not required in connection with retained turbines, shall, within 3 months of the end of the said continuous 6 month period, be dismantled and removed from the site and the surrounding land fully reinstated in accordance with this condition; or

ii. the wind farm fails to supply electricity on a commercial basis to the grid from 50% or more of the wind turbines installed and commissioned and for a continuous period of 12 months, then the Wind Farm Operator must notify the planning authority in writing immediately. Thereafter, the planning authority may direct in writing that the wind farm shall be decommissioned and the application site reinstated in accordance with this condition. For the avoidance of doubt, in making a direction under this condition, the planning authority shall have due regard to the circumstances surrounding the failure to generate and shall only do so following discussion with the Wind Farm Operator and such other parties as they consider appropriate. All decommissioning and reinstatement work required by this condition shall be carried out in accordance with the approved detailed Decommissioning and Reinstatement Plan (DRP), or, should the detailed DRP not have been approved at that stage, other decommissioning and reinstatement measures, based upon the principles of the approved draft DRP, as may be specified in writing by the planning authority.

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

6. No development shall commence until details of the proposed wind turbines have been submitted to, and approved in writing by, the planning authority. These details shall include:

- i. The make, model, design, power rating and sound power levels 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.

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. For the avoidance of doubt, all wind turbine blades shall rotate in the same direction.

**Reason:** To ensure that the turbines stated in the application are used in the development and are acceptable in terms of visual, landscape noise and environmental impact considerations.

7. No development shall commence until final details of the location, layout, external appearance, dimensions and surface materials of all substation buildings, welfare facilities, compounds and parking areas, as well as any fencing, walls, paths and any other ancillary elements of the development, have been submitted to, and approved in writing by, the planning authority (in consultation with SEPA and SNH, as necessary). Thereafter, development shall progress in accordance with these approved details. For the avoidance of doubt, details relating to the substation and welfare buildings shall include additional architectural design, landscape and visual impact assessment and other relevant

assessment work, 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.

8. No development shall start on site until a Construction Environmental Management Document is submitted to, and approved in writing by, the planning authority in consultation with SNH and SEPA. The Document shall include:

- An updated Schedule of Mitigation including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and set out in the relevant planning conditions;
- Processes to control/ action changes from the agreed Schedule of Mitigation;
- The following finalised specific Construction and Environmental Management Plans (CEMP):
  - i. Peat management plan – to include details of all peat stripping, excavation, storage and reuse of material. This plan shall include a revised table confirming volumes of acrotelmic and catotelmic peat that will be disturbed and a table showing how much peat is estimated to be required for infrastructure reinstatement works (based on best practice and broken down into acrotelmic and catotelmic) and how much will be used for gully restoration works.
  - ii. Pollution prevention plan
  - iii. Chemical pollution plan
  - iv. Site waste management plan
  - v. Species protection plan, including specific measures to be taken to make site staff aware of species and minimise disturbance and/ or capture
  - vi. Plan for the avoidance of impact on H13 Calluna – Cladonia heath and areas supporting Sphagnum fuscum or S. austinii
  - vii. Plan for minimisation of impacts on peat habitat and GWTDE habitats (through micro-siting and use of floating roads wherever possible) that includes the micro-sited layout, based on additional detailed peat probing to micrositing limits in all areas of deep peat (> 1 metre), which clearly demonstrates how finalised layout minimises impacts on peat habitat.
  - viii. Borrow Pit working plan, including details of final restoration,
  - ix. Plan for the mitigation of construction noise, vibration and, in the case of borrow workings, blasting,
  - x. Construction Traffic Management Plan, to include limitations on the times that construction traffic may enter or leave the site.
- Details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities which shall include but not necessarily be limited to:
  - i. Providing training to the developer and contractors on their responsibilities to ensure that work is carried out in strict accordance with environmental protection requirements;
  - ii. Monitoring compliance with all environmental and nature conservation mitigation works and working practices approved under this consent;
  - iii. Advising the developer on adequate protection for environmental and nature conservation interests within, and adjacent to, the application site;

- iv. Directing the placement of the development (including any micro-siting, if permitted by the terms of this consent) and the avoidance of sensitive features; and
- v. The power to call a halt to development on site where environmental considerations warrant such action.

- Details of any other methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, planning authority and other relevant parties.
- Statement of any additional persons responsible for 'stop the job/ activity' if in potential breach of a mitigation or legislation occurs.

Unless otherwise agreed in writing by the planning authority the development shall proceed in accordance with the agreed Document.

**Reason:** To protect the environment from the construction and operation of the development.

9. No development shall commence until a Habitat Management Plan (HMP) has been submitted to, and approved in writing, by the planning authority in consultation with SNH and SEPA. The HMP, which shall be implemented in full and in accordance with any timescales outlined therein, unless otherwise agreed in writing, shall include the improvement and future management of the blanket bog and other Annex 1 habitat on the site, including assurance that no muir burning takes place in any areas proposed for peatland restoration, and providing a clear methodology for gully restoration.

**Reason:** To protect and enhance the nature conservation interests of the area, including the management of vegetation and peat land within the site.

10. No development shall start on site until a reasonable financial contribution to the NHZ10 Regional Eagle Management Plan has been agreed with the council and paid.

**Reason:** To safeguard the eagle population in the area.

11. No development shall commence until the applicant has provided the Ministry of Defence (Defence Estates - Safeguarding) with the following information, a copy of which shall be submitted to the planning authority:

- proposed date of commencement of the construction;
- estimated date of completion of the construction;
- height above ground level of the tallest structure;
- maximum extension height of any construction equipment; and
- position of the turbines in latitude and longitude plus eastings and northings.

**Reason:** In order to ensure the safety of low flying military aircraft.

12. No development or work (including site clearance) shall commence until a detailed Outdoor Access Plan is submitted to, and approved in writing by, the planning authority. The purpose of the Outdoor Access Plan shall be to plan site tracks and paths to maintain public access routes throughout construction, and to enhance public outdoor access post-

construction over the longer-term. The approved Outdoor Access Plan shall be implemented.

**Reason:** To safeguard and maximise the opportunities for continued public access to the countryside during the construction and operation of this wind farm.

13. No development shall commence until a TV and radio reception mitigation plan has been submitted to, and approved in writing by, the planning authority. The plan shall provide for a baseline TV reception survey to be carried out prior to the commencement of turbine installation, the results of which shall be submitted to the planning authority. Within 12 months of the final commissioning of the development, any claim by any individual person regarding TV picture loss or interference at their house, business premises or other building, shall be investigated by a qualified engineer appointed by the developer and the results shall be submitted to the planning authority. Should any impairment to the TV signal be attributable to the development, the developer shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline TV reception.

**Reason:** To ensure local TV and radio services are sustained during the construction and operation of this development.

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

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

15. Where ground conditions specifically require it, wind turbines, areas of hardstanding and tracks may be micro-sited within the application site boundary. However, unless otherwise approved in writing by the planning authority (in consultation with SEPA and SNH), micro-siting is subject to no wind turbine, hardstanding or track being moved:

- more than 10 metres above the AOD height relative to the position shown on the approved plans and Table 3.1 of the Environmental Statement;
- more than 50 metres from the position shown on the approved plans and Table 3.1 of the Environmental Statement; and
- in any case to a position within 50 metres of any watercourse.

All micro-siting permissible under this condition without requiring the approval of the planning authority must be approved by the development's Environmental Clerk of Works (ECoW) identified under Condition 8. A written record must be kept of any such ECoW approval and shall be maintained for a period extending to no less than four years following the first export date.

Within one month of the wind farm being commissioned, the developer must submit an updated site plan to the planning authority showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure within the site. The plan



should also highlight areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW's or planning authority's approval, as applicable.

**Reason:** To minimise the effect of the development on the water environment and species and habitat contained therein.

16. The proposed route for any abnormal loads on the trunk road network must be approved by the trunk roads authority prior to the movement of any abnormal load. Any accommodation measures required including the removal of street furniture, junction widening, traffic management must similarly be approved.

**Reason:** To maintain safety for both the trunk road traffic and the traffic moving to and from the development ensure that the transportation of abnormal loads will not have any detrimental effect on the trunk road network.

17. Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered must be undertaken by a recognised quality assured traffic management consultant, to be approved by the trunk road authority before delivery commences.

**Reason:** To minimise interference with the safety and free flow of the traffic on the trunk road.

18. Before the delivery of any turbine components to the site via the local road network the applicant shall undertake a review of:

- the maximum axle loading on structures along the access route;
- overhead services along the access route;
- roadside vegetation, in summer conditions, along the access route and detail the clearance of any vegetation that may interfere with construction traffic;
- road works or road closures that could affect the movement of construction traffic; and
- new or diverted underground services that may be at risk from construction traffic.

This information, along with proposals for any mitigation required, shall be submitted to, and approved in writing by, the planning authority prior to the delivery of the first turbine to site.

**Reason:** In the interests of protecting the public road infrastructure and ensuring the safety and free flow of traffic on the public road.

19. No development or work shall commence on site until a scheme for the improvement of the B9007 to accommodate not only abnormal loads but to cater for the increase in heavy traffic likely to result from construction activities have been submitted to, and approved in writing by, the planning authority. Examples of mitigation considered appropriate include upgrading existing passing places, provision of new passing places, passing place signs, road widening and road strengthening. The approved mitigation shall be in place before the commencement of development on site.

**Reason:** In order to bring this route a standard acceptable to accommodate the increase in traffic and activity in the interest of road safety.

20. No development shall start on site until evidence of a bond or other financial provision to cover the repair of any damage done to the public road by development-related traffic has been submitted to and agreed by the planning authority.

**Reason:** To safeguard the standard of public roads.

21. Before the erection of the first turbine on site, a scheme for the installation of appropriate aviation warning lights shall be submitted to, and approved in writing by, the planning authority in consultation with MoD and HIAL. Only the approved lighting scheme shall be implemented.

**Reason:** In the interests of air safety.

22. The rating level of noise immissions from the wind turbines hereby granted (including the application of any tonal penalty), when determined in accordance with the Guidance Notes, shall not exceed 35 dBLA90, 10-min at any wind speed up to 10m/s at any noise sensitive property existing or with the benefit of planning permission at the time of this permission and:

(A) Prior to the First Export Date, the wind farm operator shall submit to the planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority.

(B) Within 21 days from receipt of a written request of the planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the Guidance Notes. The written request from the planning authority shall set out at least the date, time and location to which the complaint relates. Within 14 days of receipt of a written request from the planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (G) to the planning authority in the format set out in Guidance Note 1(e).

(C) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the planning authority for written approval the proposed measurement location where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits or approved by the planning authority pursuant to paragraph (B) of this condition shall be undertaken at the measurement location approved in writing by the planning authority.

(D) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (E) of this condition, the wind farm operator shall submit to the planning authority for written approval a proposed assessment protocol setting out the following:

- (i) The range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
- (ii) A reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request from the planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the planning authority.

(E) The wind farm operator shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the planning authority made under paragraph (B) of this condition, unless the time limit is extended in writing by the planning authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the planning authority on request. 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 pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (E) above unless the time limit for the submission of the further assessment has been extended in writing by the planning authority.

(G) The wind farm operator 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 wind farm operator 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.

**Notes:** 1) For the purposes of this condition, a "dwelling" is a building within Use Class 9 of the Use Classes Order which lawfully exists or had planning permission at the date of this permission.

2) The guidance notes referred to in this condition are available from the planning authority.

**Reason:** To ensure that the noise impact of the turbines does not exceed the predicted noise levels in the interest of amenity, that the noise immissions will be monitored over time and that there is sufficient scrutiny and assessment in the event that a complaint is received.

23. A community liaison group shall be established by the developer prior to development commencing, in collaboration with The Highland Council and local community councils. 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 coordinate deliveries and work to ensure no conflict between construction traffic and the increased traffic generated by such events/ seasons. The liaison group, or element of any combined liaison group relating to this development, shall be maintained until wind farm has been completed and is operational.

**Reason:** To assist with the provision of mitigation measures to minimise the potential hazard to road users, including pedestrians, travelling on the road networks.

### Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 4. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).