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Decision by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2158
- Location : Land at Carn Ghriogair, Aberarder Estate, Inverness
- Appeal by Mr John Appleton of RES Ltd against the decision by the Highland Council
- Application for planning permission dated 27 February 2015 refused by notice dated 19 April 2016
- The development proposed: Erection of 12 wind turbines, up to 130m to blade tip, and associated access track, infrastructure and key ancillary development
- Application drawings : Environmental statement figures 1.1 and 2.1-2.19
- Date of site visit by Reporter: 29-30 November 2016

Date of appeal decision: 7 April 2017

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## Decision

I allow the appeal and grant planning permission subject to the 26 conditions listed in annex 2 at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

## Description and background

1. The site of the proposed wind farm is located about 5 kms to the east of the B851, to the east of Loch Ness and on the western periphery of the Monadhliath Mountains. It comprises an approximately rectangular area of gently undulating moorland/sporting estate land, extending to about 390ha, at an elevation of about 650-750m, situated immediately to the north of the newly constructed Dunmaglass wind farm. The latter comprises 33 turbines 120m in height.
2. The Aberarder proposal would extend about 1.5kms northwards from the Dunmaglass wind farm. It has been designed to be generally similar to the existing wind farm in terms of layout, appearance, and turbine height, and would take access by means of the same road junction and access track that serve Dunmaglass, extended northwards into the Aberarder site.
3. The stated reason for refusal is that the proposal would be contrary to policy 67 (Renewable Energy) of the Highland-wide Local Development Plan as it would have significantly detrimental individual and cumulative visual impact as viewed by recreational users of the outdoors in the vicinity of the site, in particular on the high ground north of Loch



Ness and the Great Glen Way, due to the design and location of the proposed development.

4. The majority of the 39 representations submitted in response to the planning application, including that from the Strathnairn Community Council, oppose the development on grounds of visual impact on and near Strathnairn, and also in relation to a number of other aspects of the proposal (see below). The Strathdearn Community Council also opposes the proposal.

5. Section 25 of the Act requires this appeal to be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise. The development plan now includes the council's newly adopted (November 2016) Supplementary Guidance for Onshore Wind Energy. Parties have had the opportunity to comment on the implications of this additional component of the development plan.

6. The main thrust of local development plan policy 67 is to give support to renewable energy developments where the council is satisfied that they are located, sited and designed in a manner that will not be significantly detrimental overall, either individually or cumulatively with other developments. Consideration of renewable energy proposals will have regard to any significant effects relating to 11 specified criteria (see below), many of which are the subject of specific specialist policies in the local development plan. Some of these matters are also covered in the representations opposing the proposal.

7. Thus the determining issue in this appeal is whether or not the proposal accords overall with the development plan, specifically policy 67, the supplementary guidance for Onshore Wind Energy, and the more specialist policies that are relevant; and whether other matters put forward in support of and against the proposal justify a different outcome.

8. The council's opposition to the proposal is based on the specific concern stated in the reason for refusal, and especially in relation to the recreational use of the two locations specified in the reason. The council's appeal statement (paragraph 6.4) states that this is at the heart of the dispute in this case, while the appellant's grounds of appeal (paragraph 2.11) confirm that the visual impact of the proposal (individual and cumulative) on recreational users is the principal determining issue.

9. The matters requiring consideration in the determination of this appeal are thus, first and foremost, the visual impact of the proposal in relation to the receptors specified in the reason for refusal, and in and around Strathnairn; and then the other matters listed for consideration in policy 67 and the council's recently approved Supplementary Guidance on Onshore Wind Energy developments. Other relevant matters raised by objectors not already covered in this process would be addressed as material considerations.

10. If the proposal is approved and goes ahead, the council is seeking, among other things, that the developer funds an improvement to a section of the B851 in the vicinity of the site access. The section in question extends to about two kilometres in length, between Aberarder Bridge and Dunmaglass Bridge. The council's intention is to widen the road from single lane to two lanes, and to provide a separate parallel shared surface for use by pedestrians and cyclists. The appellant contests the need for these improvements, and the justification for charging them to the developer, in the context of the tests for acceptable

planning conditions set out in circular 4/1998. This is therefore a separate matter of dispute between the appellant and the council. However it does not affect consideration of the merits of the proposal (as set out above) but becomes relevant if the application is to be approved.

## **Compliance with the development plan**

### Policy 67

#### Visual impact

11. Policy 67 of the Highland Wide Local Development Plan requires consideration of the visual impact of renewable energy developments, and their effect on landscape character.

12. For the appellant, it is stated that the wind farm has been located in an area identified in the council's interim supplementary guidance (2012) as an Area of Search for Wind Farms. The site is partially located in an area of significant protection in the later draft version of this guidance (September 2015) but this is not for landscape reasons. The development has been located so as to avoid prominent summits and slopes, on a gently sloping area enclosed as far as possible by adjacent summits or ridges to safeguard views from key receptor locations. The proposed wind farm has been located close to the Dunmaglass wind farm so that the new turbines would overlap the Dunmaglass turbines in the majority of views, and has been designed to be perceived as part of that wind farm.

#### Visual Impact : West of the Great Glen/Great Glen Way

13. The council contends that the assessment of the adverse visual effects that would be experienced by receptors, particularly from high ground to the north of the appeal site, and whether as a result of these effects, the proposal is significantly detrimental overall in terms of policy 67 of the local development plan, is a matter of judgement, both as to the impact and the significance of the impacts. The council considers that this is a matter best assessed in the field, with the aid of visualisations.

14. Paragraphs 4.186-4.189 of the Environmental Statement Vol II provide a commentary and conclusions on the potential effects of the proposal on views from the Great Glen Way.

15. For the appellant, it is stated that the environmental assessment (chapter 4 : Landscape and Visual) has concluded that there would be no significant effects on the visual amenity of recreational walkers at key summits and other elevated locations in the vicinity of the proposed development.

16. The appeal statement notes (paragraphs 3.11-3.12) that there would be intermittent visibility of the new turbines from the Great Glen Way on the western side of the Great Glen, the turbines appearing on the skyline at distances of between about 15 and 22 kms, closely abutting and overlapping the existing Dunmaglass turbines. In particular, for viewpoints 17 (on the Great Glen Way, on the southern flank of Carn na Leitire) and 20 (from the summit of Meall Fuar-Mhonaidh), both in elevated positions on the west side of

Loch Ness, to the northwest and west of the appeal site, the residual effects on visual amenity are predicted to be moderate (table 4.7b), both for the appeal proposal individually and cumulatively.

17. I note that viewpoint 6 (Balbeg) is also relevant, as it is on the Great Glen Way at a distance of about 15 kms from the nearest turbine. The environmental assessment of the residual effects on visual amenity at this location (table 4.7b) are moderate/minor to moderate, both individually and cumulatively.

18. An examination of the mapping of theoretical visibility to the northwest of the appeal site (Environmental Statement Volume 3 Figure 4.5d) shows that the turbines would be visible to hub height from the elevated sections of the Great Glen Way to the north and south of Drumnadrochit. A good deal of this route is flanked by conifer woodland which has the potential to restrict views across Loch Ness. However there are also sections of open ground giving wider views (in good weather), for which viewpoints 6 and 17 are representative.

19. On the basis of my site visits, I am satisfied that the viewpoint imagery that has been provided gives a reasonably realistic impression of how these views would be affected, in the context of the existing turbines visible at the Dunmaglass wind farm. At these distances (around 15 kms for both viewpoints) the new Aberarder turbines would be seen as a modest addition, closely grouped with the existing Dunmaglass turbines. The new turbines would be partially screened by intervening topography when viewed from viewpoint 6, but would be more exposed when viewed from viewpoint 17.

20. Given the distance to the new turbines from the Great Glen Way, the very wide overall scale of these landscape views, and the close grouping with the Dunmaglass turbines, I conclude that there would be very little effect on the landscape/visual experience of walkers using this part of the Great Glen Way. The combined wind farms would appear as a somewhat larger feature, but still a minor component of a large scale and complex landscape.

21. I also note that the site is located about 5 kms to the south of the Loch Ness and Duntelchaig Special Landscape Area, which extends to some of the high ground on the western side of Loch Ness. According to the mapping of potential visibility (figure 4.4d of volume 3 of the Environmental Statement), there would be few if any views of the scheme from the south shore of Loch Ness and from Loch Ness itself, due to the steep topography rising above the southeast shore of the loch. There would be some visibility from the northwest side of the loch, particularly at higher levels. The potential effects on views from the Great Glen Way have been considered in preceding paragraphs. In most of the potential views from lower levels along the northwest side of the loch, the Aberarder turbines would be seen in close proximity with the Dunmaglass wind farm.

22. The mapping of theoretical visibility also shows that the proposed turbines would not be seen from Loch Duntelchaig or Loch Ruthven, due to the steep intervening ridges to the southeast of each loch, except for limited parts of the shoreline at the west end of each loch.

23. I am satisfied that the proposed scheme would have little or no effect on the qualities and character of this special landscape area.

Visual impact : Strathnairn and environs

24. Turning to visual impacts on closer locations on the east side of Loch Ness, including Strathnairn, Loch Ruthven, Loch Duntelchaig, and nearby summits, most of the representations opposing this proposal are from people with addresses in the section of Strathnairn extending downstream to Daviot.

25. The concerns in the representations relating to landscape and visual impact focus on the number of windfarms already present or approved in the locale; the overlarge wind farm that would result from the combination of the Aberarder and Dunmaglass wind farms into a single assembly of over 40 turbines; and the intrusion of the new windfarm in views from Strathnairn and nearby locations, including Loch Duntelchaig.

26. Paragraphs 4.178-4.179 of the Environmental Statement Vol II provide a commentary and conclusions on the potential effects of the proposal on views along the route of the B851 to the southwest of the A9.

27. The mapping of theoretical visibility already referred to shows that all or most of the new turbines would be visible to hub height in the section of Strathnairn extending south from near Dell Farm to Woodside, except where they are obscured by the forestry plantations. There would be no theoretical visibility from the floor of the strath from the A9 junction southwest to Dell Farm and from Woodside south to the bridge over the River Nairn near Aberarder House. There would be some visibility from more elevated locations on the northwest side of the strath, notably at Daviot village.

28. The images that have been supplied for viewpoints 1 (Daviot village) and 5 (Milton of Farr) are representative of what residents and those travelling south on the B851 between these two locations would be likely to see. The distance to the new Aberarder turbines would be around 18kms at Daviot village, reducing to about 12kms at Milton of Farr.

29. From both locations, the new turbines would be seen on the skyline, with the existing Dunmaglass turbines partially visible to the rear from viewpoint 1. From Milton of Farr, the turbines would be more conspicuous, being significantly nearer, and with the Dunmaglass turbines much less visible, hidden by the intervening hill summit.

30. Although visible from some sections of the strath in this corridor, I agree with the assessment contained in the Environmental Statement (Volume II table 4.7b) that the residual effects on visual amenity resulting from the new turbines would be minor to moderate. This is because the turbines are 12kms or more away from these receptors, partially hidden by the landforms and forestry, and in some places merging visually with the Dunmaglass turbines which are situated behind the Aberarder turbines in these views, when visible.

31. Turning to the potential cumulative effects of the proposed Aberarder wind farm in conjunction with existing and approved wind farms, those concerned about the progressive

encroachment of wind farms in the vicinity of Strathnairn refer principally to those at Farr, Glen Kyllachy, and Dunmaglass which are closest to this section of Strathnairn. Volume 3 of the Environmental Statement (LVIA GIS Output) provides mapping of the theoretical visibility of the proposed Aberarder wind farm in conjunction with these wind farms. The mapping also covers the Moy and Tom nan Clach wind farms to the east of the A9 and the Corriegarth windfarm and extension to the south west.

32. A careful examination of the relevant maps (4.7a, 4.9a, 4.12a and 4.13a) shows that there would be little or no visibility of the Moy, Tom nan Clach and Corriegarth wind farms from the floor of Strathnairn/B851, from the vicinity of the A9 southwestwards. The Farr and Glen Kyllachy wind farms, which are contiguous, would be theoretically visible from a short section of the B851 near Milton of Farr. The Dunmaglass wind farm, being so close to the Aberarder proposal, would be seen with it in most views south up Strathnairn, the Dunmaglass turbines being generally to the rear of the Aberarder scheme.

33. I conclude from this mapping that the proposed Aberarder turbines would be seen in conjunction with the Dunmaglass wind farm from the central section of this part of Strathnairn, where the two adjacent wind farms would be perceived as a single group of turbines. Similarly, from a much shorter section of the strath, there would be theoretical visibility of the Farr and Glen Kyllachy turbines to the east in conjunction with the Dunmaglass and Aberarder turbines to the south.

34. As these 4 wind farms would essentially form two groups each comprising two adjacent wind farms, with the Aberarder wind farm seen in close proximity to Dunmaglass, I conclude that the addition of the Aberarder turbines would make little difference to the overall sense of encroachment that is felt by the Strathnairn Community Council and residents opposing the scheme.

Visual impact : High level views

35. The proposed wind farm (blade tips) would be seen from some high level areas in the western and central portions of the Monadhliath Mountains, within the landscape character area identified by SNH as Inverness Rolling Uplands. The relevant areas are largely to the south and southeast of the proposed site. There would also be limited theoretical visibility from relatively small areas in the eastern part of this range, within the Cairngorms National Park (characterised as Cairngorms Uplands and Glens landscape), where distances from the nearest turbines would be approaching 20kms.

36. A number of the representations, including that from the Strathdearn Community Council, express concern about these more distant potential views of the new wind farm.

37. The representative viewpoints for considering this aspect of the proposal are number 18 (Carn na Saobhaidhe), about 7 kms southwest of the proposal; 15 (Carn Dubh), also to the southwest, at a distance of about 17 kms; and 9, 10 and 19 (Carn Sgulain, Geal Charn, and Geal-chn Mor), to the south and southeast, at distances of about 15, 23 and 20 kms respectively.

38. The photo of the existing view northeast from viewpoint 18 (figure 4.76c in volume 5 of the Environmental Statement), taken in April 2014, does not show the Dunmaglass wind

farm, as construction had not commenced. The photomontage showing both wind farms (figure 4.76d) shows that both wind farms, totalling some 45 turbines, would be readily visible, forming a very extensive group. However the 12 proposed Aberarder turbines would be located behind the Dunmaglass turbines, and well within the horizontal extent of the latter, so that although they would contribute to a denser array of turbines, the additional effect on the wider landscape views would be modest.

39. The same screening effect would apply at viewpoint 15, which is on almost the same alignment as viewpoint 18, and from viewpoint 10, but the impact of the additional turbines would be reduced, as they would be 10 and 16 kms further away respectively.

40. From viewpoint 9 (figure 4.67d), the Aberarder turbines would also be seen largely to the rear of the Dunmaglass turbines, but with 3 turbines partially visible to the right of the Dunmaglass turbines. At a distance of 14 kms, I consider that this would make very little difference to the visual impact resulting from the turbines already approved and installed.

41. Viewpoint 18 is located well to the northeast of viewpoint 9, so that the Dunmaglass turbines do not encroach on the view of the proposed Aberarder turbines. The latter would be partially visible as an extension immediately to the right of the Dunmaglass turbines, at a distance of about 20 kms. Given the distance, the close grouping with the Dunmaglass turbines, and the limited geographical areas in this eastern part of the Monadhliaths from which the new turbines would be theoretically visible, I consider that there would be very limited impact on these views.

42. Drawing these elements together, I find that high level views of the proposed turbines would be largely confined to the areas to south and south east of the site, where the existing Dunmaglass turbines would be directly in front of the new turbines. There would thus be very little additional visual impact resulting from the extra turbines.

43. This screening effect would not apply in views from the east and northeast, but there is very limited theoretical visibility from these directions, and what there is lies further away from the site. Even from here, the additional turbines would be seen in close proximity to the Dunmaglass turbines.

44. I conclude from all this that the proposed Aberarder turbines, being grouped so closely with the Dunmaglass turbines, would have little additional visual impact on high level views, either because of the screening effect of the existing turbines or the distances involved.

45. This conclusion accords with the view expressed by the Mountaineering Council of Scotland, who state that the proposed development would “add to the industrialisation of the western Monadhliath but without any significant additional impact on the mountain resource”. Accordingly the mountaineering council offered no objection to the proposal.

46. Scottish Natural Heritage has expressed a very similar view.

Conclusions on visual impact : synthesis

47. For the reasons explained above, based on the mapping of theoretical visibility and extrapolating from the representative viewpoint imagery, I conclude that the proposal would have very little visual impact in the wider landscape setting or on those receptors who would be able to see it from the high ground to the west of the Great Glen, in Strathnairn, and elsewhere on the high ground of the Monadhliaths; and that it would not have an adverse effect on the character of the Inverness Rolling Uplands and Cairngorms Uplands and Glens landscape character areas.

48. The implications for the area of wild land designated in the core of the Monadhliath range are covered at paragraphs 51-53 below.

#### Other policy 67 matters

49. In addition to the implications for visual impact and landscape character, policy 67 also identifies 10 further matters for consideration: These are covered in sequence below. Several of them are matters of concern raised in the representations.

#### Natural, built and cultural heritage features

50. As noted in the grounds of appeal, figure 4.3 of the environmental statement shows that the appeal site is not located within any designated natural, built or cultural heritage areas.

51. The site is about 5 kms from the nearest part of the Monadhliath Wild Land designation, to the south and southeast of the site. The mapping of theoretical visibility (in particular, figure 4.4b in volume 3 of the environmental statement) shows that there would be potential views of the Aberarder turbines from areas within the wild land area to the south and southeast, mainly at distances of 7-15 kms. As noted above, views of the new turbines from this sector would be mainly through or abutting the existing turbines at Dunmaglass.

52. Scottish Natural Heritage has not expressed concerns about the potential effect of the Aberarder proposal on the character of the area covered by the wild land designation.

53. Accordingly, although the combination of the two adjacent wind farms would lead to an intensification of the appearance of the group when viewed from the wild land area, I agree that there would be no significant adverse effect on the qualities of the area and the enjoyment of those who explore it.

54. Figure 4.3 also shows that the proposal would be more than 10 kms from any designed gardens and landscapes.

55. Figures 5.1 and 5.2 in volume II of the environmental statement show the locations of archaeological features, scheduled monuments and listed buildings within 5kms of the appeal site. Nearly all of the items shown are on the lower ground along Strathnairn, where there would be limited potential visibility of the proposed turbines, some 3-4 kms away.

56. The consultation reply from Historic Environment Scotland raises no concerns about possible adverse effects on the settings of these features.



57. I conclude that the proposal would be unlikely to result in any adverse effects in terms of natural, built and cultural heritage features.

#### Species and habitats

58. Some of the representations raise concerns about some aspects of these subjects, including the potential effect on Golden Eagles and other protected species.

59. The environmental statement provides a very detailed examination of the habitats, vegetation, groundwater, peat stability, and species to be found on and around the site, including protected species; the likely implications of the proposal; and potential methods of mitigation of potential adverse effects.

60. Scottish Natural Heritage has concluded that the proposal will result in limited additional adverse effects on natural heritage interests.

61. In particular, Scottish Natural Heritage notes that:

- The proposal is within 6 kms of the Loch Ruthven Special Protection Area, classified for its breeding Slavonian Grebe population. The site's status means that the requirements of the Conservation (Natural Habitats &c) Regulations 1994, as amended (the Habitats Regulations) apply. As the appeal site does not provide a suitable habitat for the grebes, and none were sighted during the visual surveys, Scottish Natural Heritage considers that the proposal is not likely to have a significant effect on the qualifying interests of the Loch Ruthven site, so that an appropriate assessment is not required.
- The predicted potential effects on Golden Eagle are acceptable, together with an appropriate contribution to the Great Glen Regional Golden Eagle Conservation Management Plan.
- With regard to the potential effects on protected species, Scottish Natural Heritage recommends further mitigation measures in addition to those already proposed. Their inclusion would avoid the need for a licence from Scottish Natural Heritage. On the basis of the information currently available, Scottish Natural Heritage considers it likely that the tests required under the Habitats Regulations 1994 (as amended) can be met prior to the approval of the application, so that a licence could be granted.
- There is a population of the rare Marsh Saxifrage within the site. This can be safeguarded by appropriate protection measures.
- Much of the detail for the safeguarding arrangements will be contained in the Construction and Decommissioning Method Statement. This should be agreed with Scottish Natural Heritage prior to work commencing on site.

62. On the basis of the detailed information contained in the environmental statement, the absence of objection from the Royal Society for the Protection of Birds, and the endorsement of Scottish Natural Heritage that the proposal would be acceptable, subject to various detailed requirements and safeguards, I am satisfied that the proposal would not result in unacceptable effects on wildlife and natural habitats, and that the various specialist statutory processes intended to safeguard these matters can be met.

63. The environmental assessment already puts forward various measures to safeguard the natural features, habitats, and species present on the site, and to ensure that

construction and decommissioning methods minimise adverse effects. Additional studies and remedial measures have been proposed, and are a necessary element of the development. The relevant requirements and planning conditions proposed by the council's planning staff in the committee report would address these matters. That would include a Construction Environmental Management Plan covering the construction, operational and decommissioning phases of the development, a Nature Conservation Management Plan, and the employment of an Ecological Clerk of Works to oversee implementation these matters.

64. Subject to these requirements and safeguards, I conclude that the proposal would satisfy the objectives of this aspect of policy 67.

Amenity at sensitive locations, including residential properties, work places, and recognised visitor sites

65. Table 10.4 in volume II of the environmental statement lists the 10 nearest residential properties to the appeal site. The nearest is 4.4 kms away and the furthest over 7 kms. The residential properties closest to the site are located on low ground in Strathnairn, with no or limited visibility of the proposed turbines.

66. There are also stated to be no work places or recognised visitor sites within 4 kms of the site, which is not surprising as the site is located within an extensive area of open moorland, with some forestry on lower slopes and the Dunmaglass wind farm (currently a construction site nearing completion) directly adjacent.

67. With this degree of separation from potential receptors, the conclusion that there will be no problems of shadow flicker or noise is understandable, a position endorsed in the consultation response from the council's Environmental Health staff.

68. As noted in the grounds of appeal, the Great Glen Way is a recognised visitor site, and it is mentioned in the reasons for refusal. The potential impact on this route, and its users, has been covered in paragraphs 16-20 above.

69. There are other recognised visitor sites within the Great Glen, along the route of the A82, including Urquhart Castle. The environmental assessment has examined the potential impact of the proposal on users of this (and other) routes. The conclusion is that the impact on the A82 route would be none/moderate, due to the limited potential visibility. The council's planning staff agree with this assessment.

70. I agree that due to the intervening topography and roadside vegetation, there would be limited locations along Loch Ness where the Aberarder turbines would be visible, and in most of these the Dunmaglass turbines would also be visible to some extent. I note that Urquhart Castle, an important visitor destination, would not have theoretical visibility of the new turbines.

71. For these reasons, I conclude that the proposal would have no adverse impact on sensitive locations of this type.

Safety and amenity of occupied buildings, having regard to visual intrusion, noise, ice throw and shadow flicker

72. The potential impacts of visual intrusion, turbine noise and shadow flicker have been considered above. Similarly the large separation distances between the new turbines and other properties means that there would be no risk of ice throw problems.

73. The grounds of appeal also refer within the context of this topic to the potential effects of noise and vibration from construction traffic on residential amenity at houses along the access route (the B851 from the A9 junction at Daviot). This subject is covered in chapter 9 of the Environmental Statement (Volume II). Information about the amount of construction traffic is given at paragraphs 9.42 and 9.43, which in turn refer to appendix 9.1. The potential impact of this traffic along the access route is considered in pages 6-11 of the chapter. Full details of the construction traffic predictions are to be found in the Transport Assessment in appellant's document APP1.4, at appendix B.

74. The potential impact of the construction traffic on the local road system and other road users is considered in paragraphs 107-111 below.

75. Looking specifically at the potential loss of amenity at houses and other occupied buildings along the access route, paragraph 9.22 and table 9.1 of the assessment describe the potential relevant receptors along the B851 between Daviot and the site access point. In summary, they comprise:

- Around 30 homes at Inverarnie (named as Tombreck on the Ordnance map), most of which face onto the B861 and not the B851;
- Holiday cottages at Dalvourn Farm, which are set well back from the road;
- Around 10 homes adjacent to Farr Primary School, and the school itself, all fronting onto the B851;
- Riverside Holiday Cottages, a group of 3 cottages set close to the B851 but without an open frontage.
- 18 homes at Croachy : there appear to be about 10 houses in the main group, all fronting onto the B851.

76. This amounts to around 25 houses with a fairly close frontage to the B851, plus the primary school.

77. In addition, there is a separate group of a further dozen or so homes fronting onto the B851, about 700m to the south of Farr primary school, which appear to be omitted from table 9.1. Thus the overall total is 25-35 houses, plus a few isolated houses outwith these groups.

78. The estimated additional traffic occurring during the period of construction is shown in tables 9.6 (all vehicles) and 9.7 (heavy goods vehicles), where the increase from the baseline levels is calculated. The figures are split between the first two months, when the construction traffic is expected to be at a peak, and the remaining months of the 18 month construction period, when there is expected to be a decrease in construction vehicles, and especially HGVs.

79. The figures for various points on the A9 during the first two months show increases of well under 2% for all vehicles, and less than 4% for HGVs, which are regarded as not discernible, being well within the daily variation of the averages.

80. The figures of most relevance in this case are those for the B851, which are the last entry in each table. The baseline weekday figure for the B851 near the appeal site entrance is 179 (all vehicles), being an average weekday figure (presumably because each day's flow is so low that it will be subject to quite wide daily variations compared with the large flow on the A9).

81. The forecasts for the first two months show that the baseline flow of 179 vehicles would be increased by 123 construction trips, an increase of nearly 69%. The corresponding figures for heavy goods vehicles are 21, increased by 40, to give a 187% increase.

82. For all subsequent months of the construction period, the corresponding increases are estimated to be 52% for all vehicles and 47% for heavy goods vehicles.

83. The assessment (paragraph 9.51) describes these increases as "substantial", reflecting the low level of current traffic flows on this road. The sensitivity of the receptors along the B851 is assessed to be "medium", based on the criteria listed in table 9.9 ("Residential with frontage onto road, educational, etc"). The combination of these two factors results in a "moderate or large" degree of significance for the first two months, reducing to "slight" during the rest of the period.

84. This assessment is based on standard guidance given in the IEA Guidelines for the Environmental Assessment of Road Traffic. This suggests that an increase in traffic of between 30% and 60% should be regarded as "slight", being a "perceptible change in conditions", whereas on this quiet country road (with less than 200 daily movements), an increase of around 90 vehicles per day is likely to be (in my judgement) "Readily apparent" to residents, increasing the magnitude descriptor to "Moderate" and the significance descriptor to "Moderate", rather than "Slight".

85. The environmental statement points out that the increase in the use of the B851 by HGVs going to and from the Aberarder wind farm would amount to an average of 40 per day during the first two months and 10 per day during subsequent months. It is contended that these would be low absolute numbers, equating to 4 HGV movements per hour (assuming a 10 hour daily delivery period) during the first two months, reducing correspondingly further during subsequent months.

86. I conclude from these forecasts and assessments that the additional traffic during the initial period of construction, amounting to a 69% increase in all traffic and a 187% increase in HGVs, would be a very noticeable feature for those living close to the road. Even in subsequent months, when the corresponding increases are predicted to be 52% and 47%, amounting to an extra vehicle for every two already using the road, I think it very likely that those living close to the road would experience a noticeable and unwelcome difference in traffic levels. Although the absolute numbers of vehicle trips would be relatively low, the employees daily journeys to and from the construction site (which are by far the largest

component of total trips) would be likely to be bunched into the usual peak morning and evening travel times, giving a more pronounced effect.

87. As noted above, the number of homes likely to be affected would be about 25-35. Although concerns about construction traffic noise do not feature prominently in the representations, I think it likely that some residents would experience increased noise in their homes, and some degree of loss of residential amenity, particularly during the first phase of the construction period.

88. On this basis, I conclude that the proposed wind farm would have little or no direct effect on the amenity of sensitive locations, but that construction traffic would be likely to lead to some loss of residential amenity along the B851, particularly during the first part of the construction period and at peak journey to and from work travel times.

#### Ground and surface water, aquatic ecosystems and fisheries

89. The proposal has been located and designed so as to avoid or mitigate potential adverse impacts on these receptors. The environmental assessment found little or no potential adverse impacts, taking account of the mitigation measures that are proposed.

90. The consultation reply from the Scottish Environment Protection Agency states that the agency is content with most aspects of the proposal that are relevant to their interests, provided that various conditions are attached to any planning permission, and are implemented.

91. The Highland Council professional staff are generally satisfied with these matters, and have included extensive requirements in the proposed planning conditions and management plans to safeguard these matters.

92. On this basis, I am satisfied that the proposal would comply with this aspect of policy 67.

#### Safe use of airport, defence and emergency service operations

93. There are no objections to the proposal from the Civil Aviation Authority, National Air Traffic Control, and the Ministry of Defence, subject to planning conditions relating to aviation lighting and confirmation of the final turbine locations.

94. Highlands and Islands Airport Ltd had initial concerns about the new turbines being a visible interference on the radar facilities serving Inverness airport. However as a result of discussions, agreement has been reached that satisfactory mitigation can be put in place, and can be safeguarded through an appropriate planning condition, for which wording has been supplied.

95. The Highland Council is content to proceed on this basis, with the cost of any mitigation arrangements falling on the developer.

96. On this basis, I am satisfied that the proposal would comply with this aspect of policy 67.

Other communications systems, including the quality of radio and TV reception

97. No potential issues of this kind have emerged during the assessment and consideration of this proposal. The Highland Council wishes to safeguard the position by means of a planning condition.

98. The appellant is content with this approach, but has put forward a revised wording for the condition.

99. I am satisfied that this approach will address any problems of this kind that arise. The choice of wording for the condition is covered in the section below on planning conditions and obligations.

100. On this basis, I am satisfied that the proposal would comply with this aspect of policy 67.

Amenity of users of core paths or other established public access for walking, cycling or horse riding

101. There are no designated core paths nor any other obvious paths crossing the site. There are paths and other established public access routes in the wider area, of which the most significant is the Great Glen Way. The potential effects of the new proposal on the amenity of users of the Great Glen Way have been considered above. Apart from this, no other established public access facilities have been identified as being potentially at risk from a loss of amenity as a result of the new turbines.

102. On this basis, I conclude that the proposal would have a limited adverse effect on the amenity of users of certain elevated sections of the Great Glen Way, reduced because in most views the new turbines would be seen in close association with the existing Dunmaglass turbines. Consequently I am satisfied that the proposal would comply with this aspect of policy 67.

Tourism and recreation interests

103. Several aspects of tourism and recreation interests in the wider area have been considered already in the context of the potential landscape impact of the proposal on visitors making use of the Great Glen Way, the Monadhliath Mountains, and the designated wild land area, visiting Urquhart Castle, or travelling on the Loch Ness section of the A82 road or by boat on the loch itself. The new turbines would have little or no visual impact on some of these locations, and where visible would often be seen in close association with the existing Dunmaglass turbines.

104. The environmental assessment has examined the probable impact on views from a number of mountain summits selected (in consultation with the council and Scottish Natural Heritage) to be representative of a number of recreational receptors in the area. No significant visual effects were identified at any of these locations.

105. Although the turbines would be visible from locations on high ground in the western part of the Monadhliaths and other nearby summits, wind farms are already visible fairly

close by in most of these views and the Aberarder turbines would usually be seen as an apparent enlargement of the Dunmaglass wind farm. While perhaps unwelcome to some users, I do not think there would be a serious adverse impact, and there is no evidence that a significant number of visitors would be affected.

106. On this basis, I am satisfied that the proposal would comply with this aspect of policy 67.

#### Land and water based transport and traffic interests

107. The appellant notes that there are no objections to the proposal on road access and traffic grounds from either Transport Scotland (for their trunk road interest in the A9) or the Highland Council. However both organisations have requirements relating to the transport of large turbine components and other abnormal loads to the site, and (in the case of the council) to a financial contribution from the developer to 3 specific infrastructure improvements.

108. As noted above, the appellant disputes the need for the latter improvements, and for any financial responsibility for them, in the context of Scottish Government and the Highland Wide Local Development Plan guidance on such matters. However, if they are found to be necessary, they are implementable and do not represent an obstacle to the grant of planning permission.

109. The council's assessment of the proposed road access arrangements is that :

- There would be no noticeable impact on the A9 trunk road.
- The wind farm traffic would use the B851 from the A9 to the site access. This section is about 18km in length, of which nearly 10kms have been upgraded to twin track secured through previous wind farm developments in the area.
- The remainder of the road is single track, of which almost two kilometres is suffering from significant edge deterioration, especially in Croachy, Inverarnie and Farr, and close to the entrance to the Dunmaglass wind farm.
- The construction of the proposed Aberarder wind farm is likely to result in about 19,000 vehicle movements during the 18 month construction period.
- The council is concerned that this additional traffic will result in a significant risk of damage to the road, due to its fragile nature, and that structural failure of the carriageway is a possibility. Mitigation of these risks should be addressed before the delivery of abnormal loads to the site.
- The council is seeking (in proposed condition 14) the upgrading of a 1.9km section of the B851 between Aberarder Bridge and Dunmaglass Bridge (the site entrance) to twin track standard, and the formation of a shared use pedestrian and cycle path parallel to this section, all to be in place before development commences on site.
- These improvements would be in line with the established South Loch Ness Road Improvement Strategy.
- Without these improvements, the council considers that the road is not fit for purpose, and that the development would have an unacceptable impact on the local road network, both in terms of the structure and condition of the road and the cumulative change in character.

- The council would expect a community liaison group to be formed to inform the community of potential road disruption and remedial measures.
- A wear and tear agreement under section 96 of the Road Act would also be required.

110. As the developer is prepared to accept most of the council's requirements relating to roads matters, and to address these requirements if they are found to be a necessary prerequisite directly related to the proposal under consideration, I agree that they do not constitute an obstacle to approval of the planning application. The necessity for the improvements and mitigation measures is considered below in the section on planning obligations and conditions.

111. In this context, I am satisfied that the proposal would comply with this aspect of policy 67.

#### Other relevant local development plan policies

112. The other policies referred to in the council committee report are 28 (Sustainable Design); 29 (Design Quality and Place Making); 31 (Developer Contributions); 51 (Trees and Development); 55 (Peat and Soils); 56 (Travel); 57 (Natural, Built and Cultural Heritage); 58 (Protected Species); 59 (Other Important Species); 60 (Other Important habitats); 61 (Landscape); 63 (Water Environment); 72 (Pollution); and 77 (Public Access).

113. These are considered in sequence below, although several of them have been considered already in the context of the component elements of policy 67 (Renewable Energy Developments).

114. Policy 28 embraces a wide range of factors that are relevant to sustainable design, including demonstrating sensitive siting and high quality design; impacts on habitats, species, and water systems; landscape and scenery; cultural heritage; and contribution to the economic and social wellbeing of the community. Several of these have been considered already as components of policy 67. The scheme has been designed to fit in visually as an extension of the Dunmaglass wind farm, and to minimise the potential adverse impacts on landscape character and visual receptors, as well as local habitats and species.

115. The construction of the wind farm would be likely to make a contribution to the economy of the wider area, but would also involve some disturbance to the local community. There is no suggestion that the new wind farm would make a long term contribution to the economic and social wellbeing of the local community, but nor have any significant adverse effects been identified.

116. I conclude that the proposal would be in general accordance with the objectives of policy 28.

117. Policy 29 is of limited relevance to this proposal, as it focuses primarily on the design of places and buildings for occupation and use. However, as noted above, this new windfarm has been sited and designed so as to minimise the potential visual impact in the landscape, and to blend in well with the neighbouring wind farm already in place. Accordingly I conclude that the objectives of policy 29 would be met.



118. Policy 31 sets out the context, purpose, and guidelines where developer contributions will be expected. The main objective is to seek a reasonable and fair contribution where development proposals create a need for new or improved public services, facilities, or infrastructure that relate directly to the proposed development.

119. The main items where the council is seeking a financial contribution are for the Great Glen Regional Golden Eagle Conservation Management Plan; a bond for the decommissioning and restoration of the site; funding for the improvement of a two kilometre section of the B851 extending northeastwards from the site access; and a wear and tear agreement for road damage under section 96 of the Roads (Scotland) Act 1984. These matters are all discussed in the section below on planning obligations and conditions, where conclusions are reached on which of these items are necessary and appropriate for inclusion as part of the consideration of this planning application, in the context of local development plan policy 31 and national guidance on this subject.

120. Policy 51 (Trees and Development) is not relevant to this proposal, as the site is open moorland with few if any trees, and where any new structural planting would be inappropriate.

121. The potential impact of the proposal on peats and soils has been covered in the environmental statement, and as part of the consideration of policy 67. The design, implementation, and management of the proposal has been devised to avoid any significant adverse effects on these items, so that the objectives of policy 55 would be met.

122. Policy 56 (Travel) is primarily about locating development in a manner where it can be well served by various appropriate modes of transport. Among these considerations, the third bullet point of the policy expects developments to be designed for the safety and convenience of all potential users (in this case other road users, pedestrians, and cyclists).

123. There is no suggestion that the additional road traffic generated by the proposal during the construction phase would lead to any capacity problem on the B851 or the A9. However the council has concerns about the structural fragility of parts of the B851 to carry the extra traffic, and is seeking to safeguard the position through agreements and financial contributions. These are discussed in the section below on planning obligations and conditions.

124. The operation of the council's policy on developer contributions requires that any adverse road impacts arising directly from the development are addressed in a reasonable and fair manner, so that there should be no significant negative effects for other road users. Thus the aspects of policy 56 relevant to the current proposal would be met.

125. The potential impact on the amenity of people and properties along the B851 has been covered in paragraphs 75-88 above.

126. The matters that are the subject of policies 57-61, 63, 72 and 77 have already been covered in the context of policy 67.

127. For these reasons, I am satisfied that the proposal would be in general accordance with all the relevant objectives of these policies.

### Supplementary guidance

128. The report to the planning committee on this application lists 6 items of supplementary guidance that form part of the development plan that are pertinent to the determination of the application. I have reviewed these documents in the context of the various corresponding development plan policies, the environmental statement, and the appeal submissions.

129. I am satisfied that the guidance on flood risk and drainage impact assessment, the historic environment strategy, sustainable design, trees and woodlands, and protected species has been adequately addressed in the environmental statement and that appropriate safeguarding measures have been incorporated in the siting, design, and detailed layout of the proposal and the intended construction management procedures, so that the proposal would achieve the objectives of these guidance documents, where applicable.

130. Waste will arise during the construction phase, and will require appropriate management in accordance with the regulation of construction operations. I am satisfied that the objectives of this guidance can be met.

131. The development plan also now includes supplementary guidance for onshore wind energy developments adopted by the council during the consideration of this appeal. Parties have had an opportunity to make submissions on the implications of this additional guidance.

132. For the appellant, it is submitted that the adoption of the final version of the supplementary guidance has no implications for the proposed development. This is based on the contention that the proposal complies with the relevant provisions of the local development plan and the guidance contained in the interim draft version of the supplementary guidance, and that the final version introduces no changes relevant to the proposal that would alter the position. In particular, it is noted that the appeal site is located in an area of significant protection in the spatial framework for onshore wind farms, due to the presence of deep peat on the site, but the layout, design, and development management arrangements that are proposed give adequate protection to this resource. The new turbines will not affect the operational efficiency of the Dunmaglass wind farm, and the use of on-site borrow pits will minimise the use of public roads by construction traffic. Detailed arrangements will be covered in the Construction Environmental Management Plan required by proposed planning condition 16.

133. The appellant notes that the proposed turbines would be visible as skyline development when viewed from some locations on the north side of Loch Ness. However this would be acceptable in the context of the existing Dunmaglass turbines, with minimal additional landscape impact.

134. The appellant notes the guidance on traffic and transport interests that seeks a strategic approach to coordinate mitigation works in areas where more than one scheme is permitted. However mitigation works should fairly and reasonably relate to the impacts of the proposal on the local road network, in accordance with circular 3/2012.

135. The appellant contends that the proposal will contribute to the local economy during the construction period, and to renewable energy output once in operation, without significant adverse effects, and will thus meet the objectives of the various local development plan policies that are relevant.

136. The council considers that the final adopted version of the supplementary guidance has only minor differences from the draft version, relating to wild land. It thus involves no significant change from the position when the Report of Handling was prepared for the committee, other than having enhanced status as part of the approved local development plan.

137. The council notes that the supplementary guidance contains more detailed criteria for the consideration of schemes. The council remains of the view that the extension of the Dunmaglass wind farm by the erection of the additional turbines at Aberarder would have a significant impact on recreational users of routes and ways to the north of the Great Glen. The enlargement of the existing windfarm would reduce the spacing between this group of turbines and those to the east, in an area where there is limited scope for further large scale turbines.

138. I have considered the adopted supplementary guidance as part of the development plan, and especially those sections that have potential relevance to this appeal decision. While there are additional criteria to be considered, I agree with the council and the appellant that there is little change from the development plan policy context that formed the basis of the council's committee report and decision, and the policy background for developer contributions, as set out in local development plan policy 31, reflecting the guidance contained in Scottish Government circular 3/2012.

139. I conclude from all this that the proposal would be in accordance with the relevant provisions of the local development plan, including the supplementary guidance, by making a contribution to renewable energy resources without being significantly detrimental individually, or cumulatively with other wind farm developments.

### Material considerations

140. Turning to material considerations that might justify a different conclusion, I note that the representations express concern about a number of matters that have not been considered in the context of development plan compliance, including government subsidies for wind farm development, the lack of need for additional wind farms to meet the government's renewable energy targets, and lack of evidence about carbon emissions savings.

141. The government policies and funding regime in support of renewable energy developments are matters of wider government policy relating to the principle of wind farm developments and reducing carbon emissions, which do not affect the assessment of the planning merits of an application for planning permission.

142. In addition, several potentially relevant items relating to planning for wind farm developments have been published since this appeal was lodged. These are:

- Scottish Government Draft Climate Change Plan 2017-2032 (January 2017);
- Scottish Government Draft Onshore Wind Policy Statement (January 2017);
- Draft Scottish Energy Strategy consultation document (January 2017);
- New Wild Land Area Descriptions (Scottish Natural Heritage; January 2017);
- Draft technical guidance on assessing impacts on Wild Land Areas consultation document (Scottish Natural Heritage; January 2017).

143. I have reviewed these documents to assess their potential implications for the determination of this appeal.

144. I note that 4 of the 5 documents are draft consultation papers which are potentially subject to change and do not yet constitute settled government or Scottish Natural Heritage policy. On this basis, I am satisfied that they do not contain potential changes that might be of sufficient importance to outweigh the presumption that planning permission should be granted for this proposal on the basis of compliance with the development plan.

145. The new description for the Monadhliath wild land area does not affect the assessment of this proposal. The appeal site lies outwith the designated wild land area, and the potential impact of the proposal on the character and enjoyment of the area has been considered in the environmental assessment and the appeal submissions.

146. On this basis, I find it unnecessary to seek further information from parties on the potential implications of these documents.

#### Development plan compliance : synthesis

147. Drawing these elements together, I conclude that the proposal would be substantially in accordance with the relevant provisions of the local development plan and associated supplementary guidance, and that material considerations do not indicate that this outcome should be changed. I recognise that there would be some loss of amenity and inconvenience for those living alongside or using the relevant section of the B851 during the construction period, and a small increase in the extent that wind turbines would be visible in the relevant landscape setting. However I am satisfied that the proposal would contribute to the potential output of energy from renewable resources without significant adverse impacts, and that the negative aspects do not outweigh the overall suitability of the site for this proposal.

#### **Planning obligations and conditions**

148. As I have concluded that the proposal would be acceptable in principle, I now turn to consideration of the potential planning obligations requested by the council, and the list of planning conditions proposed by the council, for which the appellant has requested a number of amendments.

#### Planning obligations and financial contributions

149. The report to the planning committee recommends approval of this application, subject to the conclusion of a legal agreement to secure :

- A £5,000 per year contribution to the delivery of the Regional Golden Eagle Conservation Management Plan.
- A bond for the decommissioning and restoration of the site.
- A Roads Wear and Tear Agreement under section 96 of the Roads (Scotland) Act 1984 (as amended).

150. The appellant has stated that the request for contributions to the Great Glen Regional Golden Eagle Conservation Management Plan is acceptable, as mitigation for the proposed development but also with the wider regional enhancement benefits when coupled with the contributions from other wind farm developments.

151. I have given consideration to this matter, alongside the submission on the appropriate mechanism for establishing a fund for the decommissioning and restoration of the site (see below). I am satisfied that a satisfactory mitigation scheme to safeguard the Golden Eagle population can be established.

152. With regard to the request for a financial bond to cover the decommissioning and restoration of the site, the appellant contends that this can be secured by means of a suspensive planning condition, and that this approach has been adopted in other wind farm decisions.

153. I am aware that the approach commended by the appellant has been used in other wind farm appeal decisions, including non-delegated cases decided by the Scottish Ministers. On this basis, I am satisfied that it is not necessary to put a legal agreement in place to secure the bond prior to the issue of a planning permission.

154. The appellant accepts that a wear and tear agreement under the Roads (Scotland) Act will be required. Paragraph 4.34 of the appellant's appeal statement explains that the local roads authority has the power to initiate this procedure. The appellant also proposes to include a requirement for such an agreement in the wording of the appellant's proposed planning condition 14.

155. As the roads legislation provides a mechanism for the roads authority to initiate the procedure for a wear and tear agreement, it is not strictly necessary to make a parallel requirement in the planning conditions. However I consider it helpful to retain the wording proposed by the appellant, as part of the wider package of measures to maintain the public road in an adequate manner.

156. In addition, the council is seeking the upgrading of the section of the B851 between the site access point at Dunmaglass Bridge and Aberarder Bridge, a distance of about 1.9kms where the existing single lane roadway would be widened to twin track, plus a parallel shared use path for pedestrians and cyclists. As set out above, the report to the planning committee does not include these improvements in the items to be secured by a legal agreement, but instead requires them to be carried out, at the appellant's expense, prior to the commencement of development on site through the terms of the council's proposed planning condition 14.

157. The appellant contests both the need for these road improvements and the liability of the developer to pay for them, on the basis that they do not meet the tests for planning conditions set out in Scottish Government planning circular 4/1998.

158. Despite its age, this circular continues to form the basic guidance on the use and suitability of planning conditions, though it is now supplemented and complemented by circular 3/2012 on planning obligations.

159. Circular 4/1998 (paragraphs 12-39) contains 6 tests which planning conditions are required to meet. These are necessity; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. These are considered in sequence below.

160. Regarding necessity, the appellant contends that the proposed upgrading of the B851 is unnecessary because:

- The relevant section of the road has already been improved to a suitable standard to accommodate the construction traffic for the Dunmaglass wind farm, a much larger project than the Aberarder proposal.
- Wear and tear on the road will be made good through the agreement under the Roads (Scotland) Act 1984.
- A consultation response from the council's transport staff in April 2015 stated that there are "virtually no essential road mitigation measures associated with this development". The council changed its position to the current requirements in a later response dated 1 July 2015.

161. In response, the council states that up-front improvements to the road are necessary to avoid damage to the road caused by heavy goods vehicles associated with the development. The council notes that the single lane sections of the B851 show signs of significant damage to the carriageway edges and verges due to vehicles over-running the surfaced section of the road.

162. I note that the section of the B851 that would carry the construction traffic from the A9 extends to about 18kms, of which almost 10kms is now twin tracked, leaving nearly 9kms of single lane carriageway. The section where the council is seeking an upgrade at the appellant's expense extends to two kms, leaving 7 kms remaining as single lane carriageway.

163. The two kilometres in question, between Aberarder Bridge and Dunmaglass Bridge, has a reasonably good and level alignment, passing through farmland and woodland with only two or three frontage properties along the way. This contrasts with other sections of the road that are single carriageway with a poorer alignment and more frontage development.

164. The council has not explained why the use of this particular section of the road by the Aberarder construction traffic (as opposed to the other sections of single carriageway where there is also edge damage in some places) necessitates upgrading to a two lane standard (as opposed to strengthening the carriageway where necessary in anticipation of the additional heavy goods vehicles or making good damage under the wear and tear

agreement). Nor has the council demonstrated that there is sufficient use of this section of road by pedestrians and cyclists to justify a separate path for them during the construction period.

165. On this basis, I find that the two kilometre section where the council is seeking upgrading appears to be adequate for use by the Aberarder construction traffic (subject to a wear and tear agreement) and rather more suitable than some other sections of the B851 where the council is not seeking upgrading to twin track. Accordingly I find that the council's proposed planning condition 14 fails the necessity test.

166. The second test is relevance to planning. Ensuring that proposed developments are served by appropriate and adequate access arrangements is a well established element of the development management regime, so this test would be met.

167. The third test, which is perhaps at the heart of the disagreement between the council and the appellant with regard to the proposed upgrading of this section of the B851, is relevance to the development to be permitted.

168. The appellant contends that the council's requirements set out in proposed condition 14 do not result from the potential traffic implications of the proposal, but are part of a wider strategy to upgrade the B851 from single lane to twin track standard. This is based on the changes in the council's position that can be seen in the various responses from the transport staff, and the explicit reference in the stated reason for the condition to "the cumulative change in the character of the existing road network as a result of this development, in line with the Council's South Loch Ness Road Improvement Strategy".

169. In response, the council states that the requirements are reasonable and appropriate, that it is desirable to plan for the anticipated traffic rather than to deal with the consequences of damage, and that these specific improvements are a proportionate response.

170. Although I can understand the council's laudable wish to upgrade this section of road from single lane to twin track carriageway, and to make separate provision for pedestrians and cyclists, I am not convinced that the temporary use by the construction traffic of this particular section of road amounts to a "cumulative change in the character of the existing road network". The apparent change in the position of the council's transport staff, and the reference to the South Loch Ness Road Improvement Strategy in the reason for the condition, suggest that the required improvement is part of a wider strategy and set of objectives for the B851. Accordingly I find that the scale of the improvement proposals required by the council is disproportionate to the predicted impacts of the construction traffic on this section of road, and cannot be held to fairly and reasonably relate to the development to be permitted. Thus I agree with the appellant that proposed condition 14 fails the third of the 6 tests listed in the circular.

171. I am satisfied that the fourth and fifth tests (precision and enforceability) would be met, as the condition is clearly worded, the requirements clearly set out, and readily verified on the site.

172. The final test is “reasonable in all other respects”. I consider it unnecessary to reach conclusions on this aspect, in the context of my conclusions on the first and third tests. However, as noted by the appellant, it is difficult to see how the appellant would have the legal power to carry out significant civil engineering works along a two kilometre section of public highway, which would involve further statutory authorisations, temporary carriageway closures, works outwith the application site boundary, and potentially some works on land outwith the highway and not under the appellant’s control.

173. Accordingly I conclude that the council’s proposed condition 14 fails the important tests set out in circular 4/1998, and that it would be inappropriate to seek to obtain funding for this road improvement from the appellant by this mechanism.

174. I also note that if the council had sought to obtain this funding as a planning obligation under policy 31 of the local development plan, it would still have to comply with the terms of that policy, which refers to the need for improvements to infrastructure that relate fairly and reasonably directly to the proposed development.

#### Planning conditions

175. The appellant has set out extensive proposals for changes to the 25 planning conditions proposed by the council. The council’s proposals are set out in section 10.1b of the committee report, while the appellant’s proposed amendments are contained in a lengthy table which is appendix C of the appeal statement, where the proposed conditions can be compared side by side.

176. Annex 1 to this decision notice provides an explanation of why I have or have not accepted the changes to the Highland Council’s list of proposed conditions put forward by the appellant. The resulting list of conditions that forms part of this decision is set out in annex 2.

#### Conclusion

177. Drawing these various elements together, I conclude that :

- the proposed development accords overall with the relevant provisions of the local development plan, including the relevant supplementary guidance;
- there are no material considerations which would still justify refusing to grant planning permission;
- and that planning permission should be granted subject to the 26 conditions listed in annex 2 below.

I have taken account of all the other matters raised, but I find that they do not alter my conclusions.

*Richard Hickman*

Reporter



**PPA-2170-2158 : ANNEX 1 : COMMENTARY ON PROPOSED CONDITIONS****Notes :**

The list of conditions proposed by the Highland Council is set out in section 10 of the report to the South Planning Applications Committee dated 12 April 2016. The reason for each condition is stated in the list. There are 25 proposed conditions.

The amended list of conditions proposed by the appellant is Appendix C of the grounds of appeal statement. There are 30 proposed conditions. The council's proposed wording is given in the left hand column of the table. The appellant's proposed wording is given in the central column of the table, with the explanation for the change given in the right hand column. The appellant's numbering does not correspond to the Highland Council's list.

The commentary below gives the Reporter's explanation for adopting or not adopting the appellant's proposed amended version of some of the council's proposed conditions. This is followed in annex 2 by the resulting list of conditions proposed by the Reporter, of which there are 26.

Numbering of proposed conditions: Left figure = The Highland Council; middle figure = the appellant; right hand figure = Reporter's final version

**THC APP REP**

- 1 - A longer period of 5 years for the commencement of the planning permission is requested because of the complexities in securing finance. This is potentially applicable to many kinds of development. The default statutory period of 3years can be extended.

1 2 1 A longer period for the duration of the permission (50 years) is requested. The proposed period of 30 years is a long period, and the circumstances that may prevail at the end of that time cannot be foreseen. No change to council version.

2 3 2 I agree that it is not appropriate to require the development to be implemented "in accordance with the Environmental Statement". The appellant's wording is to be preferred. Micro-siting is covered in THC condition 17 (new condition number 9) and need not be mentioned in this condition.

3 4 26 I agree that the updated version of the interim decommissioning and restoration plan should be submitted for approval not later than two years before the commencement of decommissioning and restoration, so that an approved revised version can be in place 12 months before the intended commencement of decommissioning and restoration.

3 5 26 I prefer the council's more detailed wording. Allowing some installations to remain if they are more than one metre below ground level may prove to be acceptable, but should not be enshrined in the condition, as the peat cover on the site may be subject to extensive changes/erosion.

4 6 17 On the basis of other appeal decisions, including some made by the Scottish Ministers, I agree that the provision of funding to secure the decommissioning can be put in place by means of a suspensive planning condition rather than a legal agreement set up prior to the issue of planning permission. I also agree that it is helpful to set out the requirements regarding the removal of inoperative turbines in a separate condition (see below).

4 7 25 The records of electricity output required by THC condition 4 are necessary to determine if a turbine is no longer supplying electricity. I agree that 12 months rather than 6 should be the trigger for action, to allow for the potential disruption during the winter months.

5 8 3 I agree that it is not necessary to require details of the power rating and sound power levels of the turbines to be installed, as the approved plans and noise limitations will provide sufficient regulation of what is necessary. However I agree with the council that turbines should be kept free of external rust, where beyond a de minimis level.

6 9 4 No change proposed by appellant.

7 10 5 Council's condition acceptable to appellant subject to deletion of the word "demonstrable". I do not think the use of the word demonstrable detracts from the clarity of the condition. No change.

8 11 6 Council's condition acceptable to appellant subject to deletion of some text. I consider the extra detail contained in the council's version to be helpful and necessary. No change.

9 12 8 I consider the extra detail contained in the council's version to be helpful and necessary. No change.

9 13 - Appellant's condition 13 duplicates detail already contained in THC condition 9. Appellant's condition 13 to be omitted.

10 14 11 THC condition 10 contains a much more detailed specification of what is required concerning construction traffic management than the appellant's version 14. I consider this level of detail to be necessary, as it shows what is required to be included in the Construction Traffic Management Plan, which might otherwise be subject to debate. However the council's version includes two items (14ii and 14ix) relating to improvements to public roads to carry construction traffic. I have already concluded that these improvements are not necessary or justified (see paragraphs 156-173 above), so that these items should be deleted. Item 14xi requires a concluded wear and tear agreement under section 96 of the Roads (Scotland) Act 1984. While it is not strictly necessary to include this among the planning conditions, as the roads authority has the power to require such an agreement under the roads legislation, I think it is very helpful to record this requirement as part of the arrangements for construction traffic. I note that the appellant's version of this condition also includes this requirement.

11 15 - I agree with the appellant that the requirements of THC condition 11 are already covered in item i of THC condition 10. Consequently THC condition 11 is superfluous and can be omitted.

12 16 10 The appellant opposes the formation of a community liaison group on the basis that this is outwith the control of the developer. I consider the existence of such a group to be a potentially very useful component in ensuring that the construction of the wind farm causes the minimum of disruption and distress to the local community. It is within the power of the developer, in conjunction with the Highland Council and affected community councils, to set up such a group and to convene and publicise meetings, create agendas, and generally facilitate the operation of the group. It is then for the local community and individuals to use the liaison group to achieve the objectives specified by the council in proposed THC condition 12.

13 17 18 The appellant wishes to substitute wording based on an agreement reached with HIAL about safeguarding the radar facilities for Inverness Airport. This is explained in paragraph 5.78 of the appeal statement and is based on appeal document APP7.9. I am satisfied that the wording of the proposed suspensive condition that has been agreed by the appellant and HIAL would achieve the purpose of safeguarding the radar coverage serving Inverness Airport, and would generally meet the usual tests for planning conditions. I therefore agree that this wording should replace that proposed by the council.

14 18 - The council's condition 14 states the requirement for the appellant to provide specified improvements to the B851. I have already concluded that these improvements are not necessary or justified (see paragraphs 156-173 above) , so this condition should be deleted..

15 19 19 The appellant's proposed wording for this condition reflects the wording of the suspensive condition requested by the council's Access Officer. The council's proposed wording, which specifies a lot more detail, is less suitable as the wording does not take account of the actual situation at the appeal site, where there are no core paths, no areas of inland water, no nearby buildings, and no prospect of canoeists traversing the site.

16 20 12 The council's proposed condition 16 contains considerably more detail than the appellant's proposed alternative. I consider this detail to be necessary to give clear notice of what should be covered in the Construction Environmental Management Document and the constituent specific Construction and Environmental Management Plans. (Note the text for THC proposed condition 16 is not fully reproduced in the appellant's table Annex C).

17 21 9 The appellant accepts the council's wording for this condition relating to micro-siting of the components of the development, subject to amendments. The appellant contends that the condition is unnecessarily restrictive. However the council's wording allows a reasonable degree of flexibility with regard to the siting of structures. I consider that the embargo on any increase in the elevation of turbine foundations is necessary and reasonable, because of the potential sensitivity of height increases in relation to visual appearance and radar interference.

18 22 7 Condition acceptable to appellant subject to amendment. I consider the council's condition to be satisfactory – no change.

19 23 15 The appellant considers this condition to be neither necessary nor reasonable. I have considered it in the context of the 6 tests set out in Scottish Government circular 4/1998. I am satisfied that it meets all 6 tests. If the development of the wind farm takes place, it will involve major civil engineering works in a fragile and exposed environment, and the implementation of a series of complex and detailed development management and monitoring plans, all happening at a remote location. It is important for the council to be in a position to observe and check up on what happens on the site, and the proper implementation of these arrangements. The condition makes explicit provision and provides a mechanism for this purpose, all of which I consider to be necessary and reasonable.

20 24 21 Condition THC20 provides the details to be included in the scheme for the working, management, and restoration of the borrow pits, whereas the approach advocated by the appellant simply requires the Construction Environmental Management Plan to include "Borrow pit excavation and restoration proposals". I consider the detail given in THC20 to be necessary to give clear notice of what should be covered in the Construction Environmental Management Plan in relation to borrow pits.

21 25 20 Condition THC21 relates to surface water drainage. While THC16 (ii, iii and iv) covers water quality, drainage and pollution matters, I consider that proposed condition THC21 provides necessary supplementary provisions and that the degree of overlap with condition THC16 is acceptable.

22 26 24 These are lengthy and complex conditions that seek to ensure that noise from the turbines will not have an adverse effect on the amenity of nearby residents or other occupants. The council's condition sets a limit of 35dB LA90 10 min at any noise sensitive premises. This corresponds to the Permissible Noise Level Criteria specified in the Environmental Statement Vol II (table 10.2). The subsequent analysis in the statement shows that the nearest residential properties are about 4 kms or more from the nearest proposed Aberarder turbine and about 3.7 kms or more from the nearest turbine when the cumulative effect of the Dunmaglass wind farm is included. The predictions show that the noise levels at all of the nearest properties resulting from the Aberarder proposal would be below the 35 dB(A) threshold, with a minimum margin of -8.5 dB (A), so that they would be sufficiently protected without further noise assessment being required. The same conclusion is reached in relation to the cumulative impact of the combined effect of the two wind farms, albeit with a reduced margin. Figures 10.1 and 10.2 are maps showing the indicative predicted noise footprint for the Aberarder wind farm and cumulatively with the Dunmaglass wind farm. It can be seen that the nearest receptor locations are more than two kilometres beyond the predicted outer boundary of the 35dB(A) contour for the Aberarder turbines, and about one kilometre for the combined impact. On this basis, I am satisfied that the environmental statement demonstrates that there would be no risk of noise intrusion at these properties, and thus no need for a noise mitigation scheme. I also note that the approval for the Dunmaglass wind farm issued by the Scottish Ministers does not contain any restrictions on noise emissions from the turbines. On this basis, I am satisfied that no noise mitigation restrictions are required, that the complex conditions

relating to noise proposed by the council and the appellant are unnecessary, and that it is sufficient to simply use only the opening section of the council's proposed condition 22.

23 27 - I agree with the appellant that this condition is not necessary as this matter is covered in the previous condition, and especially as no noise mitigation scheme is required.

24 28 13 As with the conditions relating to the construction environmental management plan, construction traffic, borrow pits, and surface water drainage, I consider it necessary for the planning conditions to give clear notice of what is expected to be covered in the nature conservation and habitat management plans.

25 29 22 As with the preceding and other conditions mentioned above, I consider it necessary for the planning conditions to give clear notice of what is expected to be covered in the TV mitigation plan.

- 30 23 The appellant proposes a condition to restrict the hours when construction work and vehicle movements can take place. I agree that this is necessary, both to limit the period when construction vehicles will be able to gain access to the site, and for the benefit of those visiting the nearby hills for recreational purposes at weekends.

- 14 The committee report seeks a legal agreement to secure a contribution of £5000 per year to the delivery of the Great Glen Regional Golden Eagle Conservation Management Plan, as required by Scottish Natural Heritage. The appeal statement records that the appellant is content to do so. On this basis, I consider that this matter can be handled in the same manner as the restoration bond, by means of a suspensive condition (see appellant's proposed condition 6 above).

## **PPA-270-2158 : ANNEX 2 : REPORTER'S CONDITIONS**

### **Duration of planning permission**

1. This planning permission shall expire 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 Conditions 16 and 26 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, re-assessment to be made of the environmental impacts of the development and the success, or otherwise, of species protection, habitat management and other offered mitigation measures. The 30 year cessation date allows for a 5 year period to complete decommissioning and site restoration work.

### **Design details**

2. The development shall be implemented in accordance with figures 1.1 and 2.1-2.19, as noted in this decision notice, unless otherwise agreed in writing by the planning authority or unless otherwise required or approved in relation to conditions attached to this planning permission.

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

#### Turbine colour and rotation

3. No turbines shall be erected until full 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, and design of the turbines to be used; and
- ii. The external colour and/or finish of the turbines to be used (including towers, nacelles and blades) which should be non-reflective pale grey semi-matt.

Thereafter, development shall progress in accordance with these approved details and 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 chosen are suitable in terms of visual, landscape, and environmental considerations.

4. For the avoidance of any doubt all wind turbine transformers shall be located within the tower of the wind turbine to which they relate.

**Reason:** To reduce any ancillary elements to the development in terms of its visual and landscape impacts.

5. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended), and unless there is a demonstrable health and safety or operational reason, none of the wind turbines substation buildings / enclosures or above ground fixed plant shall display any name, logo, sign or other advertisement without express advertisement consent having been granted on application to the planning authority.

**Reason:** To ensure that the turbines are not used for advertising, in the interests of visual amenity.

6. No development shall commence until full details of the location, layout, external appearance, dimensions and surface materials of all control and/or 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 control and substation buildings shall include additional architectural design, 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 and environmental impact considerations.

#### Wires and cables

7. All wires and cables between the wind turbines, control buildings, sub-stations and welfare buildings shall be located underground within the verge of the access tracks or within 3m of the access tracks, unless otherwise agreed in writing by the planning authority. Thereafter, and within three months of the completion of cable laying, the ground shall be reinstated to a condition comparable with that of the adjoining land, to the satisfaction of the planning authority.

**Reason:** To ensure that the construction of the wind farm is carried out appropriately and does not have an adverse effect on the environment.

#### Aviation lighting :

8. No development shall commence until a scheme of aviation lighting is submitted to, and approved in writing by the planning authority after consultation with the Ministry of Defence. Thereafter the approved scheme of aviation lighting shall be fully implemented on site. The company shall provide both the Ministry of Defence and the Defence Geographic Centre (AIS Information Centre) with a statement, copied to the planning authority and Highland and Islands Airports Limited, containing the following information:

- a. The date of commencement of the development;
- b. The exact position of the wind turbine towers in latitude and longitude;
- c. A description of all structures over 300 feet high;
- d. The maximum extension height of all construction equipment;
- e. The height above ground level of the tallest structure; and
- f. Details of an infra red aviation lighting scheme, unless otherwise required, as agreed with the MOD, HIAL and other aviation interests and the planning authority.

**Reason:** To ensure that the erected turbines present no air safety risk and in a manner that is acceptable to local visual impact considerations.

#### Micrositing

9. Where ground conditions specifically require it, wind turbines, masts, 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 the following restrictions:

- i. No wind turbine foundation shall be positioned higher, when measured in metres above Ordnance Datum (Newlyn), than the position/level shown on the original approved plans;
- ii. No wind turbine, mast, hardstanding or track shall be moved:
  - a. More than 50m from the position shown on the original approved plans;
  - b. Into an area identified as a highly dependent ground water dependent terrestrial ecosystem buffer as shown in the Hydrological Constraints (Figure 8.2 MMD-324487-DR-GI-001);

c. To a position within 50m of any watercourse or, where it outlines a lesser distance, to a position within a watercourse buffer zone identified within the approved Environmental Statement and/or plans;

d. To a position within an area identified within the approved Environmental Statement and/or plans as having a gradient constraint, being deep peat (that is peat with a depth of 1.5m or greater) or having a peat landslide hazard risk of significant or greater;

iii. No wind turbine, mast, hardstanding or track shall be moved where a change to its position, location or route has been proscribed under a condition of this permission. 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). 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 show areas where micrositing has taken place and, for each instance, be accompanied by copies of the ECoW or planning authority's approval, as applicable.

**Reason:** To enable appropriate micro-siting within the site to enable the developer to respond to site-specific ground conditions, while enabling the planning authority to retain effective control over any changes to layout that may have ramifications for the environment and/or landscape and visual impact.

### Pre-commencement requirements

#### Community Liaison Group

10. No development shall commence until a community liaison group is established by the developer, in collaboration with The Highland Council and affected 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 co-ordinate deliveries and work with these and any other major projects in the area to ensure no conflict between construction traffic and the increased traffic generated by such events / seasons / developments. The liaison group, or element of any combined liaison group relating to this development, shall be maintained until the wind farm construction has been completed and is fully operational.

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

#### Construction Traffic Management Plan

11. No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved by, the planning authority in consultation with the relevant roads authorities and Transport Scotland. The CTMP, which shall be implemented as approved, must include:



- i. A description of all measures to be implemented by the developer in order to manage traffic during the construction phase (including routing strategies), with any additional or temporary signage and traffic control undertaken by a recognised suitably qualified traffic management consultant, to the satisfaction of The Highland Council and Transport Scotland, including;
  - a. A route assessment report for abnormal loads and construction traffic, including swept path analysis and details of the movement of any street furniture, any traffic management measures and any upgrades and mitigations measures as necessary;
  - b. An assessment of the capacity of existing bridges and other structures along the construction access routes to cater for all construction traffic, with upgrades and mitigation measures proposed and implemented as necessary;
  - c. A videoed trial run to confirm the ability of the local road network to cater for turbine delivery. Three weeks notice of this trial run must be made to the local Roads Authority who must be in attendance;
- ii. Drainage and wheel washing measures to ensure water and debris are prevented from discharging from the site onto the public road;
- iii. A risk assessment for the transportation of abnormal loads to site during daylight hours and hours of darkness;
- iv. A contingency plan prepared by the abnormal load haulier. The plan shall be adopted only after consultation and agreement with the police and the respective roads authorities. It shall include measures to deal with any haulage incidents that may result in public roads becoming temporarily closed or restricted.
- v. A procedure for the regular monitoring of road conditions and the implementation of any remedial works required during the construction period.
- vi. A detailed protocol for the delivery of abnormal loads/vehicles, prepared in consultation and agreement with interested parties. The protocol shall identify any requirement for convoy working and/or escorting of vehicles and include arrangements to provide advance notice of abnormal load movements in the local media. Temporary signage, in the form of demountable signs or similar approved, shall be established, when required, to alert road users and local residents of expected abnormal load movements. All such movements on council maintained roads shall take place outwith peak times on the network, including school travel times, and shall avoid local community events.
- vii. A detailed delivery programme for abnormal load movements, which shall be made available to Highland Council and community representatives.
- viii. Details of any upgrading works required at the junction of the site access and the public road. Such works may include suitable drainage measures, improved geometry and construction, measures to protect the public road and the provision and maintenance of appropriate visibility splays.
- ix. Details of appropriate traffic management which shall be established and maintained at the site access for the duration of the construction period.  
Full details shall be submitted for the prior approval of Highland Council, as roads authority.
- x. A concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 under which the developer is responsible for the repair of any damage to the local road network that can reasonably be attributed to construction related traffic. As part of this agreement, pre-start and post construction road condition surveys must be carried out by the developer, to the satisfaction of the Roads Authority(s).
- xi. Measures to ensure that construction traffic adheres to agreed routes.
- xii. Appropriate reinstatement works shall be carried out, as required by Highland Council, at the end of the turbine delivery and erection period.

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

### Construction Environmental Management Plan

12. No development shall commence until a finalised Construction Environmental Management Document is submitted to and agreed in writing by the planning authority in consultation with SNH and SEPA. The document shall include provision for :

- An updated Schedule of Mitigation (SM).
- Processes to control / action changes from the agreed Schedule of Mitigation.
- The following specific Construction and Environmental Management Plans (CEMP):
  - i. Peat Management Plan – to include details of all peat stripping, excavation, storage and reuse of material in accordance with best practice advice published by SEPA and SNH. This should for example highlight how sensitive peat areas are to be marked out on-site to prevent any vehicle causing inadvertent damage.
  - ii. Water Quality Management Plan - highlighting drainage provisions including monitoring / maintenance regimes, water crossings designed to 1 in 200 year event plus 20% for climate change, surface water drainage management (SUDs) and development and storage of material buffers (50m minimum) from water features, unless otherwise agreed in writing by SEPA and The Highland Council's Flood Risk Management Team;
  - iii. Public and Private Water Supply Protection Measures;
  - iv. Pollution Prevention Plan and Construction Method Statement
  - v. Site Waste Management Plan
  - vi. Construction and Decommissioning Method Statement
  - vii. Provision of wheel washing facilities.
  - viii. Construction Noise Mitigation Plan.
  - ix. Species Protection Plan advancing: -
    - a. The pre construction survey for legally protected species is carried out at an appropriate time of year for the species, at a maximum of 12 months preceding commencement of construction, and that a watching brief is then implemented by the Ecological Clerk of Works (ECOW) during construction. The species that should be surveyed for include, but are not limited to, breeding birds, wild cat, otter and water vole. The area that is surveyed should include all areas directly affected by construction plus an appropriate buffer to identify any species within disturbance distance of construction activity and to allow for any micro-siting needs
    - b. Provision of a communication plan to ensure all contractors are aware of the possible presence of protected species frequenting the site and the laws relating to their protection;
    - c. The notification and a stop the job commitment requirements set out below:
      - i. Should an otter holt be found during construction, all works within 250m of the holt shall stop immediately and the SNH Dingwall office be notified and asked for advice.
      - ii. Should a wild cat den be found during construction, all works within 200m of the den shall stop immediately and the SNH Dingwall office be notified and asked for advice.
      - iii. Should any water vole activity be found during construction, all works within 10m of the nearest burrow shall stop. Work may progress if it is in excess of 10m of the

nearest burrow, otherwise work shall stop immediately and the SNH Dingwall office be notified and asked for advice.

In addition, the CEMP shall provide 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 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, as 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 'stopping 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 CEMD.

**Reason:** To protect the environment from the construction and operation of the development and secure final detailed information on the delivery of all on-site mitigation projects.

#### Nature Conservation Management Plan

13. No development shall commence until a Stage 1 Nature Conservation Management Plan (including Habitat Management Plan and restoration) has been submitted to and approved in writing by the planning authority in consultation with SNH and SEPA. The Nature Conservation Management Plan shall set out proposed long term management for the wind farm site and shall provide for the management, monitoring and reporting of terrestrial and aquatic habitats on site.

The approved Nature Conservation Management Plan will be reviewed and updated by the developer to reflect ground condition surveys undertaken during construction and prior to the First Export Date and shall be submitted to the planning authority for its written approval in consultation with SNH and SEPA prior to the First Export Date, as the Stage 2 Nature Conservation Management Plan.

In furtherance of the aim and for the better implementation and review of the Nature Conservation Management Plan, a Nature Conservation Management Plan Steering Group (NCMP SG) shall be formed prior to the commencement of any development. The membership of this NCMP SG will include representatives of the developer, the planning authority and SNH. The NCMP SG will meet annually but it is expected that its consideration of relevant matters will be primarily by exchange of correspondence.

The Stage 2 Nature Conservation Management Plan shall be further reviewed by the developer at a frequency of no longer than the 5 year anniversary of the First Export Date, and no longer than every 6 years thereafter until the development is no longer in operation and the Decommissioning and Restoration Plan has been implemented in full. The developer shall submit a stage reviewed Nature Conservation Management Plan following each such Nature Conservation Management Plan monitoring year as provided for in the Nature Conservation Management Plan for approval in writing by the planning authority in consultation with SNH and SEPA. Mitigation identified through the reviewed Nature Conservation Management Plans shall be implemented in full by the developer, unless otherwise agreed in writing by the planning authority in consultation with SNH and SEPA. NCMP monitoring shall be carried out by the developer in operational years 1, 5, 10, 15 and 25 and shall be reported to the planning authority and the NCMP Steering Group in writing by the developer. The developer shall submit a monitoring report to the planning authority, SNH and SEPA on the ongoing implementation of the approved Nature Conservation Management Plan which will be provided no later than 6 months after the end of each NCMP monitoring year. The monitoring report shall present an assessment of the implementation of the Nature Conservation Management Plan, including -

- an assessment of the implementation of the Nature Conservation Management Plan, and any reviewed such plan, in relation to the aims and objectives of the plan;
- the levels, if any, of habitat restoration delivered on site, and
- the results of any monitoring and surveys required in compliance with the conditions of this planning permission.

If a monitoring report identifies that the implementation of the Nature Conservation Management Plan is not meeting the aims and objectives of the Habitat Management Plan then this shall be reported by the developer to the HMP SG along with details of the proposed mitigation and any other works considered to be required to ensure the aims and objectives of the approved Habitat Management Plan will be met within 6 months of the relevant monitoring report being so submitted. The HMP SG will review such proposals and make recommendations thereon. The developer shall then finalise proposed mitigation and other works, incorporate changes into an updated Habitat Management Plan which shall be submitted to the planning authority within 12 months of the relevant monitoring report for written approval in consultation with SNH and SEPA.

Unless otherwise agreed in advance in writing with the planning authority after consultation with SNH and SEPA, the approved Habitat Management Plan, each approved reviewed Habitat Management Plan and updated mitigation and works to achieve same shall be implemented in full by the developer.

**Reason:** In the interests of good land management, the protection of habitats and to minimise collision risk to bird species.

#### Golden Eagle Mitigation Plan

14. No work shall start on the site in implementation of this permission until details of a scheme for the mitigation of the potential effect of the proposal on the Golden Eagle population has been submitted to and approved by the planning authority. The scheme is to include an annual contribution to the Great Glen Regional Golden Eagle Conservation Management Plan for the duration of the life of the wind farm, from the commencement of construction to the completion of decommissioning and site restoration. The mitigation

scheme shall be implemented prior to and continue during the life of the project, as appropriate.

**Reason :** To safeguard the Golden Eagle population from the potential effects of the proposal.

#### Planning Monitoring Officer

15. No development shall commence until the planning authority has approved the terms of appointment of a Planning Monitoring Officer (PMO), the identification of the appointee by and at the cost of the developer of an independent and suitably qualified consultant to assist the planning authority in the monitoring of compliance with conditions attached to this planning permission during the period from commencement of development to the date of final decommissioning.

The role of the PMO shall include the monitoring of compliance with all conditions, agreements and obligations related to this permission (and/or any superseding or related permissions) and shall include the provision of a quarterly compliance report to the planning authority throughout the construction phase. Following the final commissioning of the wind farm a compliance report shall be submitted no later than 31 March of the following years 1, 3, 5, 10, 15, 20, 25.

**Reason:** To enable the development to be suitably monitored during the construction and operational phases to ensure compliance with the permission issued.

#### Decommissioning and Restoration Plan

16. No development or works (excluding preliminary ground investigation which shall be permitted) shall commence until an Interim Decommissioning and Restoration Plan (IDRP) for the site has been submitted to, and approved in writing by, the planning authority in consultation with SNH and SEPA.

**Reason:** To ensure that all wind turbines and associated development are removed from site by the end of the permitted period, or should the wind farm become largely redundant; in the interests of safety, amenity and environmental protection.

#### Decommissioning financial provisions

17. No work shall start on the site in implementation of this permission until details of the financial provisions to be put in place to cover the full cost of decommissioning and site restoration have been submitted to, and approved in writing by, the planning authority; documentary evidence has been provided that these provisions are in place; and the planning authority has confirmed in writing that these are satisfactory. Thereafter, the provisions must be kept in place until required to complete site decommissioning, restoration and aftercare in accordance with conditions 16, 25 and 26

**Reason:** To ensure adequate financial provision will be available to decommission the project.

### Air traffic control safeguarding

18. No turbine shall operate, other than for testing and evaluation as agreed with Inverness Airport, until an Air Traffic Control Mitigation Scheme to address the impact of the wind turbines upon the Inverness Primary Surveillance Radar (and if applicable the ILS and IAPs) has been submitted to and approved in writing by the local planning authority, in consultation with the operator of Inverness Airport and approved by the Civil Aviation Authority

No turbine(s) shall become fully operational until all measures required by the Radar Mitigation Scheme (and if applicable the ILS and IAPs) have been implemented. The development shall thereafter be operated fully in accordance with the approved Mitigation Scheme.

“Approved Mitigation Scheme” means a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at Inverness Airport (and if applicable the ILS and IAPs) and the Air Traffic Control operations of the airport which are reliant on these navigation aids.

The Approved Mitigation Scheme will include the appropriate measures to be implemented and be in place for the operational life of the development provided the Radar (and if applicable the ILS and IAPs) remain in operation and will also include provision for future and alternate agreement of the mitigation solution with the operator of Inverness Airport.

**Reason:** Mitigation is required to ensure that there will be no unacceptable impacts on the safe operation of Inverness Airport's radar

### Outdoor Access Plan

19. No development shall commence until an Outdoor Access Plan is submitted to and approved in writing by the planning authority. The Outdoor Access Plan shall provide for the maintenance of safe public access routes during construction, and for long term public access during the operation of the wind farm . The Outdoor Access Plan shall be implemented as approved.

**Reason:** - To ensure public access to the outdoors is not unnecessarily impeded as a result of this development.

### Surface water drainage

20. No development shall commence until full details of all surface water drainage provision within the application site (which should accord with the principles of Sustainable Urban Drainage Systems and be designed to the standards outlined in Sewers for Scotland Second Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the planning authority. Thereafter, only the approved details

shall be implemented and all surface water drainage provision shall be completed prior to the first occupation of any of the development.

**Reason:** To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

#### Borrow pits

21. No development shall commence until a proposed scheme for the working of each borrow pit within the site has been submitted to, and approved in writing by the planning authority, in consultation with SEPA and SNH. Thereafter, the scheme shall be implemented as approved. The scheme shall make provision for:

- i. Methods of working (including the timing of works and the use of explosives and/or rock-breaking equipment);
- ii. A description of the volume and type of minerals, aggregates and/or fines to be extracted from each borrow pit, including harness and potential for pollution;
- iii. A site plan and section drawings showing the location and extent of each proposed extraction area;
- iv. Overburden (peat, soil and rock) handling and management;
- v. Details of the existing water table and volumes of de-watering;
- vi. Drainage infrastructure, including measures to prevent the drying out of surrounding peatlands; and
- vii. A programme for the re-instatement, restoration and aftercare of each borrow pit once working has ceased, including a management proposal if wetland features form part of the restoration.

For the avoidance of doubt the material won from the hereby approved borrow pits shall only be used in the construction of Aberarder Wind Farm.

**Reason:** To ensure that a scheme is in place to control the use of borrow pits to minimise the level of visual intrusion and any adverse impacts as a result of the construction phase of the development.

#### Television reception

22. No development shall commence until a TV 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 first export of electricity from the wind farm, 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 Services are sustained during the construction and operation of this development.

#### Construction phase

## Permitted hours for construction work and traffic

23. Working hours during the construction phase of the development (including the movement of construction traffic on the site and using the site access from the B851) shall be limited to 0700 hours to 1900 hours on Mondays to Fridays, 0700 hours to 1200 hours on Saturdays, and no work permitted on Sundays and Bank Holidays. Outside these hours:

(a) Works required in an emergency where there is the potential of harm or damage to personnel, plant or equipment, including the environment, may take place provided the developer retrospectively notifies the planning authority of such works within 24 hours of their occurrence.

(b) Provided that 24 hours prior written notice is given to the planning authority the delivery of turbine and crane components may take place at any time.

(c) The pouring of concrete foundations may take place if necessary to complete the works safely and to the required standard provided the developer retrospectively notifies the planning authority of such works within 24 hours of their occurrence.

(d) Access for maintenance, dust suppression, and other necessary environmental controls, and access for the security or management of the site, by personnel in light vehicles less than 7.5t gross weight may take place at any time.

**Reason:** To protect residential and recreational amenity from prolonged periods of construction related activity

## Operational phase

Noise levels.

24. The Wind Turbine Noise Level, including the application of any tonal penalty specified in ETSU-R-97 at pages 99-109, shall not exceed 35 dB LA90,10min at any Noise-Sensitive Premises. This condition shall only apply at wind speeds up to 10m/s measured or calculated using the methods described in "Prediction and Assessment of Wind Turbine Noise" (published in IOA Bulletin March/April 2009).

**Reason:** To ensure that noise produced by the turbines does not exceed the permissible level that forms the basis of the noise analysis in the environmental statement.

## Decommissioning

Removal of inoperative turbines

25. 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 the site as a whole and electricity generated by each individual turbine within the development and retain the information for a period of at least 12 months. The information shall be made available to the planning authority within one month of any request by them.



In the event that :

i any wind turbine hereby permitted fails to supply electricity to the grid for a continuous period of 12 months then, unless otherwise approved in writing by the planning authority, a scheme for the removal of that wind turbine and any surface ancillary works solely relating to that wind turbine shall be submitted in writing for the approval of the planning authority. The scheme shall be implemented as approved.

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

#### Commencement of decommissioning

26. Not later than two years prior to the decommissioning of the development, an updated version of the IDRP shall be prepared by the developer, to ensure that the IRDP reflects best practice in decommissioning prevailing at the time and ensures that site specific conditions, identified during construction of the site, and subsequent operation and monitoring of the development, are given due consideration. A copy shall be submitted to the planning authority for its written approval, in consultation with SNH and SEPA.

Not later than 12 months prior to the decommissioning of the development, a detailed Decommissioning and Restoration Plan (DRP), based upon the principles of the approved interim plan, shall be submitted to, and approved in writing by, the planning authority, in consultation with SNH and SEPA.

The IDRP and subsequent DRP shall include, unless otherwise agreed in writing with the planning authority and in accordance with legislative requirements and published best practice at time of decommissioning, details about the removal of all elements of the development, relevant access tracks and all cabling, including where necessary details of (a) justification for retention of any relevant elements of the development, b) the treatment of disturbed ground surfaces, c) management and timing of the works, d) environmental management provisions and e) a traffic management plan to address any traffic impact issues during the decommissioning period. The DRP shall be implemented as approved. In the event that the Final DPR is not approved by The Highland Council in advance of the

decommissioning, unless otherwise agreed by the planning authority the Interim IDRP shall be implemented.

**Reason:** To ensure that all wind turbines and associated development are removed from site on the expiry of the planning permission; in the interests of safety, amenity and environmental protection.

### 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 access 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).