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Dear Mr Elder,

REFUSAL OF APPLICATION FOR CONSENT FOR THE CONSTRUCTION AND OPERATION OF WEST GARTY WIND FARM, 4 KILOMETRES SOUTH OF HELMSDALE AND 10 KILOMETRES NORTH OF BRORA IN THE HIGHLANDS.

Application

I refer to the application made by West Garty Renewables LLP ("the applicant") dated 27 November 2014 for consent under section 36 of the Electricity Act 1989 ("the Act") and deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 for the construction and operation of West Garty Wind Farm ("the proposed development"), located approximately 4 kilometres to the south of Helmsdale and 10 kilometres to the north of Brora. It comprises an area of blanket bog/peatland on the West Garty Estate and is in the Planning Authority area of The Highland Council.

The original application proposed a development with a total output of up to 54MW, consisting of 18 turbines, each with a maximum height from ground to blade tip of 120 metres. The revised application proposed a development with a total output of up to 51MW, consisting of 17 turbines, 13 with a maximum height from ground to blade tip of 100 metres and 4 with a maximum height from ground to blade tip of 110 metres. This letter contains the Scottish Ministers' decision to refuse the application.

Consultation

On 27 November 2014, in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") the applicant submitted an Environmental Statement describing the proposed development and giving an analysis of its environmental effects.

In accordance with statutory requirements, notice of the application and Environmental Statement were published appropriately and copies placed in the public domain in the locality of the proposed development and those wishing to make representations had the opportunity to do so.

Under Schedule 8 of the Electricity Act and the 2000 Regulations, the relevant Planning Authority is required to be notified in respect of a section 36 consent application. In terms of the 2000 Regulations, notifications were sent to The Highland Council as the Planning Authority, Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland (HES). A wide range of relevant organisations were also consulted as bodies likely to be affected by the proposed development.

On 21 September 2015, following a wide ranging statutory consultation and in response to consultees' comments, West Garty Renewables LLP submitted Additional Information. This Additional Information amended the application to remove one turbine, thereby reducing the number of wind turbines to 17; the movement of turbine 15 and minor movements of several other wind turbines and their associated crane hardstandings. The Additional Information also amended the application to reduce the blade to tip height of the wind turbines; reduce the width of the crane hardstandings and give a minor relocation of sections of the access tracks and the removal of one turning point.

On 8 March 2016 Further Environmental Information requested by the Scottish Ministers was received from the Company in relation to peat investigation and peat slide risk assessment.

A summary of all consultation responses and third party representations received regarding the proposed development are contained within Chapter 1 of the Public Local Inquiry Report.

Public Local Inquiry (PLI)

The Highland Council objected to the application on 8 May 2015, maintained its objection on 10 November 2015 after considering the Additional Information and further objected on 21 March 2016 after considering the Further Environmental Information. In accordance with the terms of Schedule 8 to the Electricity Act, a PLI was held.

Inquiry sessions were held on 4 days between the 18 and 21 April 2017 and the hearing sessions took place on 11 and 12 April 2017. The Reporter undertook unaccompanied visits of the application site, its surroundings and other locations referred to in evidence took place on the 9, 10 and 13 April 2017. An accompanied site visit took place on 21 April 2017.

The Report was received by the Scottish Government on 5 April 2018. The Reporter's recommendation is that the application for section 36 consent should be refused.

Environmental Matters

The Scottish Ministers are satisfied that environmental information, including an Environmental Statement, has been produced in accordance with the Electricity (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”) and that the applicable procedures regarding publicity and consultation laid down in those Regulations have been followed.

The 2000 Regulations have subsequently (with effect from 16th May 2017) been replaced by the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 Regulations”). The 2017 Regulations now apply to this application subject to certain modifications. These modifications, among other things, provide that where the 2017 Regulations refer to an “EIA report” this includes an “environmental statement” prepared under the 2000 Regulations.

Regulation 3 of the 2017 Regulations requires that the Scottish Ministers must not:

- a) grant an Electricity Act consent for EIA development; or
- b) direct that planning permission is deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of EIA development,

unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

In accordance with paragraph 3 of Schedule 9 to the Electricity Act the Scottish Ministers have had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. The Scottish Ministers have also had regard to the extent to which the Company has done what it reasonably can to mitigate any effect the proposal would have on those matters.

The Scottish Ministers are satisfied that the requirements of the 2000 Regulations, the 2017 Regulations, the Electricity Act, and the Electricity (Applications for Consent) Regulations 1990 (as amended) have been met.

The Scottish Ministers’ Considerations

The Scottish Ministers have considered fully and carefully the application, including the Environmental Statement, the addendum to the Environmental Statement, consultation responses, public representations, the findings, conclusions and recommendation of the Reporter and all other material information.

In Chapter 7 of the report the Reporter gives their overall conclusions and recommendations.

The Reporter concluded that:

- The development would make a meaningful contribution towards meeting the UK and Scotland's renewable energy targets;
- The community investment offer and the net economic impact of the proposed development are significant factors in its favour; on the other hand;
- The proposed development does not comply with the development plan due to its significant detrimental landscape and visual impacts;
- National planning policy does not support the scheme because it is not the right development in the right place;
- There would be an adverse impact on natural beauty, although there is no issue with the other matters in Schedule 9 of the Electricity Act;
- Overall the disadvantages of the proposed development are sufficient to outweigh its benefits.

In Chapter 7.11 the Reporter recommends that consent under Section 36 of the Electricity Act 1989 should be refused.

The Scottish Ministers consider that the offer of community investment is not advanced enough to ascertain what, if any, the net economic benefits might be in order for favour to be attached as a material consideration. Otherwise, the Scottish Ministers agree with the Reporter's findings, reasoning and conclusions and adopt them for the purposes of their own decision and find that the disadvantages of the proposed Development outweigh the benefits.

The Scottish Ministers' Determination

The Scottish Ministers **refuse the application for consent** under section 36 of the Electricity Act 1989 for construction and operation of the West Garty Wind Farm.

In accordance with regulation 23(4) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the applicant must publicise this determination on a website maintained for the purpose of making information publicly available, in the Edinburgh Gazette and in a newspaper circulating in the locality in which the land to which the Application relates is situated.

Copies of this letter have been sent to the public bodies consulted on the application including the planning authority, SNH, SEPA and HES. This letter has also been published on the Scottish Government Energy Consents website at www.energyconsents.scot.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts –

<http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>.

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

Yours sincerely,

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**Nikki Anderson – Head of Energy Consents Unit
For and on behalf of the Scottish Ministers
A member of staff of the Scottish Government**