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Decision by Claire Milne, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2183
- Site address: Dell Wind Farm, Land at Dell Estate, Whitebridge, Inverness IV2
- Appeal by Dell Wind Farm Ltd against the decision by The Highland Council
- Application for planning permission 14/02879/FUL dated 29 July 2014 refused by notice dated 12 October 2017
- The development proposed: erection of 14 turbine wind farm (approx. 42 MW installed capacity) and associated infrastructure
- Application drawings: listed in the Schedule
- Date of hearing sessions: 22 May 2019
- Date of site visit by Reporter: 19 March 2018, 23 and 24 May 2019

Date of appeal decision: 22 August 2019

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## Decision

I allow the appeal and grant planning permission subject to the 29 conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

## Preliminary matter

On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 with certain exceptions. The 2011 Regulations continue to have effect for an application (and any subsequent appeal) for planning permission where the applicant submitted an environmental statement in connection with the application before 16 May 2017. That was done in this case. I have therefore determined this appeal in accordance with the 2011 regulations as they applied before 16 May 2017.

In carrying out my assessment of the proposal, I have taken account of the environmental information and other material submitted, in particular the Environmental Statement (ES) July 2014, Additional Landscape Visualisations, November 2014, Further Environmental Information, March 2016 and the Additional Information, November 2018, along with my observations at the accompanied and unaccompanied visits to the site and within the surrounding area.



## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan, the main issues in this appeal are the effects of the proposed development in terms of:
  - landscape and visual amenity, including cumulative impacts
  - associated infrastructure including access tracks and a new bridge crossing
  - roads and traffic
  - species and habitats
  - tourism and recreation
  - other site specific matters.
3. The council's reasons for refusing the application were with regard to the landscape and visual impacts of the proposed access track. Subject to the imposition of planning conditions and a legal agreement, the council was content with all other aspects of the proposal. Similarly, The Mountaineering Council of Scotland, who objected to Dell Wind Farm as a stand-alone scheme prior to the approval of Stronelairg Wind Farm, continues to object to the access track. While I note the more restricted nature of these concerns, I must nevertheless consider all the potential effects of the development, as well as the representations from statutory consultees and objectors.
4. The council received a total of 103 objections, with 2 letters of support, as well as a petition with around 150 signatories rejecting the approval of the application. The expressed concerns include: landscape and visual impacts, including cumulative impacts and wild land; loss of trees; impacts on birds, protected species and ecology; peat disturbance; water, drainage and flooding impacts; traffic and abnormal loads movements; impacts on tourism and recreation; and the potential to avoid certain environmental impacts by utilising an alternative route for the access track.
5. The appeal site comprises an area of 577 hectares situated within Dell Estate and is described in two sections: an access corridor and a wind turbine area. The site lies to the east of Loch Ness and is generally remote from existing settlements and properties. The proposed turbines are located on the western edge of the Monadhliath Mountains. The nearest residential properties are within the lower ground within Stratherrick. The proposed access corridor runs from Stratherrick through Glen Brein, an area of rough grazing, forestry and moorland, and partly utilises an existing hydro-scheme track.
6. The proposal consists of 14 wind turbines with an anticipated rated capacity of around 3MW, with a likely overall capacity of around 42MW. A sub-station, control building, underground cabling, three temporary construction compounds, temporary security office and two borrow pits are also proposed. The scheme has been amended to utilise internal transformers and no longer intends to use a third borrow pit (C) which is in an area of priority peatland habitat/carbon rich soils. To create a more consistent height profile for the proposed turbines, the scheme was also amended to reduce the hub heights of four turbines resulting in a tip height of 115.5 metres, with the remaining turbines proposed at 130.5 metres. Approximately 19km of access track is proposed. Access to the site off the

B862 road will involve the construction of a new access track and bridge crossing over the river Alt Breineag.

### The development plan

7. The relevant development plan comprises the adopted Highland Wide Local Development Plan, 2012, the Inner Moray Firth Local Development Plan, 2015, and adopted supplementary guidance: Onshore Wind Energy Supplementary Guidance and Loch Ness Landscape Sensitivity Study, 2016. Parties are agreed that there are no specific policies within the Inner Moray Firth Local Development Plan which are of particular relevance.

8. The council refers to a number of policies from the Highland Wide Local Development Plan including Policy 28: Sustainable Development and Policy 29: Design, Quality and Place-making that are given particular emphasis with regard to residential amenity and in terms of economic impact and tourism. I agree that these policies are relevant and would be just as applicable to a windfarm development in a rural setting as to an urban development. While a number of other policies are also applicable to the proposed development including trees (policy 51), peat and soils (Policy 55), cultural heritage (Policy 57), protected species (Policy 58) and landscape (Policy 61), these also generally fall within the remit of Policy 67: Renewable Energy Development, which I consider to be of most relevance to this appeal.

9. Policy 67 recognises the contribution such developments can make towards meeting renewable energy generation targets along with any positive or negative effects that they are likely to have on the local and national economy. Regard for other material considerations, such as making effective use of existing and proposed infrastructure or facilities, is also relevant. Subject to balancing these factors and any proposed mitigation measures, proposals are supported where they are located, sited and designed such that they will not be significantly detrimental overall, individually or cumulatively, having regard to the 11 criteria in Policy 67.

10. The supplementary guidance sets out a spatial framework for onshore wind energy. The southern end of the appeal site (the turbine area) falls partly within Scottish Planning Policy Group 2 'an area of significant protection', and the northern end within Group 3 'an area with potential for wind farm development'. The guidance states that the advice contained therein provides a fuller interpretation of the local development plan policies as they relate to onshore wind energy development. Parties are agreed that the guidance does not contain any further tests to assess compliance beyond what is contained within Policy 67.

11. With regard to landscape and visual effects, the guidance contains 10 criteria which are used as a framework and focus for assessing proposals. The guidance also provides additional strategic considerations that identify sensitivities and potential capacity to assist assessments of landscape and visual aspects. For Landscape Character Area 6: Monadhliath ridge and tops, Rolling Uplands, there is limited scope for additional large turbines within the existing pattern. Where appropriate, turbines should not breach the skyline, should be set back from key routes, preserve mitigation established by current

schemes, maintain the landscape setting, avoid coalescence and respect the spacing and scale of existing development pattern.

12. The council considers the proposed wind turbines would sit well in the landscape, in combination with Stronelairg Wind Farm, and would not present any significant adverse visual impact overall. Its main concerns relate to the landscape and visual impacts of the proposed access track, which the proposal is considered overall to conflict with Policy 67.

### Landscape impact

13. No part of the site is covered by any international, national, regional or local landscape designations. However, certain designations exist within the wider landscape and visual study area and indirect impacts on these designations have been assessed along with effects on landscape character.

14. The proposed site for the turbines lies on the western edge of the Monadhliath Mountains, arranged across a flat, gently rolling plateau upland. This plateau upland is located between the deeply incised Glen Brein to the west and Glen Markie to the east. To the north, the landscape descends through steep, rocky side slopes to the broad, gently undulating landscape of Stratherrick. The expansive plateau moorland to the south contains the Glendoe hydroelectric reservoir and associated tracks.

15. The ES refers to the visual influence of the proposed turbines as mostly affected by distance. Within 20km, the proposed turbines have the potential to be an important and/or prominent element in the landscape. An area of core visual footprint is identified on the plateau with some local containment formed by ridges and a network of hills. Beyond this, visibility would be increasingly fragmented and more limited by forestry cover. At over 20km, the assessment identifies that the turbines would be less distinct, appearing as an element in the wider views of the landscape.

16. The proposal is located within the Rolling Uplands Landscape Character Type (LCT); an expansive open moorland plateau which forms the largest character area within the Monadhliaths. The assessment considers the existing and consented wind farm development already has an influence on the character of this LCT. The proposed development will not undermine the openness and expansiveness of the moorland plateau or substantially affect the majority of internal views out to the surrounding mountains and moorland or the visual relationships to the more distant mountain groups. Although the turbines will be seen as a prominent addition, they will be accommodated within the large-scale, expansive character of the landscape. This would result in a slight but not significant effect on this LCT.

17. The assessment identifies further LCTs within 20km where there would be theoretical visibility of the proposed development. In all cases, given the nature of the visibility and the visual influence on receptors, there would be no significant effects.

18. There is clear separation between the landscape of the Cairngorms National Park, which lies 8.8km to the south-east, and the development site. From the edge of the park boundary, at viewpoints 8 (Summit of Geal Charn) and 20 (Summit of Carn Ban), all 14 proposed turbines comprising hub and blade tip would be visible. However, these would

also be seen in the context of the more extensive Stronelairg wind farm. Further south from the park boundary edge, at viewpoint 19 (A'Mharconaich) at a distance of over 30km, there would be only partial visibility. Elsewhere within the national park at greater distances there may be visibility, in extremely clear weather conditions.

19. Although the proposed development would be a new man-made feature within the diverse panorama beyond the park boundary, it would be seen as an addition to the emerging pattern of built and consented wind farm development, in particular Stronelairg. The level of effect is assessed as locally moderate with no significant effect upon the overall qualities and integrity of the mountain summits at the edge of the national park.

20. Within the national scenic areas at distances of over 30km away, there would be limited or no visibility of the proposed development. These views would not be affected to a level that could result in significant effects.

21. Given their proximity to the proposed development, two Special Landscape Areas (SLAs) were considered further in the assessment. Ben Alder, Laggan and Glen Banchor SLA lies around 12km to the south. The open mountains in this area afford extensive views. Viewpoint 9 (Summit of Stob Poite Coire Ardhair) indicates that a small pocket of visibility of all the proposed turbines will be possible, which will be seen in the context of Stronelairg, Dunmaglass and Corriegarth wind farms, the result of which would not be significant.

22. Loch Ness and Duntelchaig SLA at around 6km distant is dominated by the linear feature Loch Ness. The council highlights a number of receptors passing through this area including the Caledonian Canal, Great Glen Way, Urquhart Castle and the A82 road, with Meal Fuar-Mhonaidh a landmark hilltop providing a good vantage point to appreciate the wider landscape and its more wilder qualities. The assessment recognises the high/medium sensitivity to change in this area. At lower levels either side of the loch, visibility of the turbines would be filtered in views. However visibility rises with altitude and from Meal Fuar-Mhonaidh, there will direct visibility of all the turbines seen within the expansive panoramas across the Great Glen and the Monadhliath. The influence of the turbines would be moderated by the presence of existing wind farm development to the north east and with sensitive siting. Reductions in the height of four turbines was made to limit potential effects on Stratherrick and the Great Glen. Consequently, the council accepts that the proposed turbines, by virtue of distance and screening, would not have a significant effect on some of the key features and experience within this SLA.

23. Consistent with the views of the council and SNH, the assessment concludes that no significant impacts on any national designations would be experienced. I agree with these conclusions and likewise, with regard to any local designations.

24. In terms of wild land, the ES considers the emerging pattern of operational and consented wind farm development (Farr, Dunmaglass, Corriegarth and Stronelairg) and reaches the conclusion that the extant wild land qualities of the Monadhliath Wild Land Area (Area 20) will be partly eroded by these developments. This concurs with the views of SNH that the former Monadhliath area has been compromised by Stronelairg to the degree that the additional effects of the proposed development on wild land and the landscape character of the Monadhliath would not be significant.

25. From the Braeroy - Glenshira - Creag Meagaidh Wild Land Area (Area 19), visibility of the proposed turbines will be confined to the summit plateau areas of the massif and the adjacent mountain summits. Seen in the context of Stronelairg, the perceived strength of physical attributes would also be reduced in this wild land area. The assessment concludes that the proposed development would not therefore have a significant effect.

26. I have considered the indirect effects from perceived changes in the character and qualities of the two assessed wild land areas, which would be prominent in views from the proposed development. The proposed turbines would form a consistent addition to the existing pattern of built and consented development within the western Monadhliath. They would be set back at around 10km from Creag Meagaidh and would not interrupt the inter-visibility between adjacent wild land areas. Seen in the context of other built or approved development, I do not consider that the proposal would detract from the wild land areas' remoteness or erode their intrinsic qualities.

### Visual impact

27. In considering the effect on the visual amenity of residents, the assessment identifies no predicted visibility of the proposed development from the majority of the main settlements within the study area. The settlements of Foyers and Invermoriston will have some potential visibility of blade tips but at distances of over 12km and with the intervening landform, the effect will be moderate/minor and not significant.

28. For Knockcarrach, which comprises a loose collection of properties along the northern side of the B862, only a single turbine will be partially visible as represented by Viewpoint 11 (B862 South of Whitebridge) at about 8km distant. The resulting level of effect would not be significant.

29. Various route corridors exist within the study area. From the A82 at Invermoriston (represented by Viewpoint 10) and for road users generally travelling along the A82, the route passes along a well-treed loch side. Views are therefore heavily filtered and only partial visibility of the blade tips at a distance of over 12km will occur which will not be significant. Similar effects will be experienced from the A887 road. Further away at Loch Geo Glais (Viewpoint 14) four turbines will be visible at over 22km distance. From the B862 south of Whitebridge, Viewpoint 11 is representative of the effects which would be similar to that at Knockcarrach.

30. From the Great Glen Way, which is used by walkers with a high sensitivity to change, partial visibility would be restricted to blade tips seen on the horizon within the hills of the Monadhliath. From Viewpoint 12 and at limited higher sections of the Great Glen Way, the blade tips of seven turbines would be visible at a distance of nearly 19km. Overall, the effects will be moderate but not significant.

31. In all the situations referred to above, the assessment focuses on the views of the turbines. While some visibility will occur from particular routes, the distances involved along with existing landform and vegetation would reduce the overall impacts considerably.

32. The ES provides an assessment of the predicted visual effects from particular viewpoints. Viewpoints 1, 3, 4, 5, 8, 9, 18 and 20 represent views of the turbines from the summits of the Monadhliath, Crag Meagaidh massif and above Glendoe Dam. Walkers with a high sensitivity to change would be the main receptors in these locations. Visibility of a large number if not all the proposed turbines would be possible at these elevations, at the summits and at various opportunities in ascending and descending the hills. However, this would often be viewed against the background of Stronelairg and with Corriegarth and Dunmaglass wind farms as distant elements on the horizon. In this context I find that the effect from these viewpoints would not be particularly adverse.

33. The only viewpoint where the effect is assessed as significant is at viewpoint 20, from the summit of Carn Ban around 13km south east of the proposed turbines. While all of the turbines will be partially seen above hub height, this view would overlap with the more extensive Stronelairg wind farm. Furthermore, due to the long separation distance, the vertical form of the turbines will appear as minor elements within the large-scale landscape.

34. Viewpoint 17 represents the views from the summit of Meall-Fuar-Mhonaidh. At this location, Stronelairg would also be seen as a large-scale new element to the centre of the view. The council agrees that the proposed turbines would be consistent with the pattern of development in the area and from this viewpoint, would sit within the framework of Stronelairg wind farm.

35. Viewpoint 7 represents the view from the approach to Glenbrein Lodge. As it would be mainly road users along this route, there is less sensitivity to change and the duration of views short. Views of the windfarm will be limited to the tips of one turbine partially seen behind the hills and the access track traversing the lower moorland slopes and rising up Glen Brein. Overall the effect is assessed as not significant.

36. The council's landscape and visual concerns major on the proposed access track leading to the turbine array through Glen Brein. Reference is made to very significant engineering works proposed on a steep hillside and the level of cut and fill required, which is likely to have an adverse impact on the landscape. Concerns are also raised over the restoration of the embankment with re-vegetation likely to be problematic.

37. The appellant's further submissions (2016) include a ZTV for the proposed access track. Cross sections are provided which detail the design of the track, including at the location of the Old Shielings (at around 430 to 580 metres AOD), at the proposed 'S' bend.

38. Viewpoint 6 – Suidhe Chuimein car park was assessed as having no visibility. Following the council's concerns that views of the access track would be possible from this viewpoint and would erode the remote and rural character of the area, I explored this matter further at a hearing session and at my site inspections. The appellant acknowledges that some visibility of the proposed track will be possible but with reinstatement of the existing track providing an overall visual improvement, there would be no significant effect. Parties disagree whether the proposed 'S bend' will be visible however it appears to me that that from the higher vantage point at Suidhe, even more length of the track would be as it rises up the glen, and also from points further north along the B862. Notwithstanding, I acknowledge that the existing forestry plantation south of the B862 will provide some

screening of the track and the proposed area of native woodland within the site would assist its assimilation at higher levels.

39. The appellant's assessment of the visual impact of the proposed track is argued by the council to have been underplayed, particularly from viewpoint 17; from the summit the council considers the effect would be at least moderate rather than moderate/minor. Based on experience elsewhere, the council doubts whether the design mitigation would overcome the expected visual impact of the track. The council has pointed me to Bhlaraidh Wind Farm at Glenmoriston Estate, which I have viewed, as an example of a heavily engineered track.

40. The appellant regards the visual impact of the proposed track has been overstated. They consider the harm arising needs to be considered in the context of the improvements to the existing track, the reinstatement of a section of existing hill track and the proposed mitigation. They acknowledge that the original visualisations in the ES deliberately over-emphasised the rendering of the track in order to mark its position. The new renderings provided are based on the detailed track model and illustrate its effect after initial mitigation works. Further mitigation is provided by inverting the track away from external views and grading so as to leave a rounded and vegetated berm and adopting a technique which rolls back the turf and topsoil which is then regraded and replaced to assist with a more rapid re-vegetation. In acknowledging the difficult gradients in the area, the appellant accepts the need for further on site investigations and to mitigate the visual impact. They suggest that the council's engineer could be more directly involved or more scope to agree the duties of the Ecological Clerk of Works to oversee such works.

41. Revised visualisations (January 2018) are provided for viewpoints 7, 11, 12 and 17 which show the proposed access track rendered in local stone colour, with existing woodland planting at Ardochy and with the proposed native woodland planting in Glen Brein. The resulting images indicate that the visual impact of the track would be substantially lessened from that contained within the original ES. In the proposed use of local stone from the local borrow pits, I note that the council assumes that the running track will always appear light grey/white consistent with other tracks in the area.

42. At my site inspections I carefully studied the local terrain and existing tracks. In views from the B862 and on the approach to Glenbrein Lodge, the existing woodland planting would filter and soften views of the track as it traverses the lower slopes at Ardochy. The proposed native woodland in Glen Brein would, at early maturity, not completely screen views of the track at the higher levels but when viewed from these lower elevations I consider that it would diminish its overall effect. The introduction of deer fencing would also prevent grazing around the track area to enable the natural moorland to establish.

43. While the proposed access track will be discernible to walkers along the route of the Great Glen Way, views would be intermittent. From a distance of around 15km, I do not consider that the track would represent a noticeable visual distraction.

44. From the summit of Meall Fuar-Mhonaidh, which provides a good vantage point from which to appreciate the Great Glen fault and the Monadhliath, there would be greater visibility of the proposed track, almost as far as where it reaches the plateau. The council



does not share the local concerns that the proposal would create a sense of encirclement of Loch Ness by turbines. However it considers that a sense of encirclement would be greater at higher elevations if the access track is more visually connected to the slopes above the eastern shore of Loch Ness. I accept that visibility of the access track may increase the perception that the turbines on the Monadhliath are closer to loch. However, the visual effect is likely to be reduced through the proposed design and mitigation measures, the commitment to which can be imposed through suitable planning conditions. Given the overall distances, the track would also represent a relatively minor element in this view, with other features likely to draw the eye including the lighter coloured fields towards the base of the slopes and the blocks of coniferous plantation forestry. From the summit of Meall Fuar-Mhonaidh, the Bhlairaidh Wind Farm would also feature in alternate views to the south west.

45. In my opinion, the character of Glen Brein is already affected, to some degree, by existing tracks. Although new sections of track would need to be formed and areas of moorland and heath displaced, the proposal seeks to lessen the impact and includes various measures which, in time, are likely to reduce its visual effect. The light colour of the proposed crushed stone surface which might initially contrast with the surrounding vegetation, particularly during and immediately post construction, should eventually become darker and partially covered in grass and moss. Furthermore, 1km of existing hill access track is to be removed and the landscape restored, providing some visual improvement to the scheme overall. Best practice techniques are to be deployed in the construction of the track. Based on my own observations and the various submissions made, I am satisfied that the visual impact of the proposed track would be acceptable subject to the proposed mitigation measures.

#### Cumulative landscape and visual impact

46. An assessment has been made of the potential cumulative effects arising from the operation of the proposal in conjunction with built, approved and planning application stage wind farms, within a 60km radius.

47. With regard to effects on landscape character, significant effects would arise on the Rolling Upland LCT with the proposed turbines visible along with the existing pattern of built and consented development. Some of this visibility will be fragmented. Within the southern portion of the LCT, wind farm development will become the dominating influence on landscape character within the Glendoe Basin portion. A moderate cumulative effect will arise with the addition of the proposed development in combination with Stronelairg.

48. Elsewhere, more localised cumulative effects are identified on the north facing flanks of the Isolated Mountain Plateau LCT and the summit areas of Rugged Massif LCT, both areas with a high sensitivity to change. There will be combined visibility with existing and proposed wind farms, particularly Stronelairg, but this will not have a significant cumulative effect.

49. John Muir Trust considers that the proposed turbines, along with Stronelairg, would have a significant and detrimental effect both in terms of combined visibility and sequential impact on wild land areas 19 and 20. In citing the Scottish Minister's decision on Glenmorie Wind Farm (August 2014), John Muir Trust refers to the approval of Stronelairg as a reason

for refusing permission (rather than approving) based on cumulative impact. The decision cited was one which ultimately balanced the benefits of the proposal with the dis-benefits.

50. From my own observations and that presented in the cumulative landscape assessment, I accept that there would be some cumulative effects on landscape character. However these effects would be confined to a landscape which I consider has the capacity and is suitable to accommodate the proposed scale of development. The proposal would form a southern addition and fit with the pattern of development in the area. In this context, I consider that the approval and presence of Stronelairg lends considerable support to the proposal from a landscape and visual perspective and I find the identified cumulative effects would be acceptable.

#### Associated infrastructure and new bridge crossing

51. The land to the west of the proposed new bridge location is a functional flood plain. SEPA objected to the new crossing of the Allt Breineag on the grounds of risk of pollution and flood risk, impact on wetlands, peat disturbance and resulting carbon emissions. In responding to SEPA's outstanding concerns, the appellant provided further environmental information relating to that part of the proposed development between the B862 and the Killiechoilum Road. This included revisions to the layout of the access.

52. There is potential that a new bridge could impede the function of the flood plain unless appropriately designed. An Outline Pollution Incidence Response Plan is provided which will form part of the Construction and Environmental Management Plan (CEMP). Track drainage design will ensure run-off rates are not increased and accommodate run-off flows for the life of the development. The new bridge crossing has the potential to disturb the river banks and/or substrate, cause silt and other sediments to enter the watercourse and increase the risk of pollutants and flood risk. All watercourse crossings or drainage channels will be constructed in accordance with SEPA and CIRIA good practice guidance and agreed in advance with SEPA. Any works within the watercourse will only be undertaken under supervision of the Ecological Clerk of Works (ECoW) and water quality will be monitored.

53. To reduce the risk of flooding, the design of the bridge will incorporate recommendations from the appellant's Hydraulic Modelling Study and additional modelling will be undertaken, with agreement of the detailed bridge design a matter for conditions. SEPA is satisfied that the proposed flood prevention measures can be adequately dealt with and they remove their objection on flood risk grounds subject to suitable conditions being imposed.

54. Peat probing surveys were undertaken in the area. The proposed junction and access track will avoid areas of peat with the exception of a small 20 metre section. Peat will be managed in accordance with the Peat Management Plan with further details of measures set out in the outline CEMP.

55. A detailed ground water investigation will be undertaken prior to construction along the length of the access track. Where groundwater and groundwater dependent plant communities are identified, specific mitigation measures will be applied to minimise impacts to Ground Water Dependent Terrestrial Ecosystems (GWDTE's). This includes a micro-

siting allowance of 50 metres either side of the track to avoid potential GWDTE's and routing the track away from areas identified as potential medium and high GWDTE. SEPA indicates that with the combination of revised proposals and proposed measuring and monitoring, the pollution risks are capable of being managed with an acceptable level of impact.

56. The ES refers to three options that were considered for the bridge crossing. The option taken forward is considered to have a lower flood risk than options further downstream and reduces land take, visual impact and the amount of tree felling. A number of alternative access routes were also considered. To avoid passing residential properties on the unclassified Killiechoilum/Ardochy road, a route was selected which involves a new length of track which leaves this road beyond the new bridge crossing and links with the existing estate track. This route also avoids disrupting private water supplies.

57. While the existing bridge and unclassified road is to be utilised initially for vehicles constructing the new bridge crossing, thereafter traffic will use the new access off the B862 which will be regulated by the Construction Traffic Management Plan. As this is anticipated to be for a short period, no concerns are raised by the council's transport planning team.

58. SEPA originally raised concerns that no assessment had been made of the environmental effect of using the existing unclassified road. This still remains the case, however they accept that significant improvement works would be required. Similar to the proposed route, this would impact on peat and carbon rich soils and GWDTE's as well as cause risk of pollution of the river. On balance therefore, SEPA regards the environmental impacts from the revised access layout, if carefully managed during construction, may not be significantly different from those involved in upgrading the existing road.

59. A proposed single storey sub-station, 20 metres by 10 metres, is to be sited in a location near to the turbines. It will sit within a compound, 100 metres by 75 metres which will contain parking and storage areas. The location selected takes advantage of the screening afforded by the terrain to the north. Figure 4.1: Site Layout shows the location for three proposed temporary construction compounds which will contain portacabin type structures, parking and laydown areas for materials. The proposal also provides for a non-material amendment to move the bellmouth and access from the B862 road approximately 23 metres south west.

60. Local residents are concerned over the location of the proposed control building adjacent to the unclassified road. Concerns raised include the need for an associated access track, impacts in terms of drainage, noise, light pollution, disturbance and visual impact. While I note these concerns, I do not regard the location as inappropriate. The building, with its associated car parking, will generally sit within the footprint of the existing farm building. It is intended to contain stores, offices and welfare facilities and aim to service those visiting and maintaining the wind farm. It will be designed in accordance with good practice to prevent pollution and incorporate sustainable drainage. Providing the building is designed to be in keeping with the local environment, I do not anticipate there being an adverse visual or wider impact. The final designs for the building can also be appropriately determined by the council and I have included measures within the CEMP condition to ensure that this is the case.

### Roads and traffic impact

61. Local concerns are raised over the routes proposed for the transportation of the wind turbine components and impacts on the road network. Transport Scotland has not raised any objection to the proposal subject to suitable conditions relating to the delivery of abnormal loads and road safety matters. A traffic management plan will require to be produced and approved by the council along with a community liaison plan in order to minimise potential hazards to road users, including pedestrians.

62. The council considers that the impact of construction traffic on the local B-road network is likely to be significant. To mitigate this impact, it refers to an agreed financial contribution from the appellant of up to £1.7m towards the South Loch Ness Road Improvement Strategy. This would provide twin tracking of the B862 for approximately 2.2km and include a road safety scheme at the Suidhe viewpoint. Similarly, the appellant refers to a commitment to make a financial contribution to the strategy to improve this section of road and viewpoint. The council expects any contributions to be commensurate with the impact and proportionate to the value of contributions received through other similar developments. To mitigate for such impacts and ensure a consistent approach, I agree that such contributions are required and are a matter for further negotiation and to be confirmed before construction commences. Accordingly, I have added a suitable criterion to Condition 11 (Traffic Management) to deal with the matter.

63. Notwithstanding the above, an agreement relating to Section 96 of the Roads (Scotland) Act or other appropriate legislation is also required which shall include the provision of a Road Bond or similar security to protect the interests of the Council, as roads authority. The agreement will include for road condition surveys and regular monitoring of traffic levels and road condition during the construction phase, and also take account of any nearby developments and provide a mechanism for apportionment of costs if necessary. Safeguards are needed to protect the local roads. To account for this I have added a further criterion to Condition 11.

### Species and habitats

64. There are no statutory designated sites within the application site boundary; the closest is located some 2.5km to the west and separated from the site by the B862 road. An extended habitat survey was carried out along with specific surveys for bats, otter, water vole and badger. The site contains a range of habitats including blanket bog and wet heath. SNH does not object to the proposal and advises that potential impacts on natural heritage interests is either small enough not to adversely affect the populations or affected species, or can be managed through appropriate mitigation. SNH also make recommendations with regard to assessments of wild deer, protecting Black Grouse leks, a pre-construction survey for legally protected species and species protection plans, all of which can be covered by suitable conditions.

65. The access track corridor through Glen Brein is dominated by Phase 1 habitat wet heath (M15) which is moderately ground water dependent. Although mitigation, including compensation is proposed for its loss, it is anticipated that a significant proportion of the wet heath will either remain unaffected or will be reinstated.

66. The ES includes an ornithological assessment with surveys of moorland breeding birds, breeding raptors, breeding divers, Slavonian grebes and black grouse. Potential collision risk, disturbance and displacement is considered including cumulative effects. No significant impacts are predicted due to construction disturbance and habitat loss or with regard to collision risk. Neither RSPB or SNH objects to the proposed development. Two golden eagle ranges are situated to the west and east of the site. As well as preparation of a scheme for the mitigation of the potential effect of the proposal on the golden eagle population, the appellant proposes to contribute towards the conservation management plan, as included for in the conditions.

67. Good practice measures are also proposed including monitoring of all construction works during the bird breeding season to ensure that disturbance to breeding birds and black grouse leks is minimised. Furthermore, all golden plover nests will be protected.

68. The CEMP will detail plans to restore/re-vegetate habitats within the application site such as the borrow pits, track edges and construction compounds, and also set out the role of the Ecological Clerk of Works. It will contain details of mitigation measures with regards to otter and water vole, and reptiles.

69. An Outline Habitat Management Plan is produced. The main aim of which is to restore 10.5ha of currently drained but restorable blanket bog which would be in addition to the 17.74ha which will be restored on site. Other measures include the restoration of lowland blanket bog, planting of 50 sessile oak trees and providing a black grouse flight corridor. A full Habitat Management Plan will be produced and agreed with the council, in consultation with SEPA and SNH prior to development commencing.

70. I am satisfied that subject to the implementation of the above mitigation measures, the proposal will not result in significant impacts on natural heritage.

#### Tourism and recreation

71. Key tourism assets in the area include Urquhart Castle and the Great Glen Way. While aspects of the proposal would be visible from certain elevated locations and viewpoints where walkers, cyclists and other recreational users visit, the visual impact is considered to be limited, given the distances involved.

72. Some temporary disruption to local recreation routes is expected during the construction phase but, following mitigation, this is not expected to be particularly adverse. The locally designated South Loch Ness Trail utilises a section of the unclassified road which is crossed by the proposed wind farm access track. To reduce potential disturbance to the people using the trail, the track has been designed to cross it at right angles. Given the anticipated very low frequency use of the wind farm access track after the construction period, there are no significant effects predicted for this recreational asset. The submission of an outdoor access plan, which will be approved by the council, is provided for through a condition. This will take account of the public's right of access and is intended to ensure that such routes are not unnecessarily constrained.

#### Other site specific matters

73. The council and others raise concerns over the visual impact and the suitability of the proposed woodland planting at Upper Glen Brein/Coire Dubh, given the elevated and exposed nature of the site.

74. The proposal provides for 96ha of new native woodland planting comprising Upland Birch and Native Pinewood. Forestry Commission Scotland's (FCS) 'Ecological Site Classification' identifies the site as very suitable or suitable for Upland Birch and suitable for Scots Pine. The appellant refers to the early success of the adjacent native woodland planting on similar ground at Ardoch. References are also made to such planting at similar elevations elsewhere and that the site benefits from topographic containment.

75. The appellant's intention is to create a transition from the existing woodland planting so that it appears as an extension. Trees will be planted at varying densities to mimic a more natural situation. More dense planting would be at lower levels getting thinner towards the higher altitude where Scots Pine will dominate. This would then grade to dwarf trees and low shrubs linking the woodland with the open hillside and would provide a beneficial habitat for Black Grouse. Areas of Montane Heath will be included within the fenced area and protected from grazing to enable regeneration. FCS response confirms that the proposals are appropriate. The proposal would also support FCS Highland Native Woodland Target Area for Caledonian Pine re-planting and enhance local biodiversity.

76. The bulk of native woodland planting would be carried out in the first available planting season subject to being agreed. A buffer of around five metres either side of the proposed access track is intended to facilitate construction. Given the circumstances described, I consider that if properly managed and subject to a suitable condition, the proposed woodland could establish and thereafter provide visual containment to the proposed track and enhance the character of the wider landscape.

77. There are no cultural heritage designations within the site such as scheduled ancient monuments or listed buildings, although there are four listed buildings within 5km of the wind turbine area including the Category A listed Old Bridge over River Foyers at Whitebridge and a Scheduled Monument (a group of burial grounds) near Dell Farm. The assessment in the ES is that there would be no significant effects on cultural heritage features.

78. Subject to the imposition of planning conditions, the statutory agencies and the council's internal consultees do not raise significant concerns regarding the proposed development. This includes responses on matters such as aviation interests, telecommunications, noise, shadow flicker and residential amenity. While I note the site specific concerns raised by objectors, the evidence before me, including the responses from statutory consultees, does not lead me to conclude that there would, subject to the imposition of planning conditions, be any other significant adverse impacts as a result of the proposed development.

### Development plan conclusions

79. The proposal would contribute towards meeting renewable energy generation targets and would have a positive effect on the local and national economy. The council has used the criteria in the supplementary guidance as a focus for assessing the landscape and

visual aspects in the context of Policy 67. Looking at the proposal as a whole, I find there would be no conflict with the 10 criteria. The proposal would not have a significantly detrimental impact on the landscape and visual amenity of the area. It would not conflict with the criteria of Policy 67 and consequently is consistent with the other relevant policies of development plan. I conclude therefore that the proposal is in accordance with the development plan.

### Material considerations

80. As set out above, the council is not confident that the proposed design mitigation can overcome the anticipated visual impact of the access track and considers that in an exceptional case such as this, due to the potential harm, that the matter of an alternative access is relevant. SEPA considers that avoidance of pollution is always preferred to management of such risks, and there would also be environmental benefits of sharing existing infrastructure.

81. As a key matter raised by the council, SEPA and in the representations to the appeal, I explored at a hearing session and in closing statements the principle of utilising an alternative access via Stronelairg Wind Farm. Relevant case law is cited by the parties. Parties are in agreement that the consideration of alternatives in most planning cases, whether that be an alternative site or alternative layout, is not normally applicable. In this case, there is also agreement that if I conclude that the access track does not give rise to any conflict with the development plan, the question of an alternative access is irrelevant. In considering whether there is a mandatory requirement for me to consider alternatives or whether it is a matter of planning judgement, the council views Stronelairg as so obviously material as an alternative that it should be taken into account or certainly considered as a matter of discretion.

82. I was referred to a number of other cases, most notable of these is 'R (on the application of Langley Park School for Girls Governing Body) v Bromley LBC [2009] EWCA Civ 734', referred to as 'Langley Park'. In reviewing the Langley Park case I note the different circumstances. With this current appeal the council's concerns mainly focus on one aspect (landscape and visual impact) of Policy 67. The access for Stronelairg also lies outside the application site on land which is not in the appellant's control. Relevant guidance from the Langley Park case includes reference to a 'spectrum' - generally, the greater the harm likely to be caused by a development, the more the need to consider whether that harm could be avoided by an alternative design or site. I take from the conclusions in that case, that where a proposal falls within the spectrum would essentially be a matter of planning judgement.

83. The council regards the level of harm resulting from the access track to be serious and the likelihood of an alternative access that could avoid this harm may justify refusal in this instance. This is the case even if the proposal brings significant benefit. Furthermore, if the alternative access through Stronelairg does not prove possible or I am not persuaded that it can be realised, the council considers the harm is still so great (in the overall planning balance) to justify refusal. In support of this, the council makes reference to the guidance in the SNH document: Constructed tracks in the Scottish Uplands and to the relevant 1999 Landscape Character Assessment.

84. The appellant considers the proposal, including the access track, is acceptable in planning terms and submits that it would not be appropriate to consider an alternative access through Stronelairg as it is not part of the proposal and not material in this context.

85. Given my conclusions reached above, I agree that the level of harm from the proposed access track would not be particularly adverse and is at the lower end of the scale. It does not outweigh my findings on the acceptability of the turbines and other infrastructure, or give rise to a conflict with the development plan. In this context I do not find it necessary for me to deliberate over the potential or otherwise of an alternative access through Stronelairg. Consequently, I do consider it any further and it has no bearing on my decision.

86. From an EIA perspective, the 2011 regulations require that the appellant provides an outline of the main alternatives studied and an indication of the main reasons for the choice made, taking into account the environmental effects. I do not see this as requiring all alternatives, or even all reasonable alternatives, to be studied. In this case, the appellant cites a number of reasons as to why Stronelairg was ruled out at the initial stages and not explored further. This includes practical and commercial reasons related to land ownership. While I accept that there could be an advantage in sharing infrastructure and potentially avoiding certain environmental risks, the appellant has not presented this information. In dealing with the proposal before me I am satisfied that it is acceptable.

87. Scottish Government's Scottish Energy Strategy and the Onshore Wind Policy Statement were both published in December 2017, after the appeal was made. The council and appellant are in agreement that both documents reaffirm the government's commitment to renewable energy development, including wind. The council contends that such development is only supported in justified locations, consistent with the framework set out in National Planning Framework 3 and Scottish Planning Policy. In this case, it regards the weight in favour of renewable energy development may be less of a consideration in the planning balance where the choice is between access solutions rather than the wind farm itself.

88. Parties acknowledge that the local development plan is now more than five years old. In terms of Scottish Planning Policy and for the purposes of being regarded as out of date, the council considers that the council's Onshore Wind Energy Guidance has effectively updated the local development plan in this context. It views Scottish Planning Policy as unclear where constituent parts of a plan are still relevant. The appellant's view is that paragraph 33 of Scottish Planning Policy is engaged in this case and the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

89. Reference is made to two appeal decisions – PPA-270-2147 relating to Druim Ba Wind Farm and WIN-270-7 relating to the Caplich Wind Farm. In the case of Druim Ba, the reporter concludes that despite being recently adopted, the council's Onshore Wind Energy Guidance is supplementary to the key development plan policies that are more than five years old and therefore the sustainable development presumption is a significant material consideration.



90. In the Caplich case, the reporter concluded that weight to the presumption can be made over and above that which would be given to a proposal that complied with a relevant development plan policy. The reporter found that in doing so, it would not amount to double counting. Paragraph 33 of Scottish Planning Policy also contains an additional requirement to weigh the benefits and dis-benefits of a proposal in the planning balance by taking into account any adverse impacts which would significantly and demonstrably outweigh the benefits. The reporter concluded here that the age and content of a development plan may affect the weighing of a proposal's positive and negative implications in the planning balance.

91. The council and appellant agree that Policy 67 of the local development plan remains relevant and accords with national policy and particularly paragraph 169 of Scottish Planning Policy. They also agree that the development plan generally advances sustainable policies which resonate with the sustainable development objectives articulated in Scottish Planning Policy.

92. I take a similar view to the reporters in the above cited cases, that before the presumption can be applied it should be determined whether the proposal would contribute to sustainable development. I agree however that as the proposal is for wind energy development it does not necessarily render it wholly sustainable.

93. The proposal has the capacity to generate in the region of 2,500GW hours of electricity over a period of 25 years, contributing to the Scottish Government's renewable energy targets. It will generate short term employment during the construction phase and indirect employment in local businesses through local spend and as part of the supply chain, along with supporting wider economic benefits. Improvements are to be made to local roads along with contributions to the conservation of the local eagle population, and positive habitat management through the improvement of some 10.5ha of degraded blanket bog. I also recognise that there will be some adverse but acceptable impacts. These include the loss of trees, habitats and areas of peatland, and some visual effects at higher elevations. Significant road impacts are also envisaged although these would be temporary and appropriately mitigation is proposed.

94. The appellant considers the planning balance to be tilted in favour of the proposed development and the presumption in favour of granting permission should prevail. I agree that paragraph 33 of Scottish Planning Policy is engaged and is a significant material consideration given that the local development plan is more than five years old. Based on my conclusions reached above, the proposal can also draw support from the planning outcomes within Scottish Planning Policy and the policy principles set out in paragraph 29, and would represent a development that contributes to sustainable development. Overall, I consider there to be a presumption in favour of the development. Drawing all the relevant considerations together, I am satisfied that any adverse impacts of the proposal would not significantly and demonstrably outweigh its benefits.

### Planning conditions

95. I provided the appellant, the council and SEPA an opportunity to agree suitable conditions should I be minded to allow the appeal. I have made a number of changes to aid

clarity and consistency and I now conclude on those conditions where there was disagreement between the parties or where I deemed such changes were required.

96. Condition 3 deals with approved plans. I agree with the appellant that given the non-material amendments made in the additional information, it is useful to include reference to this in a condition.

97. With regard to Condition 4, I do not agree it is appropriate to monitor the supply of electricity on a monthly basis and to remove any turbines that fail to supply on a commercial basis or decommission the entire wind farm if 50% of the turbines fail to supply. I agree that there is no certainty that the scheme would fail at this particular level and consider such a requirement to be unreasonable and unnecessary. That said, for clarity, I have introduced timescales for the submission and implementation of any scheme for the removal of redundant turbines.

98. With regard to decommissioning (Condition 5), while I appreciate that the aftercare arrangements may not be known at the stage of determining the Decommissioning and Restoration Plan, the council requires reassurances that such works can be delivered. Flexibility can be afforded within the final plan, with appropriate wording and with the agreement of the planning authority, to enable such matters to be covered. Therefore I have included references to aftercare measures. Detailed items are suggested for inclusion which I consider unnecessary and can be suitable matters for agreement in finalising the plan. On the matter of a restoration bond, the council wants this to be secured and reviewed every five years. I note that the appellant is agreeable to such a review and I have included the suggested wording. Finally, in the absence of reasons to the contrary, I have agreed with the council that three years prior to decommissioning is a reasonable timeframe for the plan to be submitted.

99. Condition 6 deals with micro-siting. SEPA is concerned that micro-siting within 50m is allowed for and could result in greater volumes of peat disturbed and lost than assessed, and move infrastructure into areas of peat slide risk. The appellant considers that all significant effects have been assessed and wants reasonable scope to apply micro-siting. They refer to the peat management plan (already produced) which is to be included within the CEMP and will be approved by the planning authority in consultation with SEPA and SNH. I find these measures are sufficient to respond to the concerns raised by SEPA.

100. With regard to Condition 7 (CEMP), I agree that references to relevant current best practice guidance is imprecise and also unnecessary given that SEPA has already endorsed the peat management plan and will be further consulted.

101. As discussed in paragraphs 62 and 63 above, I agree that Condition 11 (Traffic Management) should include references to expected road improvement/mitigation measures and appropriate funding to minimise the effect on the road network.

102. In Condition 13, SEPA requests that minimum periods the ECoW spends on site should be specified. While I note the concern that the ECoW could be absent when high risk activities are taking place, the terms of appointment could take account of this.

103. SEPA has requested that reference is added that no borrow pit is to be located on highly groundwater dependent habitats. Given that Condition 28 requires the detailed location of the borrow pits to be approved by the planning authority in consultation with SEPA, there is already an opportunity to confirm their exact location and avoid any high risk areas.

### Conclusion

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

*Claire Milne*

Reporter

### Conditions

#### 1. Commencement of development

The development to which this permission relates must be commenced within 5 years from the date of this notice.

*Reason: to define the duration of the planning permission.*

#### 2. Period of permission

The permission hereby granted shall endure for a period of 25 years from the date of Final Commissioning. Written confirmation of the date of First Commissioning and Final Commissioning shall be provided to the Planning Authority within 1 month of that date. Development shall commence no later than 5 years from the date of this consent.

The date of **First Commissioning** means the date on which electricity is first exported to the grid on a commercial basis from any of the wind turbines forming part of the development. The date of **Final Commissioning** means the earlier of (a) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the development erected in accordance with this consent; or (b) the date 18 months after the date of First Commissioning, unless a longer period is agreed in writing in advance by the Planning Authority.

*Reason: In recognition of the expected lifespan of the wind farm and to allow for likely grid connection timescales and discharge of pre-construction conditions.*

#### 3. Approved plans

The development shall be undertaken in accordance with the application dated 22 July 2014, as amended by the Additional Information (AI) 2018, and in accordance with the

approved plans/drawings listed in the Schedule to this decision except insofar as amended by the terms of the conditions attached to this permission.

*Reason: To ensure the development is carried out in accordance with the approved plans.*

#### **4. Redundant turbines**

If any wind turbine 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 the wind turbine and any surface ancillary works solely relating to that wind turbine should be submitted in writing for the approval of the Planning Authority no later than the expiration of 3 months from the end of the said continuous period. The scheme should be implemented as approved within 6 months of the date of its approval.

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

#### **5. Decommissioning**

The Development will be decommissioned and will cease to generate electricity by no later than the date falling 25 years from the date of Final Commissioning.

(1) The total period for restoration of the Site in accordance with this condition shall not exceed 3 years from the date of Final Decommissioning without prior written approval of the Planning Authority.

(2) No development shall commence until (excluding preliminary ground investigation which shall be permitted) an Interim decommissioning, restoration and aftercare plan (“IDRP”) has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The IDRP shall outline measures for the decommissioning of the Development, restoration and aftercare of the site and will include proposals for the removal of the Development (save for access tracks, foundations and proposed new bridge which may be left in situ with the approval of the Planning Authority), the treatment of ground surfaces, the management and timing of the works, and environmental management provisions.

(3) No later than 3 years prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan (“DRP”), based upon the principles of the approved IDRP, shall be submitted to the Planning Authority for written approval in consultation with SNH and SEPA.

The Development shall be decommissioned, site restored in accordance with the approved DRP, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA.

The date of **Final Decommissioning** means the date 25 years from the date of Final Commissioning.

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

And

(1) No development shall commence (for the avoidance of doubt, excluding site survey information and ground investigation which shall be permitted) until:

- a. Full details of a bond or other financial provision to be put in place to cover all of the decommissioning, site restoration and aftercare outlined in the Interim Decommissioning and Restoration Plan approved under this condition have been submitted to, and approved in writing by, the planning authority; and
- b. Confirmation in writing by a suitably qualified independent professional that the amount of financial provision proposed under part (1) above is sufficient to meet the full estimated costs of the IDRPs, has been submitted to, and approved in writing by, the planning authority; and
- c. Documentary evidence that the bond or other financial provision approved under parts (i) and (ii) above is in place has been submitted to, and confirmation in writing that the bond or other financial provision is satisfactory has been issued by, the planning authority.

(2) Thereafter, the bond or other financial provision shall be kept in place until the date of completion of the DRPs.

(3) The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no less than every 5 years in accordance with the restoration and aftercare obligations and best practice prevailing at the time of each review.

*Reason: To ensure financial security for the cost of the restoration of the site to the satisfaction of the planning authority.*

## **6. Micro-siting**

(1) Wind turbines, masts, areas of hard-standing, buildings and tracks (“Infrastructure”) 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 Ordinance Datum (Newlyn), than 10m above the position shown in the original approved plans;
- (ii) No Infrastructure shall be moved:
  - a. More than 50m from the position shown on Figure 4.1 ES Vol III and Figures 3a, 3c, and 3e as amended by of the AI Vol2 (“the approved plans”);

b. So as to be located any closer than shown on the approved plans to an area of surveyed Groundwater-dependent Terrestrial Ecosystems unless approved in writing by the planning authority in consultation with SEPA;

c. To a position within an area identified within the Drawings 1 and 2 contained within Appendix 10.5 of the Environmental Statement as an area of more than 1.0 metre depth of peat greater than the location of the Infrastructure identified on the approved plans;

(iii) No wind turbine, mast, hard-standing or track shall be moved where a change to its position, location or route has been proscribed under a condition of this permission.

(iv) No Infrastructure other than water course related infrastructure including crossings and approaches to crossings shall be permitted within 50m of a mapped watercourse unless approved in writing by the planning authority in consultation with SEPA.

(v) No micro-siting is permitted in relation to the bridge crossing and access track from the B862 to Killiechoilum unless approved in writing with the planning authority in consultation with SEPA.

(vi) Micro-siting of the temporary construction compound 1 is not permitted within the post construction 1:200 flood plain shown in Technical Appendix 10.1 (FRA).

(2) All micro-siting permissible under this condition without requiring the approval of the planning authority must be approved by the development's 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 Commissioning Date.

(3) Any micro-siting beyond 50m will require the specific written approval of the planning authority (in consultation with SEPA). In making such a request for micro-siting beyond the 50m permissible under this condition, the developer must submit the following supporting information:

- a. A plan showing the location of the micro-sited turbine(s) relative to the originally approved location;
- b. Detailed reasoning for the micro-siting of the turbine(s);
- c. An assessment of the visual impact of the micro-siting; and
- d. Compliance with conditions set out under (1)(ii).b and (1)(ii).c of this condition.

(4) Within one month of the wind farm being commissioned, the Company must submit an updated site plan to the planning authority showing the final position of all wind turbines, masts, areas of hard-standing, tracks and associated infrastructure within the site. The plan should also highlight areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or planning authority's approval, as applicable.

*Reason: To require and enable appropriate micro-siting within the site in order 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.*

## 7. Construction and Environmental Management Plan (CEMP)

No development other than Permitted Works shall commence until a Construction and Environmental Management Plan ("CEMP") outlining site specific details of all on-site construction works, the final designs for the sub-station, compound and control building, the final design for the proposed new bridge, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, in accordance with the ES and the AI (2018) has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA.

The CEMP shall include (but shall not be limited to):

- a. a site waste management plan;
- b. details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- c. a dust management plan including cleaning of site entrances and the adjacent public highway;
- d. site specific details for management and operation of any concrete batching plant;
- e. a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site and adherence to the pollution prevention measures outlined on Figures 3a, b, c, d and e of the Additional Information 2018;
- f. a spoil management plan;
- g. a peat management plan in accordance with the Peat Management Plan included with the ES, Technical Appendix 10.5;
- h. a drainage management strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources
- i. a surface water and groundwater management (SuDS) and treatment plan;
- j. sewage disposal and treatment
- k. temporary site illumination;
- l. the construction of the access into the site and the creation and maintenance of associated visibility splays;
- m. the method of construction of the crane pads;
- n. the method of construction of the turbine foundations;
- o. the method of working cable trenches;
- p. the method of construction and erection of the wind turbines and meteorological masts;
- q. details of watercourse crossings which shall be designed to convey flows up to and including an estimated 1 in 200 year event;
- r. post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas.
- s. a wetland ecosystems survey and mitigation plan which shall include measures to protect, or mitigate impacts, on identified ground water dependent terrestrial ecosystems.
- t. ecological monitoring over construction period including all necessary preconstruction surveys to include black grouse, water vole, otter, wild deer and any required species protection plans following the preconstruction surveys

u. an updated flood risk assessment.

The development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority.

**Permitted Works** means (i) any site investigation or other preparatory works or surveys required for the purpose of satisfying or discharging any pre-commencement obligations under the planning conditions, and (ii) the provision of any temporary contractors' facilities within the Site which are necessary for (i) above.

*Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented.*

## 8. Habitat Management

No development shall commence until a habitat management plan ("HMP") in accordance with the outline HMP submitted as part of the ES at Technical Appendix 7.7 has been submitted to and approved in writing by the Planning Authority. The HMP shall set out proposed habitat management of the wind farm site during the period of construction, operation, decommissioning and restoration of the site, and shall provide for the maintenance, monitoring and reporting of habitat in relation to black grouse, water vole and lowland blanket bog and if required, wild deer.

Unless otherwise agreed in advance in writing with the Planning Authority, the approved habitat management plan shall be implemented in full.

*Reason: In the interests of good land management and the protection of habitats.*

## 9. Traffic and Transportation

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

*Reason: To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a result of the traffic moving to and from the development.*

## 10. Traffic Control Measures

During the delivery period of the wind turbine construction materials, any additional signing or temporary traffic control measures deemed necessary due to the size or length of any loads being delivered or removed must be undertaken by a recognised QA traffic management consultant, to be approved by Transport Scotland before delivery commences.



*Reason: To ensure that the transportation will not have any detrimental effect on the road and structures along the route.*

## **11. Traffic Management**

No development shall commence until a Traffic Management Plan (TMP) has been submitted to and approved in writing by the Planning Authority. The TMP shall include:

- (a) The routing of all traffic associated with the Development on the local road network;
- (b) Measures to ensure that the specified routes are adhered to, including monitoring procedures;
- (c) Details of all signage and lining arrangements to be put in place;
- (d) Provisions for emergency vehicle access;
- (e) Identification of a nominated person to whom any road safety issues can be referred;
- (f) A plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries and the length, width and axle configuration of all extraordinary traffic accessing the site;
- (g) Details and confirmation of an agreed financial contribution related to road improvement/mitigation measures which is commensurate with the expected impact of the proposed development on the B851 and B862 roads, and proportionate to the value of contributions received through other similar developments, and should accord with and complement the council's South Loch Ness Road Improvement Strategy; and
- (h) A concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 or other appropriate legislation, under which the developer is responsible for the repair of any damage to the public road network that can reasonably be attributed to construction-related traffic. This agreement will include pre-start and post-construction road condition surveys to be carried out by the developer, to the satisfaction of the Roads Authority(s). It will require the submission of an appropriate financial bond acceptable to the planning authority in respect of the risk of any road reconstruction works.

*Reason: In the interests of road safety and to ensure that abnormal loads access the site in a safe manner and do not have a detrimental effect on the road network.*

## **12. Community Liaison**

No development shall commence until a Community Liaison Plan has been approved in writing by the Planning Authority after consultation with the relevant local community councils. The plan shall include the arrangements for establishing a Community Liaison Group to act as a vehicle for the community to be kept informed of project progress by the Company. The terms and conditions of these arrangements shall include that the Community Liaison Group will have timely dialogue in advance on the provision of all transport-related mitigation measures and keep under review the timing of the delivery of turbine components. The terms and conditions should also set out how the Community Liaison Group will ensure that local events and tourist seasons are considered and appropriate measures are taken 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, and detail the continuation of the Community Liaison Group until the wind farm has been completed and is fully operational.

The approved Community Liaison Plan shall be implemented in full unless otherwise approved in writing by the planning authority.

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

### **13. Ecological Clerk of Works (ECoW)**

(1) No development shall commence until the Planning Authority has approved in writing the terms of appointment by the Company of an independent Ecological Clerk of Works (ECoW) in consultation with SNH and SEPA. The terms of appointment shall:

- a. Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the Environmental Statement and other information lodged in support of the application, the Construction and Environmental Management Plan, the Habitat Management Plan and other plans approved in terms of condition 12 ("the ECoW works");
- b. Require the ECoW to report to the Company's nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- c. Require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site;
- d. Require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity;
- e. Provide training to the developer and contractors on their responsibilities to ensure that work is carried out in strict accordance with environmental protection requirements;
- f. Monitor compliance with all environmental and nature conservation mitigation works, micro-siting and working practices approved under this consent.

(2) The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 4.

(3) No later than 18 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning and restoration phases of the Development to the Planning Authority for approval in consultation with SNH and SEPA. The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration phases of the Development.

*Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.*

### **14. Planning Monitoring Officer**

No development shall commence until the Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant to assist the Planning Authority in monitoring compliance with the

terms of the deemed planning permission and conditions attached to this consent ("PMO"). The terms of appointment shall:

- a. Impose a duty to monitor compliance with the terms of the deemed planning permission during the construction, post construction restoration and decommissioning and restoration phases of this development;
- b. Require the PMO to submit a monthly report to the Planning Authority summarising works undertaken on site; and
- c. Require the PMO to report to the Planning Authority any incidences of non-compliance with the terms of the terms of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.

The PMO shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post construction restoration works.

*Reason: To enable the development to be suitably monitored to ensure compliance with the consent issued.*

## **15. Construction Hours**

The hours of operation of the construction phase of the development and any traffic on the site associated with the construction of the development hereby permitted shall be limited to 0700 hours to 1900 hours on Monday to Friday, and 0700 hours to 1300 hours on Saturdays. No work shall take place on Sundays or Bank Holidays unless previously approved by the Planning Authority. Outwith these hours, development at the site shall be limited to turbine delivery and erection, commissioning, maintenance, and pouring of concrete foundations (provided that the developer retrospectively notifies the Planning Authority of the works within 24 hours if prior notification is not possible). In addition, access for security reasons, emergency responses or to effect any necessary environmental controls is permitted outwith these hours.

*Reason: For the protection of residential / local amenity.*

## **16. Appearance – external finish and colour**

Prior to turbine erection, details of the wind turbine external finish and colour shall be submitted to and approved in writing by the Planning Authority. Only wind turbines and a meteorological mast with the approved finish and colour shall be installed upon the development site. The development shall be implemented in accordance with the approved details. Turbines numbered 8, 9, 10 and 11 shall be no higher than 115.5m to blade tip and Turbines 1 to 7 and 12 to 14 inclusive shall be no higher than 130.5m to tip height.

Reason: For the avoidance of doubt and in the interests of visual amenity.

## **17. Appearance – name, sign or logo**

No name, sign or other logo shall be displayed on any external surfaces of the wind turbines or external transformer units save as required by law.

Reason: In the interests of visual amenity.

## 18. Appearance – rotor direction

All turbines rotors shall rotate in the same direction.

Reason: In the interests of visual amenity.

## 19. Air Safeguarding

Prior to the erection of the first wind turbine, the developer shall provide written confirmation to the Ministry of Defence of the anticipated date of commencement of and completion of construction; the height above ground level of the highest structure in the development and the position of each wind turbine in latitude and longitude.

Reason: In the interests of aviation safety.

## 20. Aviation Lighting

(1) Prior to the erection of the first wind turbine, the Company shall submit a scheme for aviation lighting for the wind farm to the Planning Authority for written approval. The scheme shall include details of infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety, unless otherwise agreed in advance and in writing by the Planning Authority.

(2) No turbines shall be erected on site until the scheme has been approved in writing. The Development shall thereafter be operated fully in accordance with the approved scheme.

Reason: in the interests of aviation safety.

## 21. Archaeology

Prior to the commencement of development, a programme of work for the evaluation, preservation and recording of any archaeological and historic features affected by the proposed development, including a timetable for investigation, shall be submitted to and agreed in writing by the Planning Authority. The agreed proposals shall be implemented in accordance with the agreed timetable for investigation.

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

## 22. Outdoor Access Plan

No Development shall commence until a detailed Outdoor Access Plan is submitted to and approved in writing by the Planning Authority. The purpose of the Outdoor Access Plan shall be to plan site tracks and paths to maintain public access routes during construction, and to enhance public outdoor access in the long-term. The Outdoor Access Plan shall be implemented as approved.

Reason: In order to protect local amenity and public access.

### 23. Private Water Supply

Prior to commencement of development a scheme for protecting private water supplies from damage or disruption that may be caused by the development shall be submitted for the approval of the Planning Authority.

*Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on amenity and the environment.*

### 24. Flooding and Related Matters

Prior to commencement of development the finalised design of the bridge crossing and access track from the B862 to Killiechoilum shall be agreed with the planning authority in consultation with SEPA and be demonstrated to follow the design recommendations of the Flood Risk Assessment forming part of the FEI.

The existing bridge crossing at Killiechoilum shall be demolished prior to the construction of the new bridge forming part of the development.

Prior to commencement of development a proposed design of river crossing bridge proposal including a river bank restoration scheme, together with an updated Flood Risk Assessment, shall be submitted to and approved by the Planning Authority, in consultation with SEPA.

Only watercourse-related infrastructure should be allowed within a 50m buffer zone of any watercourse. The 50m buffer zone shall be marked on site before Development commences.

*Reason: to protect the water environment and minimise flood risk.*

### 25. Noise

Noise immissions from the combined effect of the turbines received at any dwelling lawfully existing or with planning permission as at the date of this permission, when measured in accordance with the methods specified in paragraphs 98 — 104 of "The Assessment and Rating of Noise from Wind Farms ("ETSU 1997) shall not exceed 35dB(A) L90 10 mins at wind speeds measured on site of up to 10ms measured at 10m above ground level.

*Reason: to protect nearby residents from undue d and disturbance.*

### 26. Eagle Conservation

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 with a focus upon education and

interpretation, 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.*

## **27. Forestry**

No development shall commence until a native woodland planting scheme (“Woodland Planting Scheme”) in accordance with the scheme included in the Addendum to the ES Technical Appendix Outline Habitat Management Plan dated December 2017 has been submitted to and approved in writing by the planning authority. The Woodland Planting Scheme shall be implemented as approved unless otherwise agreed in writing by the planning authority.

*Reason: to ensure that the approved proposal is not harmful to woodland interests.*

## **28. Borrow Pits**

No development in respect of this planning permission shall take place unless and until the following borrow pit details have been submitted to and approved in writing by the planning authority in consultation with SEPA:

- a. precise location, size, depths, dimensions, extent and means of working; and
- b. a fully detailed restoration scheme with landscaping, planting and timescale information.

The development is hereby permitted in accordance with the planning application reference 14/02879/FUL provided that Borrow Pit C identified in Figure 4.1 of the ES shall not be developed.

*Reason: In order to ascertain further detail in respect of the design, location and size of the required borrow pits and to minimise any adverse impacts as a result of the working of borrow pit.*

## **29. Restoration of hill access track**

Prior to the commencement of development a scheme for the restoration of the existing estate hill access track described in the FEI (March 2016 (Appendix 1 ) (“the Hill Access Restoration Scheme”) shall be submitted to the planning authority for approval. The Hill Access Restoration Scheme shall be implemented as approved unless otherwise agreed in writing by the planning authority.

*Reason: In the interests of visual amenity*

## **Advisory notes**

**1. 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)).

**2. 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))

**3. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).

### **Schedule of application drawings**

#### Environmental Statement Volume III:

Figure 1.1 - Location Plan

Figure 1.2 - Site Constraints

Figures 2.2, 2.3 and 2.4 - Design Evolution Layouts

Figure 2.5 - Potential Bridge Crossing Locations

Figure 2.6 - ZTV Substation

Figure 3.1 - Generating Station

Figure 4.1 - Site Layout

Figure 4.2 - Turbine Elevation

Figure 4.3 - Turbine Foundation

Figure 4.4 - Crane Hardstanding

Figure 4.5 - Transformer Housing

Figure 4.6 - Visibility Splays

Figure 4.7 - Visibility Splays

Figure 4.8 - Floating Track

Figure 4.9 - Bridge Details

Figure 4.10 - Anemometry Mast

Figure 4.11 - Substation Compound

Figure 4.12 - Cable Trench Compound

Figure 4.13 - Compound/Laydown

Figure 4.14 - Building Plan/Elevation

Road Layout Plans – 116960-701, 116960-702, 116960-703, 116960-704, 116960-705, 116960-706

#### Environmental Statement Additional Information 2018 (Vol 2):

Figure 1a - Section A with Drainage Channels

Figure 1c - Section C

Figure 1d - Section D

Figure 1e - Section E

Figures 3a - Section A with Pollution Prevention Measures

Figure 3c - Section C with Pollution Prevention Measures

Figure 3d – Section D with Pollution Prevention Measures