Planning and Environmental Appeals Division

Report of Inquiry into application under section 36 of the Electricity Act 1989 and deemed application for planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended)

The Scottish Government

The construction and operation of Rothes III Wind Farm on land at Càrn na Cailliche Hills, 4 kilometres west of Rothes, Moray

• Case reference	WIN-300-5
• Case type	Application for consent (S36 Electricity Act 1989) and deemed planning permission (S57 Town and Country Planning (Scotland) Act 1997)
• Reporter as appointed by Scottish Ministers	Robert Seaton and Karen Black
• Applicant	Rothes III Ltd.
• Planning authority	Moray Council
• Other Inquiry parties	Save Wild Moray, Speyside Community Council, Finderne Community Council, Energising Moray, Elgin Community Council, Andrew Chadderton, Yvonne Mandel
• Date of application	1 February 2019
• Date case received by DPEA	13 September 2019
• Method(s) of consideration and date(s)	Conjoined inquiry with Clash Gour Wind Farm (WIN-300-4) 1st September - 16th September 2020
• Dates of site visits	Unaccompanied site inspections 4th and 5th February, 23rd, 24th, 25th and 26th July 2020 and 5th, 6th, 7th, 10th, 11th, 17th and 18th September 2020 and 13th November 2021
• Date of report	25 February 2022
• Reporters' recommendation	Approve

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Summary of Report

The Site

The application site (figure 1.1) is located next to the existing Rothes I and II windfarms in an area used for commercial forestry and rough grazing in Moray about 4 kilometres west of Rothes and 2.5 kilometres north of Archiestown. Site access for construction traffic would be from the A941.

Background to the Proposal

The application was submitted on 1 February 2019 and was supported by an Environmental Impact Assessment Report (EIAR) submitted on the same date, additional information submitted in December 2019 ("the 2019 AI") and supplementary information submitted in March and April 2020. The Moray Council objected to this application, and consequently it was the subject of the inquiry.

Description of the Development

The application is for construction and operation of a windfarm consisting of up to 29 turbines, 3 up to 149.9 metres, 8 up to 200 metres, and 18 up to 225 metres to blade tip and associated infrastructure including tracks and borrow pits (referred to in this report as "the original proposal"). In the 2019 AI, the applicant proposed an alternative layout of 23 turbines, including 15 turbines up to 149.9 metres and 8 turbines up to 175 metres tip height and associated infrastructure ("the alternative proposal").

The Applicant's Case

Law and policy framework

National planning policy embodied in the third National Planning Framework (NPF3) and Scottish Planning Policy (SPP) strongly supports the delivery of renewable-energy development to meet the statutory targets. Within the context of the spatial framework provided by SPP, the proposed development is to be treated as being within an area in which windfarms are likely to be acceptable. The only policy issue that arises for detailed assessment is in respect of the proposed development's significant adverse landscape and visual effects. The Government's continued support for further onshore-wind development is demonstrated in the draft fourth National Planning Framework. In order to achieve the statutory targets, some such significant effects are inevitable.

Urgent action is required to address the global climate emergency and the UK's international commitments under the Paris Agreement. The UK has accepted that a doubling of onshore-wind generation capacity is required to meet the increased demand for renewable electricity arising from decarbonisation of sectors such as transport and heating in order to achieve its targets for emissions reduction set in the Sixth Carbon Budget. The need for new renewables development, the vital role of onshore wind, and the requirement for such development to involve larger and more powerful turbines is recognised in the Scottish Energy Strategy (SES) and Onshore Wind Policy Statement (OWPS). The update to the Climate Change Plan envisages up to 15 GW of new renewable-energy capacity by 2032. The Scottish Government's Programme for Government 2021 sets out a commitment to installation of an additional 8 to 12 gigawatts of onshore-wind capacity by 2030. Only 6 GW is likely to come forward from proposals presently in planning, consented or being built. The Scottish Government has recognised the economic

opportunity represented by this requirement to develop additional onshore-wind capacity. The climate emergency and the requirement for additional renewable energy means that the proposed development's contribution must be accorded very significant weight in the application's determination.

As regards the Moray Local Development Plan 2020 (LDP), the key policy is DP9 and landscape and visual effects are the key issue.

Landscape and visual effects

There is substantial agreement in the applicant's and council's evidence on the proposed development's significant landscape and visual effects. It would have no significant landscape and visual effects on any settlement or on the Speyside Way, and no unacceptable effects on any residential property. The aviation lighting required because of the height of the proposed turbines would be designed such that it does not have a significant visual effect.

The original proposal would have significant adverse effects on the Upland Moorland with Forestry landscape character type (LCT 10) where it is located and, within 8 kilometres of the development, on the neighbouring Broad Farmed Valley (LCT 7) and on the Spey Valley Special Landscape Area (SLA). It would have significant visual effects at only seven of the originally agreed eighteen viewpoints and also at the additional viewpoint 19 on the B9102. There would be significant effects on the A95 between Cragganmore and Aberlour, the B9102, the B9010, core path SP20 and right of way GM7. Excluding the consented Hunt Hill windfarm (whose landowner has agreed it would not go ahead if the proposed development is consented), the only significant cumulative effect would be a visual effect on the summit of Ben Aigan (viewpoint 4). There would be a significant combined effect with existing, consented and proposed development such that LCT 10 would change from being a landscape with windfarms to a landscape with windfarm clusters. The addition of Clash Gour or other proposed schemes to the baseline would not alter the suitability of the landscape in which the proposed development would be located.

The original proposal is a logical extension to Rothes I and II. It would relate well to the existing pattern of development. Most of its turbines would be within an area identified as having potential scope for large or very large turbines in the Moray Wind Energy Landscape Capacity Study (MWELCS). It performs well as regards constraints identified in that study. Views to it are contained by surrounding hills. It would not have adverse effects on the coast, seascape, approaches to Moray or adjacent more detailed landscapes with the exception of LCT 7. Although there would be significant effects in the valley of the Spey, including on a small area of the inner valley, views are limited by topography including Càrn na Cailliche. Although that hill is identified as a "landmark hill" in the study, the proposed development would be sufficiently offset from it and would not affect any iconic views. The significant effect on the A95 would not detract from the overall experience of the route. The development would not detract from the overall character of the valley of the Spey. It would be consistent with the council's Moray Onshore Wind Energy supplementary guidance, which incorporates MWELCS.

Although there would be significant adverse effects in the Upper Knockando area, the original proposal would not dominate the landscape in a way that by itself would represent a reason for refusal.

Although the original proposal would be visible in the Cairngorms National Park, it would not have any significant adverse effect on its landscape character, special landscape qualities or visual amenity.

The alternative proposal allows Ministers to consider an alternative layout that has reduced landscape and visual effects as compared with the original proposal.

Capercaillie

Although turbines would be located close to a historic capercaillie lek site, there is no longer a breeding population left in the forest. The distance and fragmentation of habitat on routes from the nearest capercaillie populations means it is unlikely the lek will be recolonised. The habitat-enhancement measures proposed as part of the development would improve the forest habitat for capercaillie and increase connectivity, making it more likely capercaillie will return.

Socio-economic effects

Construction of both the original and alternative proposals would generate a significant number of jobs and supply-chain contracts in Moray and Scotland generally. The proposed development would provide direct community-benefit payments and a shared-ownership scheme. There would be a more coordinated approach to community benefit through Energising Moray.

There is no reliable evidence to demonstrate windfarms have an adverse effect on tourism. Tourism is thriving in Moray, notwithstanding existing windfarms. The proposed development would not have primary adverse effects on the amenity of natural, cultural or recreational assets of a type or degree that would cause a significant adverse secondary effect on tourism. The proposed development's effect on Yvonne Mandel's property at Glenarder would not be such as to cause a significant adverse effect on her business.

Cairngorms National Park Authority (CNPA)

Although the CNPA purported to object to the proposed development, the objections submitted to both the original proposal and alternative proposal did not reflect the resolution of its committee. It refused to explain its position by appearing at the inquiry. Its objection should be treated as having no weight.

Conclusion

Although the original proposal is acknowledged to have significant adverse landscape and visual effects, overall, these are not such as should cause it to be refused consent.

The Council's Case

While in terms of SPP table 1, the proposed site is in policy terms one in which windfarms are likely to be acceptable, this is subject to detailed consideration.

There is nothing in energy-policy documents subsequent to the SPP, including the SES and OWPS, to suggest that a planning balance need not still be struck. Although targets are set for renewable-energy generation and for emissions reduction, there is no requirement that these should be met by onshore wind alone. No targets are set nationally for Moray. Moray Council already has a strategy to address the climate emergency. It has already accepted extensive windfarm development.

The capacity for development identified by MWELCS in LCT 10 was limited. Both the original proposal and the alternative proposal would be partly outside the identified area of

potential for very large turbines. There is, in any case, no presumption in favour of development within the identified area of potential. Both the original and alternative proposals would locate turbines on the landmark hill of Carn na Cailliche, contrary to the guidance. They would breach the containment of the surrounding hills and would not be well set back into the upland, contrary to MWELCS guidance. They would combine with existing development to create a windfarm landscape in LCT 10. They would have significant adverse landscape effects on the sensitive lower hill fringes in the Upper Knockando area and on the Spey Valley SLA, where turbines would be visible on prominent skylines and breach the containment of the valley. There would be significant adverse visual effects in the sensitive valley of the Spey, on the A95 and B9102, and at other viewpoints extending to 13.5 kilometres from the proposed development (including for the original proposal viewpoints 4, 5, 6, 7, 11, 13, 18 and 19 and for the alternative proposal 4, 6, 7, 18 and 19). There would be significant adverse cumulative and combined visual effects. The design fails to take account of the pattern of nearby existing windfarms and the proposed development would contrast with them in terms of turbine scale and rotation speeds. The original proposal would not achieve a balanced composition at a number of viewpoints. The size, number and location of proposed turbines is such that both the original proposal and the alternative proposal exceed landscape capacity.

Given its unacceptable landscape and visual effects, the proposed development is contrary to policies DP1 and DP9 of the Moray LDP 2020. It is contrary to policy EP3, given its adverse effects on the Spey Valley SLA. Its adverse landscape and visual effects together with the lack of locational justification mean it is contrary to policy DP5 on business and industry. It is not supported by policy PP2 on sustainable economic growth.

The proposed development's adverse landscape and visual effects mean that it is not the right development in the right place. It is contrary to national planning policy and the development plan. National energy policy does not tip the balance in its favour. Consent should consequently be refused.

Speyside Community Council

The proposed development, by virtue of its extent and the large size of the proposed turbines (in both the original and alternative proposals) and aviation lighting, would have unacceptable landscape and visual effects and on Moray's wild-land attraction. There would consequently be unacceptable effects on tourism.

RSPB Scotland

The original proposal's infrastructure is located too close to the recorded capercaillie lek in Elchies forest. Though habitat-enhancement measures are proposed that are claimed to bring benefits over the longer term, the short-term impact on the lek should be avoided before mitigation is considered. The four closest turbines to the lek should be removed. RSPB Scotland does not object to the alternative proposal because these turbines do not form part of it.

Save Wild Moray (SWM)

Need for the proposed development is not a material consideration. Even if it is treated as such, national energy policy and climate-change policy does not trump other considerations in the planning balance. Impact on landscape is an important consideration.

SWM supports the council's detailed assessment of the proposed development's landscape and visual effects and its objection. SWM objects in respect of the proposed development's

siting and to the consequent adverse landscape and visual effects, including cumulative effects and combined effects, and adverse effects on relative wildness.

There are concerns about tourism. The economic effect of constraint payments have not been taken into account and should have been. Community benefit and the proposed shared-ownership scheme are not material considerations. The applicant has failed to provide an assessment of net economic impact, though policy requires it.

Andrew Chadderton

The proposed development would have unacceptable effects, including cumulative effects with the proposed Clash Gour windfarm, on landscape, visual amenity, the amenity of Tapp Farm, and on valuable habitats and species.

Yvonne Mandel

The proposed development would have an unacceptable effect, both individually and cumulatively, on the amenity of Glenarder, a property owned by the objector's holiday-let business. The adverse effect on the property's amenity would have an unacceptable effect on the business. Such adverse effects would also occur for other tourism businesses.

Cairngorms National Park Authority

The National Park Authority purported to object on the basis of the proposed development's adverse landscape and visual effects, individual and cumulative, on the cumulative effects and effects on visual amenity and special landscape qualities of the national park.

Other Matters

Matters raised in representations to the inquiry included the proposed development's landscape and visual effects, its effects on tourism, on peat at the site and consequent effect on carbon balance, downstream flood risk, valued habitats and species, forestry, cultural heritage, aviation, traffic and transport, public access to land, noise, human health and safety.

Reporters' Conclusions:

<u>Landscape and visual effects</u>

It is inevitable that a commercial-scale development in LCT 10, even if contained within the area of potential identified in MWELCS, would have some adverse landscape and visual effects. Both the original proposal and alternative proposal do have significant effects.

There would be some advantages to locating the original proposal next to the existing Rothes I and II windfarms, including minimising the need for new infrastructure, particularly tracks. A concentration of turbine development in the upland landscape assessed to be most able to accept it would limit adverse landscape and visual effects in other landscapes. There would, though, be adverse combined effects arising from the contrast in height and layout between the original proposal's turbines and the existing development, seen at higher viewpoints such as Ben Rinnes, Ben Aigan, the Gordon Monument and Càrn a' Ghille Cheàrr. The original proposal would also have significant adverse landscape and visual effects on lower-level viewpoints particularly to the south west, south and south east. There would not be such effects in the sensitive inner valley except in a small area around Blacksboat Bridge. Significant adverse landscape effects would occur in the relatively

sensitive transitional area of LCT 10 around Upper Knockando, in LCT 7 within 4 kilometres of the proposed development and consequently on the Spey Valley SLA. There would be significant effects on the Cairngorms National Park, though only in a small area and they would not be such as to affect the park's integrity. Though Càrn na Cailliche would act as a visual buffer in shorter views to the west and south west, its effectiveness as such would be limited in some longer lower-level views because of the height of turbines and the scale of the development.

The applicant acknowledges the significant cumulative visual effect on Ben Aigan with Hill of Towie II windfarm. The original proposal's significant cumulative effects with application-stage development would primarily relate to its effects with the eastern group of Clash Gour. The most concerning effects would occur particularly in the transitional area of LCT 10, on the view into the Moray uplands from Ben Rinnes, in the area of Upper Knockando, and in LCT 7 on the upper southern side of the valley of the Spey and as sequential effects on the B9102 and A95. There would consequently also be a significant cumulative effect on the SLA. There would also be a significant cumulative visual effect on the holiday house of Glenarder. The extent and degree of intensity of these cumulative effects is such that we have considered whether it would be appropriate to recommend refusal either of the original proposal or of Clash Gour.

The significant adverse landscape and visual effects of the alternative proposal would be more limited and less widespread, restricted mainly to the south and south west, though there would still be a significant visual effect in the inner valley of the Spey around Blacksboat Bridge. The most notable cumulative effects would be a significant cumulative visual effect with the consented Hill of Towie II on the summit of Ben Aigan and significant cumulative landscape and visual effects in the SLA with the proposed Clash Gour's eastern turbine group on the upper valley side south of the Spey around viewpoint 6 and sequentially on the A95 as well as on the view from Ben Rinnes. The alternative proposal would have lesser effects than the original proposal particularly because Càrn na Cailliche and other elements of the enclosing landscape would perform the function of a buffer more effectively, screening the smaller turbines and smaller extent of the proposal at some lower-level viewpoints, and because there would be less of a contrast between the size and rotation speed of its turbines and existing turbines. Given the scale of the alternative proposal, the degree of its landscape and visual effects would be limited. The alternative proposal would, however, provide 18% less capacity than the original proposal. Its significant effects could have been reduced further if the design had not included turbines on Càrn na Cailliche, but that would have meant a further substantial reduction in capacity.

Capercaillie

Although the EIAR properly records a significant effect locally upon capercaillie in respect of the original proposal, we find that this is based on a precautionary assumption that the lek is still active. The evidence indicates the lek site is no longer functioning and is unlikely to be revived without intervention. The proposed habitat-management plan would provide benefits for capercaillie regionally that are unlikely to be obtained by other means.

Socio-economics and tourism

The employment, supply-chain contracts and induced economic effect arising from the proposed development particularly during construction are likely to have beneficial economic effects of the order the applicant estimated. There is no persuasive evidence that windfarms generally have an adverse effect on tourist numbers, though it cannot be ruled out that there might be an adverse effect at a local level. In the present case, assuming such an effect could arise, the evidence indicates that the degree of impact even of the

original proposal on tourist facilities (including Glenarder) and attractions would not be such as to cause a significant adverse effect.

We do not find either the proposed community-benefit scheme or the shared-ownership scheme to be material to the proposed development.

SPP indicates that grid capacity is not to be treated as a reason to constrain individual applications for windfarms. Constraints payments are not the only payments involved in the system of interaction between power generators and the grid. System costs arising from increasing deployment of intermittent renewables are not limited to constraint payments. Such costs are only a small fraction of overall system costs and are likely to be outweighed by the lower cost of onshore-wind generation as compared with other forms of generation.

Overall, we find a net positive economic effect, which would be significant during the period of construction.

Policy assessment

There is support in national planning policy for development that contributes to achieving targets for renewable-energy generation and reduction in greenhouse-gas emissions. Ministers are required by the Climate Change (Scotland) Act to do what is best calculated to achieve their emissions-reduction targets and to do what they consider most sustainable. Among other measures, a considerable increase in onshore-wind deployment is required for those targets to be achieved.

The proposed development is to be treated as being in a group-3 area in the SPP spatial framework and consequently likely to be acceptable subject to detail consideration. The installed capacity of both the original proposal (137.4 MW) and of the alternative proposal (116.8 MW) would make a significant contribution to meeting targets. The net economic benefit weighs in their favour too. The key issue in both local and national policy is whether either or both the original or alternative proposal's significant adverse landscape and visual effects are acceptable.

The evidence of the Sixth Carbon Budget indicates a specific need for a near-doubling of onshore-wind capacity in order to meet the UK's net-zero target. The Scottish Government has also in policy made in the context of its declaration of a climate emergency recognised a need for new onshore-wind capacity. In the context of the Sixth Carbon Budget's findings, it is consulting on planning for an additional 8 to 12 GW of capacity by 2030 to meet the Scottish targets. Since the targets are set in law, we consider it is appropriate to assume at least the lower amount is required by 2030 so that compliance is assured. This factor weighs in favour of grant of permission for onshore wind. Given the need for further onshore wind development, it is likely to have greater landscape and visual effects, from increased size of turbines or expansion of development or both.

If the targets are to be achieved, in our view it will be necessary to carry out commercial-scale development in areas such as the upland landscape of LCT 10. The larger turbines of the original proposal would have greater capacity and would represent a more efficient use of the area than those of the alternative proposal. Although the original proposal's adverse effects would be substantial (including the cumulative effects with Clash Gour in particular), they would still be relatively limited in proportion to the very large size of the proposal. Overall, we find that the original proposal's landscape and visual effects would be acceptable both in terms of national policy and the development plan.

In view of this, the original proposal would be sustainable. We find that it is acceptable having regard to the factors set out in the Electricity Act, Schedule 9 paragraph 3(2), including in respect of its effect on natural beauty.

Recommendations:

We recommend that Section 36 consent be granted and that planning permission be deemed to be granted, subject to appropriate assessment as set out at paragraphs 4.51 and 6.41 of this report and subject to conditions listed in Appendix 3.

If Ministers disagree with our recommendation to grant consent for the original proposal, we recommend that consent is granted for the alternative proposal subject to conditions listed in Appendix 4 (and also to appropriate assessment).

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File reference: WIN--300-5

The Scottish Ministers
Edinburgh

Ministers

In accordance with our minute of appointment dated 3 March 2020 we conducted a conjoined public inquiry in connection with an application to construct and operate the Rothes III Wind Farm at Càrn na Cailliche Hills, 4 kilometres west of Rothes, together with an application to construct and operate the nearby Clash Gour Wind Farm (DPEA reference WIN-300-4). This report relates solely to the proposed Rothes III Wind Farm.

The application (the original proposal) by Rothes III Ltd, a wholly-owned subsidiary of Fred Olsen Renewables Ltd, for consent under section 36 of the Electricity Act 1989 and direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997 is for the construction of 29 turbines and associated infrastructure. In December 2019 additional information was submitted by the applicant which included an 'alternative proposal' for 23 turbines with changes to the layout and design.

Moray Council lodged an objection to the proposal which has not been withdrawn. We held an in-person pre-examination meeting at The Fleming Hall, Queen's Road, Aberlour on 6 February 2020 to consider the arrangements and procedures for the inquiry for both applications. However, in view of the restrictions on travel and the implementation of social distancing measures relating to the Covid-19 pandemic, we postponed the original inquiry for both applications which was proposed to commence on 20 May 2020.

We subsequently held two on-line case conferences with inquiry parties to discuss the next steps in progressing both cases on 2 June 2020 and 22 July 2020. We held an in-person conjoined inquiry in Aviemore (subject to Covid 19 protocol requirements), commencing on 1st September 2020 until 16th September 2020. We heard evidence at the inquiry on matters related to landscape and visual effects, ornithology, socio-economics, tourism, legislative and policy matters and on planning conditions.

Due to the Covid 19 restrictions, accompanied site inspections did not take place. However we carried out unaccompanied inspections of the site and surrounding viewpoints on 4th and 5th February, 23rd, 24th, 25th and 26th July, 5th, 6th, 7th, 10th, 11th, 17th and 18th September 2020 and 13th November 2021.

Our report, which is arranged on a topic basis, takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the discussion at the inquiry and hearing sessions. It also takes account of the environmental impact assessment report, the supplementary, additional and other environmental information submitted by the parties, and the written representations made in connection with the proposal. Throughout the report highlighted text indicates hyperlinks which direct the reader to the source material or reference or to the relevant sections of this report.

Our separate report to Scottish Ministers, outlining our recommendation on the Clash Gour application has also been submitted today. This is to enable Ministers to consider the cumulative impacts of both proposals together, given their proximity to each other and common issues. We elected to provide separate reports for the Clash Gour and Rothes III wind farm proposals, despite the inquiry process itself being conjoined. This reflects that the two proposals are distinctly separate applications, despite the potential cumulative interactions between them. Inevitably however, some discussion of evidence, reasoning and conclusions are common to both proposals.

CHAPTER 1: BACKGROUND, CONSULTATION AND REPRESENTATION

Site location and description

1.1 The application site is located approximately 4 kilometres to the west of Rothes village and just over 2.5 kilometres north of the village of Archiestown in Moray (figure 1.1). The operational Rothes I and II wind farms are located immediately north west of the proposed site. Rothes I, comprising 22 turbines of up to 100 metres to tip height became operational in 2005. Rothes II comprising 18 turbines (15 up to 125 metres and 3 up to 110 metres in height) became operational in 2013. The proposed site includes the northern and eastern slopes of Carn na Calliche Hill, and land surrounding Mannoch Hill, Hill of Stob, Cairn Cattoch and Hunt Hill.

1.2 The site, currently used for commercial forestry and open hill with rough grazing, extends to approximately 1,397 hectares. A right of way from Upper Knockando towards Birnie also runs north-south through the site (known as the Mannoch Road). Part of the Burn of Rothes/Mannoch Road core path is located within the north eastern boundary of the proposed site. Access for construction traffic would follow the same route as used for the existing Rothes I and II windfarms, from the A941, then on minor roads by Gedloch and Bardonside, then via the Mannoch Road. During operation, the proposed development would also be accessed via the existing Rothes I and Rothes II wind farm entrance on the C13E public road to the west of the proposed development between Dallas and Upper Knockando.

The original proposal and the alternative proposal

1.3 The applicant seeks consent for the proposed Rothes III development under section 36 of the Electricity Act 1989 (the 1989 Act) and also deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 for a period of 35 years. The applicant has proposed two different development designs, referred to in this report as “the original proposal” and “the alternative proposal”.

1.4 The applicant describes the proposed development as an extension to the operational Rothes I and II wind farms.

The original proposal

1.5 The application made to Scottish Ministers on 1 February 2019 was for construction and operation of a wind farm consisting of up to 29 turbines:

- 3 of a maximum height base to tip not exceeding 149.9 metres,
- 8 of a maximum height base to tip not exceeding 200 metres and
- 18 of a maximum height not exceeding 225 metres

Consent was also sought for associated infrastructure, including external transformer housing; site tracks; crane pads; turbine foundations; anemometry mast; underground electricity cables; two substations/control buildings; temporary construction and storage compounds; up to six borrow pits; associated works/infrastructure; forest felling and restocking; water crossings and drainage attenuation measures; and health and safety signage. The proposal would provide up to 137.4 MW installed capacity.

1.6 A full description of the original proposal, including the construction process, is provided in chapter 4 of the Environmental Impact Assessment Report. The proposed site layout is shown on EIAR figures 1.2 and 1.3. The applicant has proposed that one change

should be made to the design by condition, which would delete turbine 15. The purpose of the change would be to address an objection from SEPA.

1.7 As originally proposed, the turbines of the development would be located on land ranging from about 250 metres (turbine 27) to about 382 metres (turbine 9) above ordnance datum. Proposed turbines 2, 5, 6, 9, 10, 13 and 14 and their associated infrastructure would be situated on Knockando Estate land. The remaining turbines and infrastructure would be located on land owned by Forestry and Land Scotland, Broadland Properties Ltd and Rothes Estate.

1.8 The documentation also includes a Planning, Access and Design Statement and Pre-application Consultation Report.

1.9 The applicant provided a position statement at the time the case was passed to the Planning and Environmental Appeals Division (DPEA). This provides an overview of the project, a summary of consultee responses at that point, a summary of its case and notification of the applicant's intention to produce additional information in respect of an alternative proposal.

The alternative proposal

1.10 The applicant's position statement indicated that the purpose of submission of the alternative proposal was to address objections by SNH and RSPB in respect of impact on capercaillie.

1.11 The alternative proposal is described in chapter 4 of additional information, which was submitted in December 2019 (referred to in this report as "the 2019 AI"). The alternative proposal comprises:

- 15 turbines up to 149.9 metres to tip height
- 8 turbines up to 175 metres to tip height

Associated infrastructure is also proposed including tracks, crane pads, hardstandings, two electrical substations, temporary construction and storage compounds, anemometry masts and borrow pits. The proposed site layout is shown on 2019 AI figures 1.2 and 1.3. The layout is similar, though not only are six turbines and associated infrastructure deleted, but also turbine T15 is moved to a different location, beyond the micro-siting distance sought for the original proposal.

Environmental Impact Assessment Report

1.12 The application was accompanied by the EIAR, the purpose of which is to describe the environmental effects of the original proposal.

1.13 The 2019 AI had the purpose of describing the effects of the alternative proposal. It also updated the assessment of cumulative effects of the original proposal.

1.14 In accordance with regulation 19(2) of the EIA Regulations we also served notice on 25 February 2020 to require the applicant to provide supplementary information in relation to a number of matters in respect of the original proposal. Given this information was formally requested for the purposes of the inquiry it was not advertised, but notice was given to the planning authority and those originally sent a copy of the EIAR. We requested the following information:-

- Information demonstrating that measures proposed to manage the habitats within the application site in favour of capercaillie are sufficient to ensure that there would be no adverse effect upon the integrity of the Anagach Woods Special Protection Area (SPA) or Darnaway and Lethen SPA;
- Information about the proposed development's effect upon the operations of the Highland Gliding Club from Easterton Airfield sufficient to establish whether the proposed development would have a significant effect upon those operations;
- Information in respect of peat avoidance and appropriate re-use responding to the matters raised in paragraph 1.2 of the consultation response from the Scottish Environment Protection Agency (SEPA) dated 2 July 2019 to the applicant's Environmental Impact Assessment Report (and subsequent correspondence).

1.15 In accordance with the same regulation and in the same notice, we required provision of supplementary information on the following matter in respect of the alternative proposal:-

- Information in respect of peat avoidance and appropriate re-use responding to the matters raised in paragraph 1.2 of the SEPA consultation response dated 22 January 2020 to the AI.

1.16 In response, on 10 March 2020, the applicant provided the following supplementary information (March 2020 SI) :

- Introduction to the Habitat Management Plan
- Habitat Management Plan Report
- HMP1 - Rothes II Land Management Plan
- HMP2 – Capercaillie Concept Map (original proposal)
- HMP3- Capercaillie Concept Map (alternative proposal)
- Peat Response in respect of both layouts
- Peat - email 9 March 2020 SEPA to applicant (SI Peat 2)
- Peat - Micrositing Peat Depth analysis (SI Peat 1)
- Rothes III WPAC Technical Briefing Note Highland Gliding Club - Objection Removal
- HMP4 – Confidential Annex (extent of clear felling)

1.17 In accordance with the same regulation we served further notice on 19 March 2020 to require the applicant to provide supplementary information. Again, since this information was formally requested for the purposes of the inquiry, it was not advertised. Notice was given to the planning authority and those originally sent a copy of the EIAR. The information we sought was:

- An assessment of the transport of the abnormal loads required for construction of turbines proposed in the original layout including:
    - an abnormal-load route survey to review access issues and mitigation works for a candidate turbine up to a 150 metre rotor diameter turbine (including assessment of blade- and tower-sections and any other turbine parts that would constitute abnormal loads);
    - a weight review (included in the Route Survey Report) to identify bridge or structural weight issues along the route;
    - a swept path assessment of the new pedestrian facilities near Dr Grey's Hospital on the A96;
    - a vertical alignment review of the Reiket Lane rail bridge based upon the results of a topographical survey;

- A traffic impact review, expanding upon the existing information submitted, providing more detail on stone movements and the baseline assumptions; and
- Assessment, including visualisations, for an additional viewpoint on B9102 close to the entrance of Paul's Hill Wind Farm.

1.18 In response, on 10 April 2020 the applicant provided the following supplementary information (April 2020 SI):-

- Supplementary Transport Information including Route Survey Report
- Additional viewpoint 19 B9102 between Blacksboat Bridge and Cardhu (original proposal)
- Additional viewpoint 19 B9102 between Blacksboat Bridge and Cardhu (alternative proposal)
- Additional viewpoint 19 B9102 between Blacksboat Bridge and Cardhu Comparative Visualisations

The reception of evidence in respect of the alternative proposal

1.19 The council objected to the submission of the 2019 AI on the basis that the alternative layout described in it was, in substance, so materially different from the original proposal as to constitute a new scheme, which would require to be the subject of a new and separate application. In support of this view, the council made the case that:

- there were a number of significant changes in the alternative proposal from the original proposal;
- the additional information showed material differences in the impact of the alternative proposal on, for example, forestry, ornithology and cultural heritage (in respect of which the council had not previously objected) as well as landscape and visual effects (in respect of which the council objected);
- it had to consider the alternative proposal in the same way as it would a fresh proposal (conducting internal consultations with its various specialist departments and appointing consultants on landscape and noise to assess the alternative proposal);
- the original design and alternative proposal were presented as alternatives, which demonstrated that different planning considerations were involved in each;
- there would be prejudice to it and to the public from acceptance of the additional information.

1.20 The council argued it would be prejudiced as a consequence of the 2019 AI being admitted in evidence. First, less time was afforded for consideration of the detail of the alternative proposal than would have been available under the Electricity Act 1989. Second, the public would not reasonably expect the proposed reduction in the number of turbines and in heights of some turbines to be treated as additional information and would perceive this as an attempt to thwart representations made to the Energy Consents Unit.

1.21 The applicant responded that the alternative proposal is not a new scheme. It argued that it did not seek to amend or vary the application, but simply to assess an alternative that would have reduced impacts, and that would enable Scottish Ministers to consent the alternative layout by imposing conditions on any consent granted. It referred to the cases of *Wheatcroft v Secretary of State* (1982) 43 P&CR 233, *Walker v Aberdeen City Council* [1998 SLT 427] and *Finney v Welsh Ministers* [2019] EWCA Civ 1868 as establishing that the test to be applied is whether the change is fundamental (that it would amount to a change in the substance and character of the development). The applicant provided the reports of these cases in its response. It gave examples of cases under

section 36 of the Electricity Act in which Scottish Ministers had approved a development not only reduced in scale but in which the layout was changed. It also referred to the Scottish Government's guidance on applications for variation of existing consent for a generating station under section 36C of the Electricity Act. This indicates that the scope of a variation under that section extends to a change that would not lead to a development that is fundamentally or substantially different from that consented.

1.22 As regards prejudice to the council, the applicant responded that the time available for response to the additional information was greater than the minimum statutory period required for consultation or to allow responses from the public (even allowing for the intervening Christmas and New Year holidays). It also pointed out that the council had requested an additional six weeks for it to respond to the additional information, an extension to which the applicant had not objected and which we had allowed.

1.23 We gave our decision in annex 2 to our note of the pre-inquiry meeting.

1.24 We disagreed with the applicant that the test in *Finney* is relevant to the question of whether Ministers can grant consent to the alternative proposal. The statutory context of *Finney* was different. Lord Justice Lewison gave reasons at paragraph 41 of that decision why it would not be relevant. We also disagreed, given the different statutory context, that guidance on what may constitute a variation to an existing consent under section 36C of the Electricity Act was relevant.

1.25 We understood the correct test to be that set out in *Wheatcroft* and in *Walker*: whether the development as altered by condition is in substance different from that for which the application was made. In *Walker*, Lord MacFadyen set out his view that while size may be a relevant consideration in applying this test, the main consideration is the nature and extent of the difference in planning terms between the original and the amended proposal. He said, "If the amendment has the effect that substantial new planning issues not raised by the original application are raised, or that the proposal is open to substantial new grounds of planning objection which were not available against the original application, the amended application may … be said to be in substance different from the original one." This is a planning judgement to be made by the planning decision-maker, and a court will only interfere with it if the decision is perverse or unreasonable in an administrative-law sense.

1.26 At that stage (on the basis of our consideration to that date of the additional information and of the submissions of parties, without having heard the full evidence at the inquiry), our view was that the alternative proposal would not be likely to raise substantial new planning issues or open substantial new grounds of planning objection that were not available against the original application. The differences of the alternative proposal from the original proposal appeared to us at that stage to be mainly differences of extent and size, with only a few minor changes to the position of infrastructure within the application site. We considered that this was analogous to the alterations to the developments in the *Wheatcroft* and *Walker* cases.

1.27 We found that the question of whether the alternative proposal was in substance different from the original proposal was a matter of planning judgement. We found that the applicant was able to make a relevant case that the alternative proposal was not in substance different from the original design. In our conclusion to this report, we make findings, having heard the evidence at the inquiry, on the question of whether the alternative proposal is in substance different from the original proposal. In our view, though, since the question is one of planning judgement, it is a matter that is ultimately for the judgement of Ministers as the decision-makers on the application.

1.28 We did not find that the council would be prejudiced by our accepting evidence in the 2019 AI in respect of the alternative proposal. There is no statutory timescale for consultation of the planning authority under the Electricity Act 1989. The minimum timescale we allowed for the council's response to the 2019 AI was greater than the statutory timescale for responding to an EIA report. We considered the timescale was sufficient for it to make an informed response.

1.29 Further, we did not find any indication in the course of the inquiry that the council's presentation of its case at inquiry was substantially prejudiced by the introduction of the additional information.

Consultation responses

1.30 The Scottish Government's Energy Consents Unit (ECU) received responses from various consultees to the original proposal in February 2019 and these are summarised below. The summary information below also includes consultees' comments on the 2019 AI, the March 2020 SI and April 2020 SI.

1.31 Aberdeen Airport has no objection.

1.32 British Telecom has no objection.

1.33 Coal Authority has no objection.

1.34 Findhorn Nairn and Lossie Fisheries Trust supports the proposal for 50 metre buffer zones around rivers and lochs and development of a fish and water monitoring programme. The Peat Management Plan is extensive and provides detailed mitigation measures which should minimise risks to water courses. The Trust would wish to be involved in discussions to develop these further.

1.35 Highland Gliding Club initially objected to the proposed development on the basis that (a) the location of the proposed site and the height of the proposed turbines would constrain its operations when launching gliders via aero-towing; (b) would have an adverse effect on local training flights; and (c) would also have a deterrent impact on cross-country flying. Following submission of the March 2020 SI, it withdrew its objection.

1.36 Historic Environment Scotland (HES) agreed with the conclusions of the EIAR and is satisfied that the proposal does not raise issues of national significance in terms of historic environment interests.

1.37 Highlands and Islands Airports Limited (HIAL) has no objection to the proposed development subject to conditions requiring aviation warning lights at hub height.

1.38 Marine Scotland Science (MSS) did not object to the proposed development subject to the imposition of conditions requiring an integrated water quality, macroinvertebrate and fish population monitoring programme (based on MSS guidelines) to ensure impacts on salmon and trout populations are minimised and/or avoided. In response to the March 2020 SI it highlighted the proximity of borrow pits A and D to adjacent watercourses and advised that appropriate mitigation measures, including monitoring are implemented to avoid potential impacts on the water quality and fish populations.

1.39 Ministry of Defence (MoD) initially objected to the original proposal on the grounds that the proposed development would have an adverse impact on the primary surveillance air traffic control radar at RAF Lossiemouth. Discussions have taken place with the applicant and a technical mitigation proposal in respect of the impacts on radar has been

accepted by the MoD. Subject to the technical mitigation being fully implemented before the rotor blades on any of the wind turbines are permitted to rotate the MoD confirmed it is content to withdraw its objection subject to the inclusion of appropriate conditions.

1.40 NATS (En Route) Public Limited Company (NERL) has no objection.

1.41 Royal Society for the Protection of Birds Scotland (RSPB) objected to the proposed development in respect of the potential adverse impact on capercaillie and on the integrity of the Darnaway and Lethen Forest and Anagach Woods SPAs. In response to the December 2019 AI, it maintained its objection, requesting that turbines 17, 21, 24 and 27, which would have the greatest detrimental impact, are removed.

1.42 In response to the March 2020 SI RSPB advised that the Outline Habitat Management Plan (OHMP) would not be sufficient to mitigate the impact of the original proposal. It therefore maintained its objection to the original proposal.

1.43 However, due to the improved mitigation measures set out in the March 2020 SI, it withdrew objection to the alternative proposal. The alternative proposal does not include turbines 17, 21, 24 and 27 and the proposed mitigation set out in the OHMP would be sufficient to address the impacts of this proposal on capercaillie. It also suggested that a capercaillie advisory officer is included as a member of the Habitat Management Steering Group.

1.44 Scottish Water has no objection subject to a number of advisory comments relating to drinking-water catchment areas and peatland areas.

1.45 Scottish Environment Protection Agency (SEPA) objected to the original proposal due to a lack of information in relation to peat management, borrow pits, groundwater dependent terrestrial ecosystems, forestry, crane hardstandings and cable trenches.

1.46 In its response to the 2019 AI, it maintained its objection and advised that the 2019 AI did not fully address its concerns due to a lack of information in regard to peat.

1.47 Following submission of the March 2020 SI, SEPA withdrew its objection to both the original and alternative proposals subject to the imposition of conditions relating to micro-siting of turbines, a peat-management plan, construction environmental-management plan and habitat-management plan.

1.48 Scottish Natural Heritage (now NatureScot) objected to the original proposal until further detail of mitigation was available to demonstrate there would be no adverse effect on the integrity of Special Protection Areas designated for capercaillie.

1.49 Following submission of the March 2020 SI its objection was withdrawn. It also confirmed the measures proposed in the SI and Habitat Management Report, if adequately secured by conditions and/or legal agreement, would allow an appropriate assessment under the Habitats Regulations to conclude that the original proposal would have no adverse effect on the integrity of the Anagach Woods or Darnaway and Lethen Forest SPAs.

1.50 Scottish Forestry had no objection to the proposed development, subject to the imposition of conditions requiring approval of a compensatory planting plan, including details of implementation, monitoring, maintenance and re-stocking.

1.51 Scotways submitted a holding objection to the original proposal. It set out concerns about the proximity of some turbines to a recorded right of way. It considered it was difficult

to ascertain the separation distance between turbines 8, 11, 12, 13 and 17 and right of way GM7. It requested a draft access plan prior to consent which should include provisional details of how public access will be managed throughout the duration of the development, accurately reflect the public-access situation over the site, and specify how the rights of way will be taken into account. The plan should also require the provision of signage for access users and for site personnel especially where the wind farm access track crosses GM7. The requirement for a full access plan should be made a condition if consent is granted. Scotways also highlighted that right of way GM137 was not shown on Figure 16.1 and effects upon that route were not considered in the EIAR.

1.52 Speyside Community Council objected to the original proposal on the basis that it was contrary to the 2015 Moray Local Development Plan policy ER1 Renewable Energy Proposals. The excessive height of the turbines is not compatible with policies to safeguard and enhance the built and natural environment. The Upland Moorland and Forestry landscape character type has limited scope for turbines up to 130 metres in height. The Moray Wind Energy Landscape Capacity Study states that 'turbines over 150 metres are too large to be accommodated in the landscape given the relatively limited extent of the uplands within Moray, with significant effects more widespread and unacceptable on adjacent landscapes.' Consequently, there is no scope for turbines of up to 225 metres. Turbines over 150 metres require aviation lighting and flashing effect during darkness. The proposal would add to the cumulative visual impact of an estimated 273 large scale wind turbines from operational windfarms with at least another four in the planning process. The community council also point out that the Landscape Capacity Study states that developments should not be near or on landmark hills. This proposal is near to Càrn na Cailliche – an identified Moray landmark hill.

1.53 In addition, the proposal is not compatible with tourism/recreational interests and facilities. Many of the scenic/tourist routes in and out of Moray would experience a considerable change in its wild-land attraction. Turbines would be introduced into views where, currently, there are none and also add to the cumulative clutter of existing windfarms. The B9010 Knockando to Dallas road would be particularly affected if this application and Clash Gour were to be approved. There are likely to be visual and cumulative effects to both the Speyside Way and the River Spey, both popular with either walkers or water sports enthusiasts. Tourism is a very important part of the Moray economy with many world class visitor experiences.

1.54 The community council maintained its objection to the alternative proposal.

1.55 Spey Fishery Board submitted a holding objection until the developer engages the Board in discussions regarding the development of a fish monitoring programme and fisheries management plan within the Spey catchment.

1.56 Telecommunications Association of the UK Water Industry (TAUWI) has no objection.

1.57 Transport Scotland initially had concerns about the potential impacts on the A96 trunk road arising from the transportation of abnormal loads and turbine blades at 75 metres in length.

1.58 In response to the April 2020 SI Transport Scotland noted that the transportation of the 74.3 metre blades will result in considerable physical changes to the trunk-road network. Any proposed changes to the trunk-road network must be discussed and approved by the appropriate Area Managers prior to the movement of any abnormal load. The technologies (hybrid trailers and scissor lifts) have not yet been used in Scotland to any great degree, therefore, significant work would be required to satisfy Transport Scotland

that the proposals can work technically and do not represent any risk to the safe and efficient operation of the trunk road network. Consequently, Transport Scotland recommended conditions relating to the proposed abnormal loads delivery route, signage or temporary traffic control be applied to any consent granted.

1.59 UK Fuel and Power Industry has no objection.

1.60 Visit Scotland has no objection. It highlighted the importance of the character and visual amenity value of Scotland's landscapes and that tourism revenue is a key driver of the Scottish economy. It also suggested that full consideration is given to the Scottish Government's 2008 research on the impact of wind farms on tourism and that an independent tourism impact assessment should be carried out.

Moray Council's position

1.61 The original proposal was considered by Moray Council (the council) at its committee meeting on 25 June 2019 at which the committee agreed recommendations of a report recommending the council should object to the proposal. This was on the basis that it was contrary to Moray Local Development Plan 2015 policies PP1 Sustainable Economic Growth, T2 Provision of Access, ED7 Rural Business Proposals, ER1 Renewable Energy Proposals, E7 Areas of Great Landscape Value and Impacts Upon the Wider Landscape, IMP1 Developer Requirements, IMP2 Development Impact Assessments, Moray Onshore Wind Energy 2017 Policy Guidance and The Moray Wind Energy Landscape Capacity Study 2017 for the following reasons:-

- Many of the turbines would be located close to the edges of, and outwith, the areas of potential for larger turbines within Landscape Character Type (LCT) 10. The proposed turbines would by virtue of their size and positions have significant adverse effects and dominate the smaller scale upland fringes in the Upper Knockando area.
- The proposal would be inappropriate in terms of its significant adverse impacts on landscapes and views within Moray. Views from varying distances such as those from Ben Rinnes, Ben Aigan and the A95 south of Aberlour would excessively diminish the recreational and visitor experience where the countryside would be overly populated with windfarm developments.
- The proposal would increase the influence of wind energy development in views north from within the Spey Valley Area of Great Landscape Value (AGLV). As development must not diminish the landscape quality within this designation the policy directly guides wind energy development proposals to compliance with the 2017 Moray Wind Energy Landscape Capacity Study (MWELCS). The proposal departing from the MWELCS therefore has an unacceptable impact upon the AGLV where the landscape would be detrimentally affected.
- The proposed windfarm would result in complex and unacceptable cumulative views of wind energy development. These cumulative views are illustrated in the various Cumulative Zones of Theoretical Visibility figures. The proposed windfarm from varied locations within Moray would bring into view an agglomeration of windfarms, constructed or consented. This would result in significant adverse cumulative effects upon the landscape and upon visual amenity resulting in the creation of a windfarm landscape.
- The submitted information is inadequate to satisfy policies T2 and IMP2 as it is insufficient to enable Moray Council to consider; the feasibility of the proposed development in terms of the ability to deliver turbine components, the impact on the public road network and the identification of appropriate mitigation/modification or improvements necessary for the proposed development. Additional information

would be required in relation to how the volumes of construction stone beyond that gleaned from on-site borrow pits have been calculated.

1.62 The council subsequently agreed that, if the application is approved, appropriate planning conditions could be imposed to address matters related to impacts on the public road network.

1.63 As part of the council's consideration of the proposal, it also consulted with its Access Manager, who stated that in the event of approval the applicant's proposed core path enhancements (inclusive of parking, signage and path improvement), protection of SP01 core path and protection of the Old Mannoch Road Right of Way would have to be demonstrated in a public access management plan and linked to the Construction Method Statement. The proposed link and loop using windfarm tracks linking SP20 and SP21 near Archiestown would be welcomed.

1.64 The council's Environmental Health Manager confirmed that noise from the proposal could be addressed by appropriately worded conditions in the event of approval, to ensure that noise levels are kept to an acceptable level. These conditions would include an allowance for any effects of amplitude modulation in the event it occurs. In the event of approval, other conditions would need to be imposed such as confirmation of the hours of operation, vibration and blasting (if proposed).

1.65 In respect of private water supplies, a Construction Environment Management Plan should include mitigation measures to protect private water supplies.

1.66 Aberdeenshire Archaeology Service had no objection subject to a condition relating to consideration of an archaeological written scheme of investigation (WSI).

1.67 In terms of flood risk management the council confirmed that the site was not susceptible to flooding. It advised that a condition would be required for approval of final designs and calculations of all watercourse crossings, such that post-development run-off rates would not exceed pre-development run-off rates, or increase the risk of flooding to surrounding watercourses or downstream.

1.68 The alternative proposal was considered by the council at its committee meeting on 25 February 2020 at which the committee again agreed recommendations of a report to object to the proposal for the same reasons listed above, but also including reference to the effect on views from and on the character of the Spey Valley.

Other representations

1.69 The ECU also received 387 objections from members of the public (CD4.5).

1.70 In response to the 2019 AI alternative proposal, a further two objections were submitted to the DPEA (CD4.6). One letter of support referring to the regional and local economic benefits of renewable-energy construction was also submitted.

1.71 Matters raised by objectors include:

- The proposal was contrary to Moray Local Development Plan 2015 policy ER1 due to the adverse landscape and visual impacts, impact on peat land hydrology, ecology and tourism and recreational interests.
- The proposal would potentially add to the adverse, cumulative visual impact of an estimated 273 large scale turbines from operational wind farms and five in planning on the upland landscape of the west Moray Moors, and would potentially result in

skylines dominated by large wind turbines on the Malt Whisky Trail's B9010 Upper Knockando to Dallas Road, B9102, B9010, A95 and A941.
- There would be a cumulative erosion of Moray's wild-land qualities in the uplands and adverse visual impacts on protected areas attractive to tourism such as Moray landmark hills Ben Rinnes and Ben Aigan, Speyside AGLV, the candidate AGLVs of Ben Rinnes and Spey Valley, the Cairngorms National Park, and recreational routes including the Malt Whisky Trail, the Speyside Way and Dava Way.
- The proposal would potentially add cumulatively to the destruction of peat land, and to the degradation of diverse natural habitat detrimental to rare upland breeding birds and birds of prey like the goshawk, merlin, hen harrier and capercaillie.
- The height of turbines proposed would far exceed any in the area, in most cases by in excess of 50% extra.
- There was lack of awareness and had been lack of advertising of the proposals in the area.

1.72 Representations also came from the following parties who participated in the inquiry proceedings.

1.73 Save Wild Moray objects to the proposed development and the reasons are set out in detail in its inquiry statement and witness inquiry report. The threshold of unacceptable cumulative impact has already been breached by the existing wind farms. There is no landscape capacity for any more commercial-scale windfarms and this is the wrong location for this type of large-scale commercial windfarm. The proposal is not in accordance with the development plan, nor with national planning policy or Schedule 9 of the Electricity Act on account of its inappropriate siting, significant adverse visual effects and adverse effects on landscape, ornithology and natural beauty and flora.

1.74 Andrew Chadderton resident at Tapp Farm which is located about 3.5 kilometres west of Rothes III objects to the proposed development. The reasons are set out in detail in the objection to the original application (CD4.7), inquiry statement, inquiry report and emails. He acknowledges the role that renewable energy has to play but is concerned about his property becoming the epicentre of over 100 turbines; the industrialisation of the landscape; adverse cumulative visual impacts and effects on the landscape; wildlife and ornithology; peat; private water supplies; fire risks; noise and increased traffic.

1.75 Yvonne Mandel objects to the proposed development. She was unable to travel to attend the inquiry proceedings. The reasons for objection are set out in the inquiry statement and related appendices and photographs (CD13.11.1, CD13.11.2, CD13.11.3, CD13.11.4, CD13.11.5, CD13.13.1, CD13.3.2, CD13.3.3. CD13.3.4, CD13.3.5, and CD13.3.6). Ms Mandel is the owner of a residential holiday let at Glenarder which lies approximately 6.5 kilometres south west of the closest turbine of the original proposal (T17). Her concerns relate to the potential cumulative landscape and visual impacts and devastating effect that would have on her business and tourism in general in the area.

1.76 In the course of the inquiry, given the restrictions on in-person attendance at the inquiry proceedings, we agreed that members of the public could, if they wished to do so, make further written submissions on matters raised at the inquiry. In response 47 objections and two letters of support were submitted (CD25.1 – CD25.47). Objections largely reflect those previously submitted in response to the original application and refer to adverse effects on the landscape, tourism, habitats and birds, local roads, peat, loss of trees, potential noise levels and community benefits. Those in support highlight the need to support renewable energy and move away from fossil fuels.

Cairngorms National Park Authority's position

The CNPA's resolution to object and its purported objection, May 2019

1.77 An objection in respect of the original proposal, purporting to be from the Cairngorms National Park Authority (CNPA), was sent to the Energy Consents Unit, dated 31 May 2019. The terms of the objection were as follows:

> "… this case was considered at the Cairngorms National Park Authority Planning Committee of 24 May 2019 when the Committee resolved to OBJECT to the application. The reason for objection is that the Committee consider that the proposed development is contrary to Policy 3.3 of the Cairngorms National Park Partnership Plan 2017 - 2022 due to the significant adverse effects on the Special Landscape Qualities (SLQs) of the Cairngorms National Park, in particular the dark skies special landscape quality as a result of aviation lighting, and the cumulative impacts of the development as a result of the scale and siting of the proposed development."

1.78 The CNPA planning committee of 24 May 2019 considered a report from its officer recommending that CNPA should not object to the original proposal. The minutes of the committee (CD15.1.6) record the committee's resolution as follows:

> "The Committee disagreed with the officer's recommendation and unanimously agreed to Object to the proposed development due to significant adverse effects on the Special Landscape Qualities of the Cairngorms National Park, including dark skies, and the cumulative impacts of the development as a result of the scale and siting of the development extending the visual envelope of wind turbines around the National Park."

1.79 The wording of the purported objection and the resolution are plainly different. Some differences are substantive:

- The purported objection refers to the proposed development being contrary to policy 3.3 of the CNP Partnership Plan. There is no reference in the committee's resolution to the plan.
- The purported objection refers to aviation lighting. There is no express reference to aviation lighting in the resolution, even if it might be implied from the reference to the effect on the dark-skies special landscape quality of the park.
- The purported objection refers to the cumulative impacts of the development as a result of the scale and siting of the proposed development, but does not add the explanation qualifying this reference to cumulative effects alleging that the proposed development would extend the visual envelope of wind turbines around the park.

The purported response by the CNPA to the consultation on the 2019 AI

1.80 The CNPA planning committee of 24 January 2020 considered the applicant's 2019 AI, containing its alternative proposal. There was no written report put to the committee. According to the minutes (CD15.1.7), the question of whether the CNPA should object in respect of the Rothes III alternative proposal was raised under "any other business". There is no evidence regarding any notice members of the committee were given of the matter being raised at the committee. The CNPA has indicated in its written statement to the inquiry that members were given an oral report supported by slides showing the applicant's comparison wireframe drawings of the original and alternative proposals from viewpoints 8 and 14. Although the committee minutes record points raised

in the discussion, the decision of the committee is recorded as follows: “The Committee agreed to maintain the Objection”.

1.81 The same day, the CNPA submitted a consultation response on the 2019 AI, which stated:

> “I can confirm that the Additional Information was considered at the Cairngorms National Park Authority Planning Committee of 24 January 2020 whereby the Committee resolved to MAINTAIN THE OBJECTION to the application. The reason for maintaining the objection is that the Committee consider that the proposed development is contrary to Policy 3.3 of the Cairngorms National Park Partnership Plan 2017-2022 due to the significant adverse effects on the Special Landscape Qualities (SLQs) of the Cairngorms National Park, in particular the dark skies special landscape quality as a result of aviation lighting, and the cumulative impacts of the development as a result of the scale and siting of the proposed development.”

1.82 The objection therefore provided a reason for the CNPA maintaining its objection, even though no reason was included in the committee’s resolution.

CNPA and the inquiry

1.83 Notwithstanding its purported objections, the CNPA indicated it did not wish to take part in the inquiry.

1.84 We wrote to the CNPA before the inquiry indicating that we would find it helpful if it would make a representative available at the inquiry to explain, in the context of the differences between the resolutions and the objections, how it had arrived at the terms of its objections, why it considered it was justified in doing so, and what evidence supported its consultation responses.

1.85 The CNPA was unwilling to give oral evidence at the inquiry on these matters. In response to a request for explanation of apparent inconsistencies between its objection and the terms of the resolution to object, it provided us with a written statement of its position.

The weight to be given to the purported objection to the original proposal dated 19 May 2019

1.86 With regard to the objection submitted in response to the EIAR in respect of the original proposal, the CNPA indicated in its written statement:

- The inclusion of a reference to policy 3.3 of the partnership plan in the objection reflected the context of the discussion and the policy background to it. This was in a context in which the park’s policy was well understood by planning-committee members, and was a common point round which the planning committee discuss the effects on the park of windfarms outside it.
- The dark-skies special landscape quality was only discussed in relation to aviation lighting because that was the only night-time lighting potentially relevant.
- The omission of the reference in the resolution to cumulative effects of the proposed development “extending the visual envelope of turbines round the park” was an error.

1.87 There is no explanation, though, of what legal authority officers had to draft an objection that was substantively different in its terms from that of the committee.

1.88 A response to a consultation on an application under the Electricity Act or to the related environmental impact assessment is a formal act of the CNPA as a statutory body.

Our understanding is that taking such formal acts is a matter for the CNPA through its board, unless it delegates the authority to do so. It is evident that the decision on responding to the consultation was delegated to the planning committee.

1.89 The action point arising from the committee's decision to object is stated in the minutes as "Officers to confirm the CNPA's objection to the proposed development to the Scottish Government Energy Consents Unit". There does not appear to be any authority contained in this action point for officers to amend the form of the objection the committee had agreed in its resolution. There is a delegation to officers in the committee's standing orders for routine operational decision-making. It does not appear to us that this delegated authority would apply to re-writing the committee's reasons for objection. No suggestion has been made to us that officers have acquired authority informally by practice of the CNPA. Since no satisfactory explanation has been given to us that would demonstrate they did have such authority, we consider it very likely that the CNPA objection submitted to the Energy Consents Unit was made without authority, in the form in which it was submitted. We therefore agree with the applicant that it should be treated as being without weight.

1.90 However, the applicant has provided us with the form of the resolution as made by the CNPA's planning committee. Although an objection in the form set out in the resolution was not made to the Scottish Government Energy Consents Unit, we nevertheless regard it as a material consideration of weight since it conveys the committee's intention to object and its reasons for doing so. We have also been provided with the paper put to the planning committee (CD3.7). Although this recommends not objecting, it does make findings of significant adverse landscape and visual effects from the proposed development in the park (a point disputed by the applicant). Similarly, although the CNPA's partnership plan (CD5.30) is not mentioned in the resolution, it is also material as the CNPA's stated policy and having been mentioned in the committee paper, and therefore as context to the resolution.

1.91 Even if we are wrong in this, the issues raised in the committee's resolution in respect of the adverse impact on the park and its special landscape qualities appear broadly to be the same as those raised by SNH and others. In view of this, we believe we are obliged to consider them in any case.

The weight to be given to the CNPA's purported objection to the alternative proposal dated 24 January 2020

1.92 The fact that no paper was put to the CNPA's planning committee on the 2019 AI (which described the alternative proposal) appears to us to be problematic. The planning committee's standing orders, provided with the CNPA's written statement, make a number of provisions as regards procedure before a meeting. These provisions include:

- meetings to brief the convenor and deputy convenor of the agenda,
- notice of the meeting seven days prior to its taking place, including notice to applicants, objectors and other representees to planning applications of committee meeting to determine the application in which they have an interest,
- that the agenda and papers will normally be sent to all board members seven days before each committee,
- officers will give an oral summary to members at the meeting of representations made before the meeting that are, in their opinion, of material significance.

1.93 Since the committee's decision on the consultation response to the 2019 AI was made under "any other business", it appears unlikely to us that any of these steps would have been taken.

1.94 CNPA's written statement claims that a consultation response does not require a written paper to be put to the committee because the standing orders do not require it. In fact, the standing orders make no reference to consultation responses. CNPA had a formal role in responding to the consultation on the 2019 AI. The role (delegated to the planning committee) involved a decision to object or not to object, and give planning reasons for doing so. Although the committee's standing orders are expressed in general terms about its business, they refer in places to applications for planning permission. An application under section 36 of the Electricity Act is for development consent that incorporates deemed planning permission. The outcome of consultation is binary, similar to a decision on a planning application. In the absence of any specific reference in standing orders to consultation on section 36 applications, it appears to us that the best interpretation of the standing orders is that such a consultation should be treated in the same way as an application for planning permission before the committee. This would seem to be confirmed by the fact that that was the approach taken in respect of the consultation on the original proposal (as described in the EIAR).

1.95 The CNPA's written statement also says that the reason a paper was not prepared for the planning committee was that it was not possible to do so before the committee date and the response deadline. This statement does not seem wholly consistent with the claim that a paper was not required. While we recognise the CNPA might have had difficulties in responding by the deadline, it did not ask us for an extension to that deadline (as is common practice where such difficulties arise and as Moray Council and others did).

1.96 There is no reference in the CNPA's statement to board members having the opportunity before the meeting to consider the 2019 AI. The written statement says there was an oral presentation from officers at the meeting and board members were shown slides of the comparative effect of the alternative proposal described in the 2019 AI at two viewpoints. Even so, since there was apparently no notice to members of the consultation response being considered at the meeting, no paper considering and making recommendations on the 2019 AI, and apparently no opportunity for members first to review the 2019 AI in advance of the meeting, we have some significant doubts that board members could have been sufficiently informed to take such a decision. Furthermore, parties with an interest in the CNPA's response to the consultation would not have been informed of the meeting and would not have had the opportunity to raise relevant matters with the CNPA's officers, who might then have then raised with the board issues they considered of material significance in those representations.

1.97 The resolution was made without giving a planning reason (which appears to us contrary to the board's standing orders). Since the resolution was made in terms that the committee maintained its objection, we are not wholly surprised that officers interpreted it to mean that the objection to the alternative proposal was to be in the same terms as that to the original proposal. Nonetheless, we do not consider such an interpretation was for officers to make, or not at least without stating the context in the objection submitted. There are some obvious problems with the interpretation: the oral advice of officers (which was apparently all the information the planning committee had to go on) was that the alternative proposal "would not impact on the features of the Dark Skies project". It is consequently difficult to see how the committee could have formulated a reason for objection of which the effect on the dark-skies special landscape quality of the park could have formed part.

1.98 Consequently, we find that no weight should be given to the purported CNPA consultation response to the 2019 AI.

1.99 Points discussed by the CNPA's committee in respect of the 2019 AI are recorded in paragraph 25 of the minutes of the meeting. These generally confirm that the committee

felt uninformed about the 2019 AI and the alternative proposal it described. While these comments are not wholly to be disregarded, we consider that the weight to be given to them is no more than should be accorded to comments and questions made on the basis of the limited information the committee had received. Consequently we consider they have little weight.

1.100 SNH provided a written response to the 2019 AI raising issues in respect of the alternative proposal's landscape and visual effects on the park. We consider, consequently, that these issues are before us and we must consider them, notwithstanding our view of the CNPA's purported objection.

The applicant's request for a finding of unreasonable behaviour

1.101 The applicant has asked us to make a finding of unreasonable behaviour on the part of the CNPA. We do not consider such a finding would be relevant to Ministers' decision on the application. No other application was made before the end of the inquiry to which such a finding would have been relevant. Consequently, we decline to make such a finding.

The inquiry process

1.102 Since Moray Council, as planning authority for the area in which the development was proposed, had objected, the holding of a public inquiry was a legal requirement.

1.103 Following the receipt of the case by the Scottish Government's Planning and Environmental Appeals Division (DPEA) for the arrangement of an inquiry, DPEA sent a letter to all parties who had previously commented on the application. This explained that the case had been transferred to the DPEA and invited parties to confirm if they wished to have any further involvement in the public-inquiry process.

1.104 We were appointed to hold the inquiry into the proposed development and also into the application for the Clash Gour windfarm. We held a pre-inquiry meeting in respect of both applications on 6 February 2020 at the Fleming Hall, Aberlour. At that meeting, we made arrangements to hold an inquiry into both applications commencing on 20 May 2020. We issued a note of the meeting setting out inquiry procedure. Annex 4 of that note included the arrangements we made for the conduct of the inquiry.

1.105 Following the meeting, we also sought a formal direction from Ministers on whether the inquiries into the proposed development and Clash Gour should be conjoined. Ministers issued a direction that they should be conjoined on 10 March 2020.

1.106 The onset of the coronavirus pandemic and the measures to restrict its spread made it impracticable to hold the inquiry commencing on 20 May 2020. We therefore cancelled the inquiry.

1.107 We subsequently held a video conference with parties on 2 June 2020. Since several parties were opposed to holding the inquiry by video conference, we agreed at that meeting to set a date of 1 September 2020 for an in-person inquiry, and to review progress towards it at a further video conference on 22 July 2020. We issued a note of the meeting subsequently.

1.108 At the meeting of 22 July 2020, we agreed to proceed with an in-person inquiry on 1 September 2020. We determined that the inquiry should be held at the Macdonald Hotels in Aviemore, for the reason that they were able to provide a venue that was large enough for physical distancing of attendees and already had a risk assessment for Covid-

19 and relevant procedures in place for handling meetings. We issued a note of that meeting subsequently.

1.109 We consulted parties on a set of rules for conduct of the inquiry to minimise the risk of transmission of Covid-19. We subsequently relaxed the requirement for attendees, when sitting in their places, physically distanced at the inquiry, to wear masks.

1.110 In these rules, we introduced restrictions both on the public being in the inquiry hall and on the number of attendees from the parties. There were two reasons to do so: first, because the Scottish Government guidance required that numbers at a meeting should be kept to a minimum; second, because the venue's health and safety risk assessment limited the number of attendees in the inquiry hall to 30.

1.111 We took a number of steps to ensure that the public could have access to the inquiry proceedings and could contribute:

- webcasting the inquiry live and retaining the record of the webcast for subsequent viewing,
- giving members of the public an opportunity to make a written submission on matters dealt with in evidence to the inquiry, and
- giving members of the public the opportunity to say why they should attend the inquiry in person – if given a reason, we undertook to consider whether to admit individuals.

1.112 When we advertised the inquiry, we stated in the advertisement that anyone wishing to attend the inquiry in person would be required to make a request to do so in advance of the inquiry stating their reasons for attending in person and the dates on which they wished to attend. This was as a measure to prevent transmission of the coronavirus. The advertisement gave a link to the webcast, mentioned the opportunity to make written submissions, and also to apply to us giving a reason why they should attend in person. We also wrote in similar terms to all those who had objected to the two applications.

1.113 Save Wild Moray expressed concerns at our holding an inquiry subject to such arrangements. It argued that we should have postponed the inquiry until the coronavirus pandemic had been supressed. In our view, though, it was in the public interest that we should make progress with the inquiry so that ministers could reach a decision on the application. It is also our view that the measures we put in place allowed at least an equivalent opportunity for participation for members of the public as they would have had at any in-person public inquiry.

1.114 We received correspondence from several members of the public at the beginning of the inquiry, expressing concerns about the public being excluded from the inquiry. We responded again to this correspondence, setting out the opportunities for the public to watch, comment and attend in person. In the event, only one member of the public wrote to us to ask to attend the inquiry in person (a request we agreed to), but ultimately no member of the public actually did attend. At the end of the inquiry, 47 written submissions were made.

1.115 The inquiry commenced on 1 September 2020 and ran for three weeks. The inquiry programme was managed by an independent programme officer, Helen Wilson. She updated the programme in the course of the inquiry:

- Inquiry programme issued 26 August 2020
- Inquiry programme issued 2 September 2020
- Inquiry programme issued 8 September 2020

1.116 The programme officer along with the DPEA case officer also coordinated the compiling of a core document list during the inquiry. The core document list has since been updated by the DPEA to include documents received after the close of the inquiry (a weblink to the core document list is included in appendix 5 to this report).

1.117 The webcast of the inquiry is available under the reference WIN-300-4 & 5 on the DPEA webcasting site.

CHAPTER 2: LEGISLATIVE AND POLICY CONTEXT

Introduction

2.1 Key documents:-

- Applicant witness inquiry report (David Bell)
- Applicant witness precognition (David Bell)
- Applicant response to January procedure notice
- Applicant further policy submission and errata
- Applicant response to North Lowther decision
- Applicant response to November procedure notice
- Moray Council Inquiry Report and appendix (Gary Templeton)
- Precognition (Gary Templeton)
- Supplementary precognition (Gary Templeton)
- Moray Council response to January procedure notice
- Moray Council comments on North Lowther decision
- Moray Council response to November procedure notice
- Save Wild Moray Inquiry Report (Ian Kelly)
- Save Wild Moray precognition (Ian Kelly)
- Save Wild Moray response to November procedure notice
- Speyside Community Council Inquiry report
- Speyside Community Council response to January procedure notice
- Speyside Community Council response to November procedure notice

Inquiry procedure

2.2 We heard the evidence of parties at the inquiry on the legislative and policy context of Ministers' decision.

2.3 On 5 January 2021, we issued a procedure notice inviting parties' views on the effect of a number of documents published after the close of the inquiry on their respective case. Moray Council subsequently made submissions on Ministers' decision on the application for the North Lowther windfarm. We invited the applicants to comment on the council's submissions.

2.4 On 12 November 2021, we issued a second procedure notice, again inviting parties' views on the effect of several further documents that had been published since the previous procedure notice.

Legal framework

2.5 Section 36 of the Electricity Act 1989 (the 1989 Act) provides that the construction or operation of a generating station whose capacity exceeds 50 MW may only be undertaken in accordance with a consent granted by the Scottish Ministers. Schedule 8(2) of the 1989 Act requires the Scottish Ministers to serve notice of any section 36 application on the relevant planning authority. Where the planning authority objects to the application, Ministers are obliged to hold a public inquiry and to consider the objection and the report of the inquiry before deciding whether to give consent.

2.6 Schedule 9 paragraph 3 of the 1989 Act requires the Scottish Ministers, in taking a decision on an application under section 36, to have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of

special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. The Scottish Ministers are also, in making their determination of the application, to avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

2.7 The Climate Change (Scotland) Act 2009 section 44 places the duty on Scottish Ministers, in the exercise of their functions, to act in the way best calculated to contribute to the delivery of statutory targets for reduction of greenhouse-gas emissions, to act in the way best calculated to help deliver the programme for adaptation to climate change laid before Parliament, and to act in a way that they consider most sustainable. The statutory targets have been updated by the Climate Change (Emissions Reductions Targets) (Scotland) Act 2019. The revised targets are a target for 75% reduction in greenhouse-gas emissions by 2030 and a target of net-zero emissions by 2045.

2.8 The Scottish Ministers, on granting consent under section 36 of the Electricity Act 1989 for an operation that constitutes development, may also direct, under section 57(2) of the Town and Country Planning (Scotland) Act 1997, that planning permission for that development is deemed to be granted.

2.9 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 require that Scottish Ministers' decision notices provide, amongst other things, a reasoned conclusion on the significant effects of the development on the environment. In the event that consent is to be granted the decision should also state that the reasoned conclusion on significant effects is up to date.

Agreed matters

2.10 The council and applicant agreed a number of matters in respect of policy (CD20.3). We set out key points of their agreement here.

National planning policy

2.11 The parties agreed relevant parts of the third National Planning Framework (NPF3) and Scottish Planning Policy (SPP), which we discuss in our reasoning below.

Climate change and renewable energy

2.12 The parties agreed on the relevance of a list of policy documents relating to climate change and reduction of greenhouse-gas emissions and the promotion of renewable energy. They agreed

- the seriousness of climate change and its potential effects.
- the seriousness of the need to cut carbon-dioxide emissions.
- the seriousness of the Scottish Government's intentions regarding the deployment of renewable-energy generation.
- that the Scottish Government's 100% renewable-electricity target for 2020 is not a cap.
- that the *Scottish Energy Strategy* (SES) sets a new 2030 target for the equivalent of 50% of Scotland's heat, transport and electricity consumption to be supplied from renewable sources, and that the *Onshore Wind Policy Statement* (OWPS) notes that to meet this target Scotland will continue to need more onshore wind development and capacity.
- that the United Kingdom renewable-electricity targets are also of relevance.

- that the Scottish and UK governments are promoting a wide range of measures to tackle climate change.
- that there is no renewable-energy target for Moray.

2.13 They expressly did not agree on two points:
- the council considered that there are only very limited further opportunities for large-scale windfarms in Moray and that Moray already provides a significant contribution of renewable energy from onshore windfarms. The applicant disagrees.
- the council considered that the *Scottish Government's Programme for Government 2019-2020* did not prioritise onshore windfarms over other renewable technologies. It considered that it was pursuing a wide range of actions to reduce emissions and address climate change.

Status of the development plan

2.14 Parties agreed that in an application under section 36 of the Electricity Act 1989, the development plan does not have primacy in consideration of the application, but carries weight in the decision-making process.

Main points for the applicant

Electricity Act 1989

2.15 The duty of the Scottish Ministers is not to preserve the qualities of the environmental assets listed in paragraph 3(1) of Schedule 9, but to have regard to the desirability of doing so. The EIAR and subsequent information have addressed all of the matters covered in Schedule 9 and consider the extent to which the effects of the proposed development can be mitigated. Sufficient information has been provided to enable the Scottish Ministers to discharge their duties under Schedule 9.

National Planning Policy

2.16 Both NPF3 and SPP, published in 2014, strongly support renewable energy and delivery of development to meet renewable-energy targets. They recognise the significant energy resource provided by onshore wind.

2.17 NPF3 provides high-level support for renewables through its vision that Scotland should be a low-carbon place. It refers to the aim, now superseded, to achieve an 80% reduction in greenhouse-gas emissions by 2050 and the target of generating the equivalent of 30% overall energy demand from renewables by 2020. It supports diversification of Scotland's generation capacity and indicates onshore wind will continue to make a significant contribution to diversification of energy supplies. The proposed development is consistent with the NPF3 aims of low-carbon generation and diversification of supply.

2.18 SPP also refers to superseded targets for renewables and reduction of greenhouse-gas emissions. SPP seeks sustainable economic growth which it says is key to unlocking Scotland's potential and achieving a low-carbon economy. The proposed development would be consistent with these policies.

2.19 SPP provides a spatial framework in which land is separated into three groups depending on the degree of protection to be accorded. The application site can be regarded as a group-3 location in which wind farms are likely to be acceptable subject to detailed assessment. The site is partly mapped as being outside the group-3 area. This is because part of the site is mapped as being subject to deep-peat constraints. However,

since those constraints have been resolved, previous Ministerial decisions indicate it is to be treated as group 3.

2.20 The detailed consideration should take account of the criteria at paragraph 169 of SPP with regard to specific circumstances of the site and the approach to design. The EIAR and 2019 AI demonstrate that the proposed development is acceptable in terms of the paragraph-169 criteria. Although the proposed development would have significant adverse effects on landscape, SNH has advised that most planning authorities should assume there will be a future level of landscape change within some of their areas from wind turbines (CD7.13).

2.21 The proposal is the right development in the right place (paragraph 28 of SPP) and the development is in accordance with the guiding principles in paragraph 29 of SPP and the desired SPP 'outcomes'. The 'tilted balance' in paragraph 33 of SPP is no more than an expression of the planning balance in a context where the development plan has primacy. It adds no extra weight to the presumption where it is engaged. However, the proposed development would contribute to sustainable development and following consideration of the principles in paragraph 29 of SPP and the desired SPP 'outcomes' the proposal should benefit from the presumption.

The renewable-energy policy framework

2.22 There are a number of considerations that were not in place when the current national planning policy in the SPP and NPF3 were adopted.

2.23 The Paris Agreement (2015) emphasised the need to keep the rise in global average temperature well below two degrees celsius from pre-industrial levels and for parties to seek to limit the temperature increase to 1.5 degrees. It stated that parties should aim to reach a global peaking of greenhouse-gas emissions as soon as possible. By 2018, the UK had not come near to achieving its EU obligation that 15% of all energy consumed in the UK should come from renewable sources by 2020. The target still applies. In 2019 the United Nations Environment Programme's *Gap Report* found a larger-than-ever gap between emissions and what was required to limit the increase to 1.5 degrees. It found a continuation of current policies would lead to a global mean-temperature rise of 3.4 to 3.7 degrees. It referred to the need for unprecedented and immediate action, including energy transition involving electrification.

2.24 In June 2019, the UK passed legislation under the Climate Change Act 2008 committing to a 100% reduction in greenhouse-gas emissions, following a recommendation by the Committee on Climate Change (CCC) in *Net Zero – UK's Contribution to Stopping Global Warming*. The target and carbon budget required to be adopted in accordance with the Act represent the UK Government's policy for meeting the UK's commitments under the Paris Agreement. The CCC's *Progress Report to Parliament* published the same year found a substantial gap between current plans and future requirements to meet the target, and a greater shortfall in action. The Department for Business, Energy and Industrial Strategy's consultation on amendments to the contract for difference scheme for low-carbon electricity generation published in March 2019 indicated an increase in ambition was required to meet the target, that renewables would play a key role and that the UK could require four times the amount of renewable energy from levels at that time.

2.25 The CCC's *Progress Report to Parliament* of June 2020 found that the previous year had not seen the progress envisaged in its 2019 report. It recommended accelerated electrification and use of low-carbon investment to restore economic growth, and further

that the devolved administrations should encourage renewable energy by various means, including a favourable planning regime for low-cost onshore wind.

2.26 The National Audit Office's report, *Achieving Net Zero*, published in December 2020 finds that for the UK government to meet its commitment of net zero by 2050 under the Paris Agreement would be a colossal challenge, considerably greater than achieving an 80% emissions reduction, the previous target. The report finds wide-ranging changes across society and the economy are required at a pace that leaves little room for delay.

2.27 The CCC's *Sixth Carbon Budget* published in December 2020 makes recommendations for a budget running from 2033 to 2037. It recommends emissions reductions of 78% by 2035 and 68% by 2030, a world-leading commitment, providing a trajectory consistent with the Paris Agreement. Well over half the emissions reductions required to 2050 would be achieved over the next 15 years. The targets cannot be met without strong policy action in Scotland. Electricity demand is likely to rise by half to 2035 and double or treble to 2050. Faster deployment of renewables is required. Almost doubling onshore wind capacity to 20 to 30 GW by 2050 is required in all its modelled scenarios to achieve the target. The opportunity for low-carbon investment would be a benefit.

2.28 The UK Energy White Paper, *Powering Our Net Zero Future*, also published in December 2020 confirms the prediction of a doubling in electricity demand to 2050. It sets out that onshore wind and solar will be key building blocks of the future generation mix, along with offshore wind, and that sustained growth in the capacity of these sectors is required to achieve net zero emissions.

2.29 The call for evidence for the *UK's Energy and Industrial Strategy – Enabling a High-Renewable, Net-Zero Electricity System*, also published in December 2020 (though as a consultation of limited weight) refers to the unprecedented levels of investment in renewable technologies required, and refers to wind and solar as now the cheapest way of generating power on a large scale. It also refers to investment in these technologies as a means of recovery.

2.30 The UK Government's *Net-Zero Strategy: Build Back Greener*, published in October 2021, represents the UK's formal strategy for meeting its commitments under the Paris Agreement. It aims for more onshore wind, solar and other renewables, to accelerate deployment of low-cost renewables, and to create new jobs in net-zero industries. One of its key commitments is to accelerate deployment of low-cost renewable generation, such as wind and solar using Contract for Difference auctions. It indicates that all electricity should come from low-carbon sources by 2035 (an acceleration from the 2020 Energy White Paper) while meeting a 40 to 60% increase in demand. The Rothes III grid-connection date of 2025 would allow it to contribute to delivery of low-cost energy by 2030. It is consistent with the *Net-Zero Strategy*.

2.31 Although energy policy is reserved, the Scottish Government has an important role in the attainment of UK and European targets.

2.32 The *Scottish Energy Strategy* (2017) recognised onshore wind as a key contributor to the delivery of renewable-energy targets, specifically the new target for 50% of all energy from renewable sources by 2030 which could see renewable electricity rise to over 140% of Scottish electricity consumption. This may require in the region of 17GW of installed renewables capacity by 2030 and does not take account of what may be required in terms of additional renewable generation capacity to attain the new legally binding net-zero targets. The government's 2020 renewable-electricity target remains unmet and has been

supplemented by these new stretching emission-reduction targets. The targets are incorporated in the Scottish Government's *Climate Change Plan* (2018).

2.33 The *Onshore Wind Policy Statement* (2017) recognised that onshore wind is to play a vital role in meeting Scotland's energy needs, a material role in growing the economy and that the technology remains crucial in terms of Scotland's goals for an overall decarbonised energy system to attain ambitious renewable targets for 2020, 2030 and 2045. The increased importance of the contribution that onshore wind is expected to make to targets and meeting future energy needs should be afforded substantial weight. It also makes specific reference to the move "… towards larger and more powerful (i.e. higher capacity) turbines and that these by necessity will mean taller towers and blade tip heights".

2.34 The First Minister declared a climate emergency in April 2019. It gives rise to an urgent need for action. Decisions through the planning system must be responsive to this position. It is highly material in planning determinations. It also goes to the weight to be attributed to benefits and the need case for the proposed development. The subsequent *Programme for Government 2019* again acknowledged the climate emergency. It committed to early action to accelerate the journey to net zero. The fourth national planning framework was to help radically accelerate reduction of emissions.

2.35 Following the declaration, the Scottish Parliament adopted more ambitious emissions-reduction targets in the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019. These targets are a consideration for Ministers. They are to be exceeded, not just aspired to, requiring very substantial increases in renewable generation.

2.36 The CCC provided the Scottish Government with advice in May 2020 on economic recovery from the Covid-19 pandemic, referencing the benefits of investment in low carbon infrastructure, the requirement to take action at home for the sake of the UK's and Scotland's credibility as host of COP26, and recommending acceleration of infrastructure projects including for onshore wind. A number of other publications in 2020 set out the economic benefits of low-carbon investment, including evidence given by Scottish Renewables to the House of Commons Scottish Affairs Committee and the report of the *Scottish Government's Advisory Group of Economic Recovery*. The *Climate Emergency Response Group* among the four priority strategies it advised was to unlock private investment with greater policy certainty, including by updating planning policy to enable new and existing onshore wind planning consents and enhance competitiveness of Scottish projects to secure a high share of the Contract for Difference.

2.37 The Scottish Government's *Update to the Climate Change Plan (2018-2032) Securing a Green Recovery on a Path to Net Zero* envisages decarbonisation across the whole energy system. It sets the target of generating the equivalent of 50% of Scottish energy demand for heat, transport and electricity from renewable sources by 2030 and envisages a combination of renewable electricity with green hydrogen production. The substantial increase in renewable generation would be particularly from offshore and onshore wind. It envisages the development of between 11 and 15 giga-watts of new capacity to 2032 to achieve the aim of decarbonising transport and heating energy demand and address the consequent growth in electricity demand.

2.38 The Scottish Government's *Programme for Government 2021* indicates that NPF4 will actively enable renewable energy, supporting repowering of existing windfarms, and sets out a commitment to securing between 8 and 12 gigawatts of installed onshore wind by 2030. The draft OWPS update confirms that the target is for onshore-wind capacity. The Rothes III proposal is fully consistent with the Government's programme, and this should be accorded weight in the decision-making balance.

2.39 The *Onshore Wind Policy Statement Refresh 2021: Consultative Draft* notes onshore wind's role in addressing the likely increasing demand for electricity alongside the need to decarbonise the system and meeting the 2030 targets, economic opportunities from onshore wind and increased public support. It acknowledges that increased turbine tip heights result in efficiencies in generation, and that while Scotland's most cherished landscapes should be afforded protection, the decisive action required to meet legal obligations will change how Scotland looks. While the exact target figure for increase in onshore wind by 2030 is to be consulted on, it would seem the minimum contemplated is a doubling of existing installed capacity. The document is consistent with UK policy. Though a draft, it indicates the Government's direction of travel.

2.40 Part 1 and 2 of the *draft Fourth National Planning Framework (NPF4)* establish a positive framework for promotion of renewable-energy generation. Renewable developments of 50 MW or more are treated as national developments, and therefore as having the principle of them agreed. This is set in the context of the large increase in renewable generation required to meet emissions targets. Part 3 sets out national planning policies. Relevant policies include:

- Policy 2(a) which places significant weight on the Global Climate Emergency in considering all development proposals,
- Policy 3 which requires biodiversity enhancement should be included as part of a development,
- Policy 19 on green energy. This provides support in principle for all forms of renewable energy and enabling works. It indicates that proposals for repowering, extending or expanding existing windfarms are to be supported unless impacts are unacceptable. The spatial approach in SPP table 1 is replaced by an approach whereby other than in national parks and national scenic areas new windfarm proposals will be supported unless the impacts are unacceptable. There is a list of indicative criteria to take into account, similar to that in SPP paragraph 169. There is no requirement, though, for the decision-maker to consider strategic landscape capacity and no longer a requirement to rely on the carbon calculator to assess impacts on carbon-rich soils.

2.41 The proposed development is not in a national park or national scenic area. It has no issues arising in respect of effects on settlements, residential amenity, scheduled monuments or designated paths, and offers biodiversity enhancement. Aviation lighting issues have been addressed. Of the windfarm sites of greatest cumulative concern to Moray Council, Hunt Hill will not be developed and Meikle Hill is unlikely to be developed. There would be positive socio-economic effects. No aspect of the proposed development would be unacceptable. It draws support from the draft NPF4.

2.42 Although a draft, the document confirms the direction of travel foreshadowed in the OWPS (2017), the SES (2017) and the draft OWPS refresh. The thrust of policy is unlikely to change on adoption, even if details are adjusted. There is a recognition of the need for urgent action and for weight to be given to the climate emergency and for energy policy to provide for further electricity-generation capacity including onshore wind. The proposed development would be treated as of national importance under the draft policy's approach. It is therefore not only aligned with existing policy, but also emerging policy.

Development Plan

2.43 Moray Council's objection was made by reference to the now-superseded Moray Local Development Plan 2015. The 2020 LDP is now the adopted plan and the application should be assessed in terms of that plan.

2.44 In terms of DP9, the key renewable-energy policy of the 2020 LDP, no effects would arise that are considered unacceptable, individually or cumulatively, with other developments.

2.45 The applicant's evidence indicates that the landscape and visual effects are acceptable. This includes the effect of aviation lighting, now reduced to a requirement to light eight turbines in the original proposal and five turbines in the alternative proposal. There would be minimal effect of turbine lighting on the Cairngorms National Park. There would not be an overbearing effect on the amenity of settlements or residences. The applicant has also produced evidence that effects on peat, ornithology and transport would be acceptable. In terms of the other matters referenced in the policy, such as aviation and defence constraints, the natural and historic environment, cultural heritage, biodiversity, forest and woodlands, and tourist and recreational interests, there are no issues arising, although some matters such as recreational routes have an overlap with landscape and visual considerations.

2.46 The alternative proposal reduces the landscape and visual and other environmental effects as compared with the original proposal.

2.47 There would be no conflict with policies PP2: Sustainable Economic Growth; DP5: Business and Industry; EP3: Special Landscape Areas and Landscape Character; PP3: Infrastructure and Services; and DP1: Development Principles.

2.48 Both proposals accord with the development plan when it is read as whole, insofar as this is a relevant matter in a section 36 case.

Supplementary guidance

2.49 The Moray Onshore Wind Energy Supplementary Guidance (MOWE) was formerly part of the 2015 LDP. It lapsed as part of the development plan with that LDP. The re-adopted version now subsists as a material consideration. The proposed development is consistent with the guidance and advice in the council's supplementary guidance and the Moray Wind Energy Landscape Capacity Study (MWELCS – CD5.6) in relation to windfarm extensions. The applicant's evidence is that the proposed development accords to a significant degree with the guidance in MWELCS. This is an important planning consideration.

Cairngorms National Park

2.50 The Cairngorms National Park Authority's planning committee objected to the proposed development contrary to their officer's recommendation. The purported objection submitted by the National Park Authority was in different terms from the committee's resolution. The officer's report found that the proposed development would not have a significant adverse effect on landscape character in the park or on its special landscape qualities, given the distance involved, the topography and context that the proposed development would be in the Moray uplands rather than in a landscape character contiguous with that of the park.

2.51 The applicant's evidence, set out in section 10 of Mr Denney's inquiry report (see chapter 3), is also that the proposed development would not have a significant adverse effect on the landscape character or special landscape qualities of the park.

2.52 The *Cairngorms National Park Partnership Plan 2017-2022* is not a planning policy document and therefore does not contain specific development-management tests. Due to the proximity to the park boundary, however, the plan is a relevant material consideration. Policies 1.3 and 3.3 are of most relevance.

2.53 As regards policy 1.3, the effects on the park would be highly localised and of a limited geographical extent. The conservation of the park's wildness qualities would not be undermined, and the proposed development would not unacceptably affect dark skies for the reasons set out in the context of Policy DP9.

2.54 Policy 3.3 supports development of a low-carbon economy. It indicates that large-scale wind turbines outside the park that significantly adversely affect its landscape character or special landscape qualities are not appropriate. The reference to "significantly adversely affect" in the policy should not be taken as synonymous with an effect that is significant in terms of environmental impact assessment. The planning judgement required as regards acceptability of effects should take account of the SPP policy tests in relation to national parks at paragraph 212. It is accepted that effects significant in EIA terms will arise with large-scale onshore wind. There would be no compromise of objectives of designation or the overall integrity of the area. The benefits of the proposed development should be taken into account in considering acceptability, as set out in the SPP (even though there is no express requirement for such a balance in policy 3.3). The Reporter's conclusions on the Dorenell wind farm appeal (CD11.3) are referenced in that SPP clearly advises that wind farms are not acceptable in national parks, but there is no specific recognition of locations in proximity to national parks.

2.55 Overall, the relationship of the proposed development to the national park is considered to be acceptable.

Benefits of the proposed development

2.56 The original proposal would have an installed capacity of up to 137.4 MW and the alternative proposal a capacity of up to 116.8 MW. The original proposal would result in savings of 4,768,032 tonnes of carbon dioxide over its 35-year lifespan and the alternative proposal 3,927,488 tonnes. The proposed development would contribute to attainment of the UK's and Scottish Government's targets for renewable-energy generation and emissions reduction. It would operate without subsidy and would involve capital investment of £171.25 million, would generate employment as described in the applicant's evidence on socio-economics, and a series of habitat-enhancement and restoration measures. It would also provide community-benefit payments (though these are acknowledged not to be a material consideration), a shared-ownership opportunity, and an opportunity for a strategic approach to coordinate funding with other windfarms and so maximise local benefits in terms of employment, training and community infrastructure. The economic benefits are of particular importance for recovery from the recession in Scotland and the UK.

Planning balance

2.57 Addressing the climate emergency creates a growing urgency of need for more renewable-energy capacity. It is critical to the attainment of legally binding targets for both Scotland and the UK. The Scottish Government is following the recommendations of the CCC for an urgent and radical shift in policies, and that the climate emergency should be a

material consideration in renewable-energy development. Established policy in the Scottish Government's Update to the Climate Change Plan is clear that there needs to be a substantial increase in renewable generation, particularly through new offshore and onshore wind. NPF4 will be vital in supporting delivery of net zero by 2045 and significant progress must be made by 2030. Onshore wind is the key technology the government wishes to see delivered faster, especially this decade. The planning system is a critical enabler.

2.58 The renewable-energy policy framework is a very important consideration and one that should attract very significant weight in the balance of factors in the determination of the application. The need case with regard to renewable generation and emissions reduction targets in NPF3 and SPP are now dated. Both are under review and have to a large extent been overtaken by new statutory provisions on renewable-energy targets and greenhouse-gas-emissions reductions. Since SPP was published there has been a shift from the move to the "low-carbon economy": instead, the move is more ambitious – to a net-zero economy and society. Significant weight should be given to the recent net-zero-related pronouncements and to the updated emissions targets. There cannot be business as usual in the context of the Climate Emergency. The need case for the proposed development has shifted the pivot of the balance.

2.59 The reporters in the Millenderdale appeal and in the Paul's Hill II section 36 decision considered it was important to take into account the new energy policy that had emerged since the SPP's adoption. This justifies giving increased weight to the benefits of the Rothes III proposal. The need case must be accorded very substantial weight in the planning balance. While need must be balanced against environmental considerations, the limited impacts of the proposed development are outweighed by the scale of benefits that would result.

2.60 The original proposal is acceptable and permission should be granted for it. The additional information offers an alternative if the original proposal is not considered acceptable.

Main points for Moray Council

Legislative framework

2.61 The applicant has a duty under schedule 9 of the Electricity Act to have regard to a number of considerations including preserving natural beauty and to mitigate a proposal's effects on it. Ministers have a duty to have regard to these considerations too. This is relevant to the application's determination.

National planning policy

2.62 NPF3, as the spatial expression of the Scottish Government's economic strategy, sets out a vision of how Scotland should evolve over the next 20 to 30 years. Among the outcomes sought are that Scotland should be a low-carbon place and a natural, resilient place. As regards the former outcome, it identifies that electricity generation from onshore wind farms has a role to play in reaching greenhouse-gas-emission targets but it also refers to a number of other renewable resources for the generation of electricity such as hydropower, offshore wind and marine-energy technologies which take advantage of tidal and wave resources. It concludes that in time, it is expected that the pace of onshore wind energy will be overtaken by a growing focus on the country's significant marine energy opportunities including wind, wave and tidal energy. Paragraph 3.7 of NPF3 refers to wind energy development as being "part of the renewable-energy mix" and paragraph 3.9 refers

to meeting the energy targets through diversification. It refers to other means of reducing carbon emissions. NPF3 also places value on Scotland's landscapes and seeks to strike a balance between protecting them and enabling change in a sustainable way.

2.63 SPP's presumption in favour of development that contributes to sustainable development is recognised, but SPP paragraph 28 specifically confirms that the "aim is to achieve the right development in the right place; it is not to allow development at any cost". The proposed development is not the right development in the right place.

2.64 Factors set out in SPP paragraph 29 – net economic benefit, delivery of infrastructure, including energy, climate-change mitigation and adaptation, protecting and enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment - should be given due weight in the planning balance in decision-making. The council's approach reflects the need for a "planning balance" and the number of windfarm projects consented by Moray Council reflects the positive approach taken.

2.65 Paragraph 161 of SPP requires planning authorities to identify areas that are most likely to be appropriate for onshore wind farms and to set out criteria that will be considered in deciding all applications. This is a broad-brush approach which results in 38.7% of the LDP area being identified as most likely to be appropriate for wind energy, subject to detailed consideration.

2.66 Paragraph 162 of SPP requires planning authorities to identify "areas where there is strategic capacity for wind farms, and areas with the greatest potential for wind development". The Rothes III proposal has some turbines located within the SPP "areas with potential". Most of the turbines in the western part of the layout, however, lie outwith the areas with the greatest potential identified in supplementary guidance.

2.67 Paragraph 169 states that proposals for energy-infrastructure developments should always take account of spatial frameworks for wind farms. It also states that considerations will vary relative to the scale of the proposal and area characteristics, but they are likely to include:- net economic impact; the scale of contribution to renewable energy generation targets; cumulative impacts and whether the existing and consented developments may limit the scope for further development; landscape and visual impacts; and impacts on tourism and recreation. Paragraph 170 confirms windfarm sites should be suitable in perpetuity. Paragraph 196 requires the identification and appropriate protection of areas important to the natural environment, including the landscape.

<u>Policy on energy and climate change</u>

2.68 The *Scottish Energy Strategy* sets targets for a 30% increase in the productivity of energy use in the Scottish economy and for the equivalent of 50% of energy demand for Scotland's heat, transport and electricity consumption to be met from renewable sources. Onshore wind is just one option for meeting these targets. The strategy for onshore wind states that it should be the right development in the right place based on case-by-case assessment and should be compatible with Scotland's landscapes. The Onshore Wind Policy Statement, although it states that onshore wind will continue to play a vital role in efforts to decarbonise electricity supplies, also states that development should strike the right balance between environmental impacts, local benefits and (where appropriate) economic benefits from community ownership. No target is set for development of onshore-wind generating capacity.

2.69 The Scottish Government's *Climate Change Plan* discusses a wide range of means for reducing carbon emissions. It recognises the importance of Scotland's natural capital, which it notes is vital to the Scottish tourist industry.

2.70 The *Environment Strategy for Scotland* (February 2020) recognises Scotland's natural environment as its greatest national asset. It refers to Scotland's unique, awe-inspiring landscapes and their importance to tourism. It also refers to nature-based means such as forestry planting and peat restoration to reduce emissions.

2.71 This was demonstrated in the 2019 *Programme for Government*. No reference to onshore wind was made in that programme. Although national targets have been set for reducing greenhouse-gas emissions, no regional targets have been set.

2.72 The Scottish Government's approach is therefore based on taking action across a wide range of subject matters, including multiple forms of renewable-energy generation, reducing emissions from buildings and transportation, and encouraging woodlands, biodiversity, waste reduction and sustainable re-use of land. It is not an all-our-eggs-in-one-basket approach.

2.73 No weight should be placed on the *Position Statement on Scotland's Fourth National Planning Framework*. It says itself it is not policy and that the final content of NPF4 will be determined following consultation, consideration and approval by Parliament. It is plain from the statement that the Scottish Government is encouraging a diverse approach to meeting emissions-reduction targets. It indicates the view that renewable-energy development should be appropriately located and that site-specific assessment is required. This is demonstrated on page 3, point 8, which refers to repowering and extension of existing windfarms as being one of a number of potential initiatives for renewable-energy generation.

2.74 The *update to Scotland's Climate Change Plan* does not focus solely on electricity generation to achieve net zero. As regards electricity generation, it does not focus solely on onshore wind. Policy includes support for new technologies and for offshore wind.

2.75 The council fully supports the Scottish Government's ambition to address climate change and, as part of this approach, the need to meet the ambitious targets for renewable energy generation. This is supported by the council's draft *Climate Change Strategy*, policies of the 2020 LDP, the operational and consented wind farms and the many other strategies and actions being progressed in Moray. The council has declared a climate emergency. It has agreed a target of net-zero carbon emissions for the council's activities by 2030. It has granted consent for solar farms. It has a local-heat and energy-efficiency strategy. It has incorporated policies in its 2020 LDP favouring reduction of carbon emissions. It has previously granted consent for a number of windfarms and has a positive framework for considering windfarm developments of the right scale in the right place. It has acknowledged some capacity for wind-turbine development. There is no foundation for the contention that it has a negative or overly restrictive stance to onshore wind energy.

2.76 Moray Council's approach similarly does not focus on one form of energy generation. Further opportunities for large-scale wind farms in Moray are very limited. Action is required across the board. The applicant, however, focuses on the contribution onshore windfarms can continue to make with limited reference to other renewable technologies, including offshore.

2.77 Although the applicant has referred to a number of documents such as the Paris Agreement, reports from the International Panel on Climate Change, the United Nations,

the UK Committee on Climate Change (CCC), the National Audit Office, and the Department for Business, Enterprise and Industrial Strategy (DBEIS), these are not policy documents that have a bearing on the decision-making process of Scottish Ministers. They do not detract from the balancing exercise required to be carried out in a planning decision. Given that the documents:

- are generic advisory responses rather than policy;
- do not take account of local economic dynamics;
- planning the response to the pandemic is still at an early stage; and
- that there is risk associated with hasty kneejerk reactions,

no weight should be attached to them.

2.78 The applicants referred to the Supreme Court's decision in *R (Friends of the Earth) v Heathrow Airport* [2020] UKSC 52. It has no bearing on the decision.

2.79 While the *CCC's Sixth Carbon Budget* indicates its modelling requires a doubling of onshore wind capacity, the context is UK-wide – it says nothing about where the new capacity is to be. It emphasises development of offshore wind to address the UK's net-zero target. The report appears to have been accorded limited weight by the reporter at the Paul's Hill II inquiry.

2.80 The UK Government's *Energy White Paper* adds nothing to the climate-change considerations and does not alter the weighing-up process and should not be taken into account. It refers to onshore wind and solar along with offshore wind being key building blocks of the future generation mix. It is a combination of these sources that is required. There is no statement as to the level of growth of each source. Onshore wind does not feature in the Government's ten-point plan – only offshore wind.

2.81 In relation to the DBEIS call for evidence on *Enabling a High-Renewable, Net-Zero Electricity System*, the applicant claims that the proposed development is shovel ready. The council questions this. Even if it is, that does not diminish the need to apply relevant planning considerations in determination of the application.

The development plan

2.82 The council's objections are based on the policies in the 2015 LDP which the council considers are still relevant. Since adoption of the 2020 LDP in July 2020, however, the council takes the view that the relevant policies in the 2020 LDP are DP9 Renewable Energy, EP3 Special Landscape Areas and Landscape Character, PP2 Sustainable Economic Growth; DP1 Development Principles; DP5 Business and Industry.

2.83 Policy DP9 reflects and includes the SPP planning balance and assessment criteria, including landscape effects and capacity (informed by Moray Wind Energy Landscape Capacity Study 2017 (MWELCS)). While recognising the benefits of the proposals, due to the unacceptable landscape and visual effects both the original proposal and alternative proposal are considered contrary to Policy DP9.

2.84 Policy EP3 Special Landscape Areas and Landscape Character aims to safeguard the Special Landscape Areas (SLAs). The original proposal and alternative proposal are contrary to this policy due to the unacceptable effects of the proposed developments on SLAs in increasing the influence of wind energy development in views north from within the Spey Valley SLA.

2.85 Although the council's objections referred to the proposals being contrary to policies T2 and IMP2 relating to impacts on the public road network, the council agreed to

withdraw its reason for objection in relation to traffic and transportation, subject to appropriate conditions.

2.86 PP2 Sustainable Economic Growth supports the *Moray Economic Strategy* to deliver sustainable economic growth where the quality of the natural and built environment is safeguarded, there is a clear locational need and all potential impacts can be satisfactorily mitigated. These requirements have not been met.

2.87 DP1 Development Principles is a wide ranging "catch-all" policy. Criterion b) of the policy requires that "the development must be integrated into the surrounding landscape". Criterion d) requires development proposals to demonstrate how they will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape. The proposals are contrary to DP1 due to the significant adverse landscape and visual impacts.

2.88 DP5 Business and Industry provides criteria for assessing business and industrial proposals in Moray. The council wishes to support economic development and sustain employment in rural areas. The policy seeks to support rural business proposals that fit into the environment. Part g) requires proposals for business development to have a locational need and for the proposal to be in accordance with all other relevant policies. As the proposals are contrary to other policies due to the significant adverse landscape and visual impacts, the proposals are also contrary to DP5.

Supplementary Guidance

2.89 The previous *Moray Onshore Wind Energy supplementary guidance 2017* (MOWE) and the *Moray Wind Energy Landscape Capacity Study 2017* (MWELCS) which formed part of the 2015 LDP lapsed when the 2020 LDP was adopted. The council decided to re-adopt this previous guidance (with minor modifications) as non-statutory guidance on 15 September 2020 pending new statutory guidance being put in place. The limitations of the strategic and broad-brush approach of this spatial framework are recognised. However, the guidance is a material consideration for development-management purposes.

2.90 The overall strategy set out in the guidance notes that:- Moray has a high-quality natural environment; it should be safeguarded; several windfarm proposals have been consented already; there is limited scope in landscape and visual terms to accommodate more; there are limited opportunities for expansion or repowering of existing windfarms. The guidance provides maps to identify constraints and areas with the greatest potential for turbine development.

2.91 Although the guidance may identify an area as suitable, that does not mean that all proposals will be acceptable. The guidance identifies certain constraints which have to be considered. The council has not sought to apply the guidance prescriptively so as to exclude proposals for turbines outside the identified area (in maps 1-4). It indicates that for the original proposal, 18 of the turbines are consistent with potential development areas for extension and repowering, but 11 turbines to the south are not. For the alternative proposal, 17 turbines are consistent with the framework whilst 6 turbines to the north-west are not.

2.92 The guidance for LCT 10 advises:

(i) there is limited scope for turbine development,

(ii) turbines should be set well back into the core of upland areas avoiding ridges and hills which form immediate skylines to the Broad Farmed Valley (Landscape Character Type 7) and Spey Valley SLA,
(iii) turbines should not be sited on or close by landmark hills or Càrn na Cailliche in particular,
(iv) significant cumulative effects on the A95 should be avoided, and
(v) turbines of up to around 150 metres or more should be sited to minimise cumulative effects with smaller turbines within nearby operational and consented wind farms in key views.

The proposed development does not meet this guidance.

2.93 The Paul's Hill II reporter found that MOWE introduced no new locational constraints, but was prepared to give some weight to factors listed. MOWE was not a stealthy attempt by the council to add locational constraints but an attempt to provide more guidance for developers. The reporter who examined the Moray Local Development Plan 2015 found it to accord with national policy. As the Paul's Hill II reporter found, the fact a site is in group 3 does not automatically mean consent will be granted.

Council strategy documents

2.94 Renewable energy is not identified as a key growth sector in the *Moray Economic Strategy* and given the landscape and visual impacts and the importance of tourism to the Moray economy, the proposals would not support Policy PP2.

2.95 The *Moray Woodland and Forestry Strategy* was approved in January 2018 and is carried forward as supplementary guidance to the 2020 LDP. The strategy supports woodland expansion in adapting to and mitigating impacts of climate change. It also identifies opportunities to increase Moray's woodland cover, with preferred areas for planting.

2.96 Rothes III proposes to remove 252.8 hectares, replanting 106.45 hectares and providing 66.75 hectares of compensatory planting. The alternative proposal would remove 246.95 hectares of woodland, replanting 103.18 hectares and providing 63.17 hectares of compensatory planting.

Planning balance

2.97 The applicant argues that the reporters must attach significant weight to what has happened since the publication of SPP and NPF3 in 2014, including various government documents and to the Covid-19 situation.

2.98 Reporters have no power to develop policy. They cannot, of course, dismiss the emissions-reduction targets, which are a relevant consideration, but they do have to take account of wider issues including the landscape and visual effects of the proposed development. This was demonstrated in the appeal decisions for Culachy and Millenderdale.

2.99 As regards the proposition that weight should be given to advice the Scottish Government has received on the green recovery, documents submitted that relate to it are advisory. No weight should be given to them. In any case, they favour a broad-based approach to the environment and do not focus exclusively either on renewable generation or on onshore wind. Recovery plans are at an early stage and precipitate action could have long-term consequences. The council is developing a recovery plan with input from the

Moray Economic Partnership (MEP). The applicant's witness did not have equivalent economic expertise as the MEP.

Application and appeal decisions

2.100 The decision on Paul's Hill II was taken on its own merits. The proposal was of a different scale and nature than either Clash Gour or Rothes III. It further demonstrates there must be the right development in the right place and that the balancing exercise must still be undertaken. This is also clear from the Millenderdale appeal decision. The Paul's Hill II reporter found significant cumulative visual effects if Clash Gour and Rothes III were consented. Although the reporter took into account the emissions targets set by the 2019 Act and the CCC publications, it is evident from the language he used that he limited the weight he placed on them as considerations. Ministers also did not refer to either the 2019 Act or CCC publications in their decision notice for Paul's Hill II.

2.101 In the report on the North Lowther Wind Farm, the reporter found that

> "there is (at present) no policy direction that proposals which aid the reduction in greenhouse gas emissions and help tackle climate change should be given disproportionate weight in decision-making to the extent that other considerations should be set-aside or downgraded"

Further, he found that:

> "The balancing exercise remains with respect to assessing whether a proposal is the right development in the right place weighing the costs and benefits over the longer term. Therefore, I find that there is limited justification to suggest that the case for the development proposed is "materially strengthened" as argued by the applicant."

In issuing their decision, Scottish Ministers agreed with the reporter's findings in relevant respects. This undermines the applicant's contention that "the most significant weight should be given" to climate-change considerations. The planning-balance exercise must still be carried out and the development must still be the right development in the right place. Although the North Lowther decision has been challenged, it has been upheld so far. It should carry weight unless it is quashed.

Conclusion

2.102 There has been significant windfarm development in Moray. The proposed development individually, and cumulatively with Clash Gour, would have significant landscape and visual effects. The council is concerned that the landscape is at or near a tipping point where windfarm development could have marked negative consequences – and could, for instance, detract from the romantic association between the Moray landscape and whisky production. The benefits in terms of reduction of emissions do not outweigh these adverse effects. Neither the proposed development nor Clash Gour is the right development in the right place.

Main points for Save Wild Moray

Electricity Act 1989

2.103 Given the inappropriate siting, the significant scheme-specific and cumulative adverse visual impacts on valued local landscapes (including adverse impacts on the remaining perceived wildness) and on viewpoints, which cannot be mitigated, and other

potential adverse effects on protected bird species and associated habitats, the applicants have neither preserved natural beauty and flora, nor secured reasonable mitigation. The Electricity Act Schedule 9 tests are not met for these applications.

Documents submitted after the inquiry's close

2.104 A number of documents were submitted after the close of the inquiry. SWM considers that any not discussed in the inquiry should not be given substantial weight by reporters.

National Planning Policy

2.105 Neither the original nor the alternative proposal accords with national planning policy on account of their unacceptable siting and the consequent significant adverse visual effects and adverse effects on landscape and relative wildness.

2.106 In determining the variation application for the Gordonbush extension Scottish Ministers determined that the need case for the variation was not a material planning consideration. Need is therefore not a factor to be taken into account in determining the outcome of this application either.

2.107 In consenting the Strathy South windfarm, Ministers gave the view that since the proposed NPF4 was only a draft they would give little weight to it. The reporters should take the same view. As regards the substance:

- resilience to climate change need not involve poorly sited onshore windfarms;
- although renewable development of 50 MW or more would be a national development, there is no updated spatial guidance for its assessment;
- policy on regional spatial frameworks makes no mention of onshore wind;
- the plan-led approach espoused by policy 1 should apply to section 36 applications;
- emissions-reduction under policy 2 can be achieved in a number of ways;
- policy 3 requires development to enhance biodiversity not just conserve it;
- in terms of policy 4 on human rights and equalities, reporters should take account of significant community opposition to particular windfarms;
- policy 8 on infrastructure means reporters should consider grid-capacity issues;
- the section on green energy provides for a plan-led approach. It requires net economic impact, landscape and visual effects and impacts on wild land (all areas, not just areas mapped in 2014) to be addressed.

Climate-change and energy policy

2.108 Although consenting of developments under the Electricity Act is devolved to Scottish Ministers, national energy policy and the associated fiscal-support framework for renewables is set at a UK level. The UK government's position is a material consideration. As regards UK targets for renewable energy, there is sufficient renewable-energy capacity in the UK to exceed by over 30% the electricity-demand component of the 2020 target set by the EU Renewables Directive. There is no UK budget provision for an overshoot. The impact of Brexit on renewable-energy policy and targets may also be at issue.

2.109 The *Net Zero Strategy: Build Back Greener* is only of limited relevance to windfarms, which can take six years to commence (or may never be built). The strategy was published for COP26 and should be seen in terms of its insipid outcome. While the executive summary deals with a number of forms of low-carbon generation and flexibility, it does not mention onshore wind. The need to protect the environment and biodiversity is recognised.

The document is for consideration in wider Parliamentary debate rather than being a document that would affect the planning balance for determination of an onshore windfarm application.

2.110 There is an overcapacity issue associated with renewable energy. The whole-system costs arising from intermittency of renewable energy should be addressed. Constraints payments should be taken into account in assessing net economic impact and assessing the benefits of the proposed development overall. Constraints payments have been made to the operators of Berry Burn, Paul's Hill, Rothes I and II, in each case totalling more than a million pounds each in 2020. Over £145 million in constraints payments were made in Scotland as a whole in 2020. Notwithstanding that the chief planner has stated the Scottish targets are not a cap, this needs to be seen in the context of the UK policy position and in the context of economic effects. It should also be seen in the context of the Scottish Government's aim to reduce electricity use.

2.111 Many turbines have been approved and not built. The Beauly-Denny overhead line is not operating near its predicted capacity. There has been overprovision of infrastructure. It is not sustainable to keep consenting more windfarms without addressing these wider considerations.

2.112 The 2020 target set in the Scottish Government's *Climate Change Plan* for Scotland's electricity demand to be met from renewables will require surplus capacity to be built to meet the target. The plan does not consider how much the required capacity would reduce if energy use is reduced, as is the aim. The target is to be achieved from a range of technology, not just onshore wind.

2.113 The foreword of the *Scottish Energy Strategy* states that Scotland's energy challenge is one where heat and transport take on an even greater significance than electricity. This is not an endorsement of a strong case for new large-scale windfarms.

2.114 Neither these two documents nor the *Onshore Wind Policy Statement* introduce any new considerations for the determination of the application for the proposed development. As the reporter in the Garleffan windfarm appeal found, these documents give qualified support for onshore-wind developments, though subject to a balancing of benefits against protection of the landscape.

2.115 The *Onshore Wind Policy Statement Refresh consultative draft* is a technical document rather than a planning document. It does not seek to change the planning balance. Onshore wind is intermittent, not a cheap and reliable energy source. Wind speeds have fallen in the last two years, reducing Scotland's GDP. The discussion of repowering indicates the focus should be on that, rather than new schemes. Technical issues such as noise, peat and forestry require to be addressed, but no policy will be determined before a decision on the application. Progress is also required in addressing the step-change in landscape and visual effects. Community benefit is merely money transferred from consumers who may already be in fuel poverty.

2.116 The *Programme for Government 2021* does identify an objective for the expansion of offshore windfarms under the heading of Net Zero. Overall though, it is not a document that can be used to reach a final planning balance for the determination of a particular application.

2.117 Although climate change is a serious issue, its being so does not mean any particular scheme purporting to address it must be approved. The objector group are not universally opposed to renewable energy. They would support a scheme that was

demonstrably effective, good value and had very limited adverse impacts. The questions that arise are:

- Whether the proposed development is moderating climate change by reducing future effects or mitigating its anticipated effects?
- What is the evidence that there would have been any difference in our climate pattern if no windfarms had been built in Scotland? If there is no evidence of an effect, then climate change should not be an element in the balance.
- What is the evidence that building windfarms, often in sensitive landscapes, is the most effective solution, having regard to costs and benefits? It is reasonable for planning authorities to consider alternatives. Building windfarms may not be the optimum policy response.
- Has the planning balance been changed by Scottish Government pronouncements on climate? The revised role of the planning system in terms of delivering the ambitious climate-change targets is to be developed and set out in NPF4. It is not yet available.

Development Plan

2.118 The detailed acceptability of the proposed development should be considered against the development plan, including the related Moray Onshore Wind Energy supplementary guidance.

2.119 The original and alternative proposals are contrary to the LDP. They do not accord with policy DP9 Renewable Energy. They do not accord with guidance in MWELCS. The landscape is not capable of accommodating the development without significant detrimental impact on its character and on visual amenity. The proposal does not respect the main features of the site or the wider environment and does not address potential for mitigation. There is a significant cumulative landscape and visual impact. The proposed turbines would be located between Dallas, Knockando and Archiestown, with adverse scheme-specific and cumulative significant landscape and visual effects, potential adverse effects on relative wildness and ornithology, economic effects on local tourism, all of which are not outweighed by the generic benefits of the schemes which are already built into the positive policy environment which is supportive of renewables.

2.120 Policy EP1 addresses a number of international, national and local protected natural-heritage assets. The proposed development raises issues of concern in respect of effects on protected species. There is an adverse effect on the national park. There would be degradation of natural habitat to the detriment of rare upland raptors like merlin, osprey, goshawk and hen harrier. Policy EP3, which deals with SLAs and landscape character, is also relevant.

2.121 The proposed development would also lie partly in areas of significant protection for carbon-rich soil and peat. It would add cumulatively to the destruction of peatland, a national asset for climate-change mitigation.

2.122 The proposed development also does not accord with policies on sustainable economic growth, rural business proposals or developer requirements. It is contrary to the plan overall. On that basis, there should be a refusal of deemed planning permission for the proposals.

Community benefit and shared ownership

2.123 Although the reporters agreed to hear evidence from Elgin Community Council and Energising Moray, their evidence related to community benefit and the applicant's proposed community ownership scheme. Neither of these are material considerations, as Scottish Government guidance makes clear.

Planning balance

2.124 The support provided by national-energy and climate-change policy does not trump other considerations. Renewable-energy development should be in environmentally acceptable locations. The proposed development would bring only minor economic benefit to Moray or the wider area. No balanced net-economic-impact assessment is provided by the applicant. The assumed benefits in terms of addressing climate change are built into favourable national policy. There are no additional scheme-specific or verifiable environmental benefits. Landscape and biodiversity are considerations of national importance according to national policy. The factors relating to the presumption in favour of development that contributes to sustainable development do not favour the proposed development since it would:

- not have a net economic benefit
- not deliver good design
- not be a sustainable land use given its significant adverse effects
- not protect or enhance natural heritage or landscape
- be overdevelopment.

2.125 Similarly, the factors set out in SPP paragraph 169 count against the proposed development, in particular since the applicant has not produced a net-economic-impact assessment or provided verifiable evidence of measurable impacts on greenhouse-gas emissions or climate parameters.

2.126 The benefits of the proposed development do not outweigh its adverse landscape, visual and ornithological effects and effects on relative wildness, which arise from its inappropriate siting. It does not accord with the development plan or national planning policy.

2.127 Although the number of objections does not represent a referendum, the number is significant (over 600 to the two windfarms considered at the inquiry) as well as objections from the two most impacted community councils, Speyside and Finderne.

2.128 Since the proposed development would not preserve natural beauty or bird species and associated habitats and does not secure reasonable mitigation, it would not meet the tests in the Electricity Act 1989. The application should be refused.

Absence of Scottish Natural Heritage and Cairngorms National Park Authority

2.129 The reporters should have required Scottish Natural Heritage and the Cairngorms National Park Authority to attend so that they had best evidence on the scheme-specific and cumulative effects of the proposed developments.

Main points for Speyside Community Council

2.130 Due to the excessive turbine heights, the proposal is not compatible with policies to safeguard and enhance the built and natural environment. The host landscape character (Upland Moorland and Forestry) has limited scope for turbines up to 130 metres in height.

MWELCS states that 'turbines over 150 metres are too large to be accommodated in the landscape given the relatively limited extent of the uplands within Moray, with significant effects more widespread and unacceptable on adjacent landscapes.' It follows, therefore, that there is no scope at all for the size of turbines proposed for Rothes III (up to 225 metres).

2.131 The capacity study states that developments should not be near or on landmark hills. This proposal is near to Càrn na Cailliche which is an identified Moray landmark hill.

2.132 The Reporters should also refer to the *Scottish Biodiversity Strategy Post 2020 - A Statement of Intent*, published by the Scottish Government in December 2020. It is difficult to equate the intention to extend the area protected for nature in Scotland to at least 30% of our land area by 2030 against the incessant demand to build windfarms.

2.133 As regards other documents, the *Onshore Wind Policy Statement Refresh* and draft *Fourth National Planning Framework* are consultation documents. They have no present relevance. As regards the *Programme for Government 2021*, it promises much but will deliver little. Windfarm development contributes to loss of biodiversity, which the programmed Environment Bill seeks to preserve. The UK Government's *Net Zero Strategy* does not justify the proposed development.

Other representations

2.134 Most third-party representations refer to the proposal's conflict with policy ER1 criterion (iii) of the 2015 LDP, specifically in relation to the significant adverse landscape and visual effects, including cumulative effects, and on peatland hydrology, ecology and tourism and recreational interests. Reference is also made to conflict with the council's onshore wind-energy supplementary guidance.

Cairngorms National Park Authority

2.135 The CNPA purported to object to both the original and alternative proposal on the basis that they are contrary to policy 3.3 of the *Cairngorms National Park Partnership Plan 2017 - 2022* due to their significant adverse effects on the Special Landscape Qualities (SLQs) of Cairngorms National Park. The report of the National Park Authority's planning officer referred to policy 3.3 of the partnership plan as relevant to the proposed development.

Reporters' reasoning

Legal context

2.136 Schedule 9 of the 1989 Act sets out a number of considerations that are by law material. They are not tests that the proposed development must meet, but rather matters that must be taken into account in determining the application. Other matters, including the UK and Scottish law and policy on energy and climate change, Scottish national planning policy and local planning policy, are also relevant to determination of the application.

2.137 There is no primacy of the development plan in determining an application under section 36 of the 1989 Act (or in determining an associated request for deemed planning permission). The policies of the development plan are material considerations along with other relevant national and local policy.

2.138 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 set more ambitious targets for emissions reduction, but the duties under section 44 of the Climate Change (Scotland) Act 2009 apply to the achievement of those more-ambitious targets. The section 44 duties apply to the determination of an application under section 36 of the Electricity Act. The assessment of what is best calculated to deliver the emissions-reduction targets and of what is most sustainable is not itself a matter of law – it is for Ministers to make.

2.139 In our opinion, in order to perform their duty, Ministers would have to address the evidence in respect of the degree of need for renewable development to achieve the statutory targets, and the need for new onshore-wind capacity in particular, as well as any consequences of the proposed development for sustainability. The latter requirement means that Ministers would also have to take account of the proposed development's adverse environmental effects in their assessment.

National planning policy

2.140 The council and applicant were broadly agreed on the areas of national planning policy that were relevant to the proposed development.

The third National Planning Framework (NPF3)

2.141 NPF3 affirms the Government's commitment to Scotland becoming a low-carbon place and to achieving the statutory target for reduction in greenhouse-gas emissions and its targets for renewable-energy generation. Energy and tourism are identified as among the seven key economic sectors with particular opportunities for growth. Although good progress is being made in diversifying Scotland's energy-generation capacity, more action is needed. Maintaining security of supply and addressing fuel poverty are key objectives. Scotland should capitalise on its wind resource, and be a world leader in offshore renewable energy. Onshore wind is to continue to make a significant contribution to diversification of energy supplies. As the council points out, it is not the sole form of renewable energy or the sole means of reducing greenhouse-gas emissions to which NPF3 refers. In time, the pace of onshore wind-energy development is expected to be overtaken by a growing focus on Scotland's significant marine-energy opportunities, including wind, wave and tidal, though the strategy should be flexible. Value is placed on Scotland's spectacular landscapes and the significant opportunities for tourism and recreation in rural Scotland. Windfarm development is not to take place in national scenic areas or national parks. It should accord with the SPP spatial framework and take account of important features such as wild land.

Scottish Planning Policy (SPP)

2.142 Scotland as "a low-carbon place" is one of the four outcomes SPP seeks. At paragraph 18, it makes express reference to the now-superseded targets of the Climate Change (Scotland) Act 2009. Policies at paragraphs 152 to 192 are within the SPP's chapter, "a low carbon place", and so we understand them to be directly aimed at achieving that outcome. The first part of the chapter is a section on delivering heat and electricity. It includes the Scottish Government's specific planning policies on onshore wind.

2.143 The first paragraph of the section makes clear that planning must facilitate the transition to a low-carbon economy to deliver the aims of the (then-current) Scottish Government Climate Change Plan. Both the 2009 Act's targets and the Climate Change Plan have been superseded by more recent (and more stringent) provisions. We note here that the national planning policies on onshore wind are set within a context in which policy is

aimed at achieving the statutory targets and implementing the programme for reduction of greenhouse-gas emissions.

2.144 SPP paragraph 155 requires that development plans should seek to ensure an area's full potential for electricity from renewable sources is achieved, giving due regard to relevant environmental, community and cumulative-impact considerations. We acknowledge that Moray Council already has in its area several existing and consented large-scale onshore-wind developments. As it states, there are no regional targets set out in policy. The council accepts that national targets do not represent a cap on development. This being the case, and since the policy is for each development-plan area's full potential to be achieved, there is no regional cap on development either.

2.145 Paragraph 161 requires the development plan to provide a spatial framework for those areas that are likely to be most appropriate for onshore windfarms. Table 1 sets out the approach to be followed. The spatial framework provided in the Moray Onshore Wind Energy (MOWE) supplementary guidance map 13 (CD27.1.1) indicates part of the application site would formally be outside group 3. We understand that this is on account of its being mapped as having deep peat, and consequently it would for that reason fall within group 2. We deal with issues relating to peat below. However, insofar as issues relating to effects on peat are resolved so that they do not present an impediment to the proposed development, we consider that the development can be treated as being within a group-3 area. In group-3 areas, the policy states that windfarms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

2.146 Paragraph 162 requires strategic- and local-development-planning authorities to work together to identify strategic capacity for windfarms and areas with greatest potential for wind development. The council's evidence had indicated that MOWE performs this function. As the reporter found in his report on the Paul's Hill II application the intention of paragraph 162 is not to provide planning authorities with the opportunity to refine a spatial strategy produced in accordance with table 1 or to depart from it. Paragraph 163 indicates that constraints are not to be added to spatial frameworks in development plans other than those in table 1. Therefore, while the additional constraints and areas with scope to accommodate turbines referred to in MOWE are a consideration, they do not alter the policy position in SPP as regards the likelihood of windfarms being acceptable in such areas.

2.147 Paragraph 165 indicates that grid capacity should not be used as a reason to constrain the areas identified for windfarm development or decisions on individual applications for windfarms. SWM has raised the issue of constraints payments, and whether they should be taken into account in determining socio-economic effects. Although we do consider the issue of constraints payments (and more widely, the system costs associated with variability of onshore wind) further in the socio-economics chapter of this report, the issue, in our view, is primarily a question of grid capacity and therefore should not be treated as an impediment in policy to granting consent for a windfarm development.

2.148 Paragraph 169 provides a list of considerations in determining an application for a proposed windfarm. These include matters that have been raised by the applicant and in objections, including the scale of contribution to meeting renewable-energy targets and effect on greenhouse-gas emissions, landscape and visual impacts, impacts on communities and individual dwellings, net economic impact (including local impacts), and impacts on tourism and recreation, on natural heritage, and on roads and transport.

2.149 SPP also seeks the outcome that Scotland should be "a natural, resilient place". In this regard, although landscape is already a consideration under paragraph 169, the council has correctly also referred us to paragraph 196, which deals with the designation of areas

and sites and according to them the appropriate level of protection. Paragraph 197 sets out purposes for designating non-statutory areas of local landscape value, including safeguarding and enhancing the character and quality of a landscape that is important or valued, promoting understanding and awareness of the distinctive character and special qualities of the landscape or safeguarding and promoting important local settings for outdoor recreation and tourism.

2.150 Paragraphs 202 to 203 deal with how the natural environment is to be treated in development management. Siting and design of a development should take account of local landscape character. Planning permission is to be refused where the nature or scale of proposed development would have an unacceptable impact on the natural environment.

2.151 A third relevant outcome sought by SPP is that Scotland should be a "successful, sustainable place". This includes policy setting out the aims of national parks, in paragraphs 84 to 86, though the protections for national parks as a designation are set out in paragraphs 212 to 213, which fall under the section relating to the outcome of a "natural, resilient place".

2.152 Paragraphs 28 to 29 deal with the presumption in favour of development that contributes to sustainable development, and paragraphs 32 to 33 deal with when it becomes a significant material consideration. As regards the latter point, we find that the mechanism by which the presumption would become a significant material consideration relates to a context of decisions under the Town and Country Planning (Scotland) Act 1997, in which compliance with the development plan is the leading consideration and there is a statutory presumption in favour of it. The decision on the present application is to be taken in the different statutory context of an application under the Electricity Act 1989. In any case, the circumstances in which the presumption would become a significant material consideration do not arise, since the development plan is not out of date. Nonetheless, the considerations set out in paragraphs 28 and 29 are material to a determination of the application.

National policy on energy and climate change

2.153 The UK Government is required by the Climate Change Act 2008 to ensure that the net UK carbon account for 2050 is zero or less. The Scottish Government is subject to the statutory requirement to achieve net zero emissions in Scotland by 2045. The UK Government has adopted a Sixth Carbon Budget, which requires reduction of UK greenhouse-gas emissions by 78% from 1990 levels by 2035. This effectively brings forward the UK's previous commitment of an 80% reduction by 2050 by 15 years.

2.154 Neither the Paris Agreement nor subsequent international agreements such as that from the Glasgow COP26 summit themselves represent government policy in the UK or Scotland. However, the purpose of the domestic targets is to meet the UK's commitments in the Paris Agreement.

2.155 The UK Government's *Net Zero Strategy: Build Back Greener* explains as follows why the action to secure the aims of the Paris Agreement is needed:

> "The latest IPCC report [shows] that if we fail to limit global warning to 1.5ºC above pre-industrial levels, the floods and fires we have seen around the world this year [2021] will get more frequent and more fierce, crops will be more likely to fail, and sea levels will rise driving mass migration as millions are forced to leave their homes. Above 1.5ºC we risk reaching climatic tipping points like the melting of

arctic permafrost – releasing millennia of stored greenhouse gases – meaning we could lose control of our climate for good."

The strategy indicates that there is a path to avoiding catastrophic climate change. It states further that this requires the world by the middle of the century to reduce emissions as close to zero as possible and that urgent action is required to achieve this.

2.156 As Moray Council points out, there are various means by which greenhouse-gas emissions may be reduced. Not all involve development of new renewable-energy capacity or the development of onshore-wind capacity in particular.

2.157 The CCC report on the *the Sixth Carbon Budget: the UK's Path to Net Zero* was intended as a blueprint for a decarbonised UK and to depict the choices in reaching the goal of net-zero greenhouse gases by 2050. It recommended the pathway involving a reduction of 78% of emissions by 2035, a recommendation since accepted by the UK Government.

2.158 The report's approach was to examine various scenarios by which net zero emissions could be achieved and to develop recommendations for a "Balanced Pathway" to net zero on that basis. It identified that emissions come primarily from the burning of fossil fuels to run vehicles, heat buildings, produce electricity, and in industry and agriculture, while there are further emissions from industrial and agricultural processes, changes in land use, waste disposal and other leakage. In addressing these, it considered the role of:

- reducing demand for carbon-intensive activities (such as reduction in travel demand, change of diets, reduction in waste, and improved energy efficiency),
- take-up of low-carbon solutions (such as electrification of transport),
- expansion of low-carbon energy supplies (including the production of low-carbon electricity and hydrogen)
- changes in land-use (such as restoration of peatlands and planting woodland), use of bioenergy and direct removal of greenhouse gases.

In other words, the report takes a comprehensive approach, and makes recommendations for all sectors to achieve the emission-reductions necessary to meet the target.

2.159 To achieve net-zero emissions, the CCC's models relied upon electrification to decarbonise sectors of the economy such as transport and heating. It predicted this would lead to a doubling or trebling of electricity demand by 2050. There would be an increase of 50% in demand by 2035. Furthermore, the decarbonisation of electricity generation is required by 2035 while addressing this increased demand. The Balanced Pathway requires 80% of generation to be from variable renewables, with most from wind power. The CCC's methodology report for the *Sixth Carbon Budget* (CD27.6.2) states that offshore wind is to be the backbone of electrical generation across all scenarios. However, it also states that all scenarios see new onshore wind generation being deployed to 2050. The report states that the modelling requires onshore-wind installed capacity in the UK almost doubling from 14 GW to 25 to 30 GW.

2.160 It follows that an increase in onshore-wind capacity is relied upon to achieve the Sixth Carbon Budget alongside other low-carbon options, such as nuclear power, offshore wind, solar power and marine renewables as well as other means of reducing greenhouse-gas emissions outside the power sector. The report does not regard onshore wind as an option that might be selected from among others to achieve the UK's statutory net-zero target.

2.161 In the report, the CCC referred to Scotland's statutory emissions-reduction target of 75% by 2030 as extremely challenging to meet, even if Scotland gets on track for net

zero by 2045. Even the CCC's most optimistic scenario would not achieve the reduction in emissions required to meet the target. The CCC's *Progress Report* to the Scottish Parliament (October 2020 - CD6.30) addresses the issue of meeting the 75% target. That report finds progress towards decarbonisation of the power sector, but that emissions from other sectors outside of electricity generation have fallen far less. Among the recommendations it makes is that there should be a favourable planning regime for onshore wind.

2.162 We acknowledge that the CCC's recommendations in the *Sixth Carbon Budget* and in the *Progress Report* to the Scottish Parliament are not themselves policy, but the report does represent a systematic assessment of how the statutory UK and Scottish targets can be achieved. It is evidence before the inquiry about the degree of need for further onshore-wind development. There is no other systematic assessment before the inquiry of what is required to meet the UK and Scottish targets that might rebut it. Its assessment has been broadly accepted in subsequent publications of the Scottish and UK governments.

2.163 The UK Government's *Net Zero Strategy: Build Back Greener* commits the UK Government to decarbonising in line with the *Sixth Carbon Budget*. Its consideration of net-zero scenarios in 2050 is expressly based on the CCC's report on the *Sixth Carbon Budget.* It envisages a reduction of 80 to 85% in emissions in the power-generation sector. Alongside other means of emissions reduction, the strategy accepts a sustained increase in deployment of land-based renewables such as locally supported onshore wind and solar in the 2020s. This is not an express endorsement of the findings of the CCC report as regards the specific increase the CCC found to be required in onshore wind. Nonetheless, we consider that the UK Government's acceptance that a sustained increase in onshore-wind capacity is required is consistent with the CCC's finding. While we accept that the *Net Zero Strategy* does not represent detailed policy regarding onshore wind and that there may be some room for adjustments, we consider that, in the light of the comprehensive evidence of the *Sixth Carbon Budget,* the broad direction the strategy provides is clear.

2.164 We were referred to several other UK Government documents, including the UK Energy White Paper, *Powering Our Net Zero Future*, and the Department for Business, Energy and Industrial Strategy's call for evidence, *Enabling a High-Renewable, Net-Zero Electricity System*. These are also not policy. The former refers, like the CCC report, to onshore wind and solar being key building blocks of the future generation mix, alongside offshore wind. It states that "we will need sustained growth in these sectors in the next decade to ensure that we are on a pathway that allows us to meet net zero emissions in all demand scenarios". The latter refers to the advantages of growth in renewable deployment in terms of meeting net-zero targets and the stimulation of investment and jobs from such deployment.

2.165 The SES – adopted before the *Sixth Carbon Budget* and Scotland's 2045 net-zero target taking effect – confirmed the Scottish Government's 2020 target of 100% of Scotland's electricity demand being met by renewables. It added a new target that 50% of all Scottish energy requirements (including heating and transport) should be met from renewable sources by 2030. The strategy states that this implies renewable-electricity generation could require to rise to over 140% of electricity consumption. The SES states that onshore wind must continue to play a vital role in Scotland's future. In these respects, the SES anticipated the CCC's *Sixth Carbon Budget* report. The SES states that there is support for development of onshore-wind capacity in the right places, based upon an appropriate, case-by-case assessment of effects.

2.166 The Ministerial introduction to the *Onshore Wind Policy Statement* recognises the vital role that onshore wind will play in Scotland's future. Again it supports development in

the right places "and – increasingly – the extension and replacement of existing sites, where acceptable with new and larger turbines, based upon a case by case assessment of their effects".

2.167 The Scottish Government's *Climate Change Plan* is required to be produced under section 35 of the Climate Change (Scotland) Act 2009. Its purpose is to set out the Scottish Ministers' proposals and policies for meeting the statutory emission-reduction targets during the plan period. The plan sets out a range of Scottish Government policies and other measures for achieving the target. The plan confirms the Scottish Government's 2020 target for 100% of Scottish electricity demand to be met by renewables. It also reports the additional measure set in 2018 for Scotland's grid intensity to be below 50 grams of carbon dioxide per kilowatt hour.

2.168 The *Update to the Climate Change Plan 2018* produced in 2020 (after the publication of the CCC report, *The UK's Path to Net Zero*) responded to advice from the CCC. In describing the pathway to 2032, it envisages a substantial increase in renewable generation of between 11 and 16 GW by 2032 to help decarbonise transport and heating demand. This capacity is to be provided particularly through new offshore- and onshore-wind capacity. The update does not replace the 2018 plan. In our understanding, therefore, it does not take away from the requirement for there to be a case-by-case assessment of the effects of proposed development. Nonetheless, it sets it in a context in which there is reliance upon substantial new onshore-wind generation capacity coming forward.

2.169 The *Programme for Government 2021: A Fairer, Greener Scotland* indicates that, subject to consultation, the government is committed to securing an additional 8 to 12 GW of installed onshore-wind capacity by 2030. This is set in the document in the context of measures to achieve the net-zero target. The programme envisages an opportunity for Scotland as a net exporter of renewable energy to attract further investment.

2.170 The consultative draft of the *Onshore Wind Policy Statement Refresh 2021* (OWPS21) confirms that this increase in onshore wind by 2030 is an ambition of the Scottish Government. It indicates that the Scottish Government accepts the modelling in the CCC's *Sixth Carbon Budget* as regards the increase in onshore wind required in any pathway to net zero. It also indicates that 4.64 GW of onshore-wind capacity is consented and 4.69 GW is in the planning process currently. OWPS21 refers to onshore wind as playing a vital role in achieving the government's net-zero commitment.

2.171 Plainly there is not enough development presently in the system to meet the Scottish Government's upper ambition of 12 GW for additional onshore-wind capacity by 2030. We also accept, as the appellant argues, that not all the applications in the planning process will be granted, that not all the consents granted will be implemented and consequently that a combination of current applications and consented development is quite likely not to meet even the Scottish Government's minimum ambition of an additional 8 gigawatts of capacity. Even if it was sufficient, it would require a high rate of consents being granted for applications in process at the moment.

2.172 The Scottish Government's commitment to the specific scale of increase in onshore wind set out in the *Programme for Government 2021* is, of course, a matter for further consultation. Nonetheless, it appears to confirm that significant further deployment of onshore wind in Scotland is a factor that the Scottish Government is relying upon in order to achieve its commitments for reduction in greenhouse-gas emissions, and its statutory net-zero targets in particular.

2.173 As we have described, the protection of landscape is also a referred to in policy relating to onshore wind, both in the OWPS and the SES. The emphasis is on "striking the right balance". The OWPS says, "We believe that developments can and must strike the right balance between utilising Scotland's renewable-energy resources while protecting our finest scenic landscapes and natural heritage." The OWPS21 also makes reference to the importance of landscape:

> "Scotland's most cherished landscapes are a key part of our natural and cultural heritage and must be afforded the necessary protections. However, we also recognise that climate change, and our net zero ambitions, require decisive action, will change how Scotland looks and that we will need to deploy significant volumes of onshore wind generation over the next decade to help us meet our challenging legal obligations. This is likely to comprise modern, efficient turbines which will maximise the generation possible at each site and a mix of current technologies and taller turbines."

This appears to us to represent (if OWPS21 should come into effect in this form) continuity in policy, but a change in tone, emphasising the decisive action required to address climate change as an element in the balance, and referring specifically to the use of larger turbines, which it indicates would be more efficient.

2.174 Both the *Net Zero Strategy* and the *Sixth Carbon Budget* refer to the economic advantages of investment in renewable energy. The CCC's annual report to the UK Parliament of June 2020 (CD6.25) and its letter to the Scottish Government with *advice on a Green Recovery* of May 2020 (CD5.20) and the *Report of the Advisory Group on Economic Recovery* of June 2020 (CD5.24) refer to the importance of investment in low-carbon and climate-resilient infrastructure as a means to economic recovery from the recession associated with the Covid-19 pandemic. We acknowledge that any net economic benefit of the development would be a consideration in its favour and that early investment could assist with economic recovery.

The Scottish Biodiversity Strategy

2.175 The *Scottish Biodiversity Strategy* sets out the Scottish Government's intentions for tackling the twin crises of climate change and biodiversity loss. We note policy 3 in draft NPF4 seeks to address the impact of development on biodiversity. As regards the proposed development, if we were to find significant adverse effects on habitats or species, that would undoubtedly be a consideration that would weigh against it in the planning balance as would anything that impeded the strategy's aim of increasing the area of Scotland protected for nature by 30%.

The Environment Strategy for Scotland

2.176 We understand the *Environment Strategy for Scotland* is a document that is intended to provide an over-arching framework for policy on the environment, including landscape, climate-change policy, the circular economy, biodiversity, and air- and water-quality strategy. It is intended to sit alongside other existing high-level government policy frameworks. It sets out strategic principles and outcomes sought. It does recognise the importance of the beauty and quality of Scotland's landscapes to Scotland's global brand. It also emphasises the need for Scotland to play its full part in tackling the twin global crises of climate and nature. It refers to the need for transformative changes in economy and society around the world and cross-refers to the *Climate Change Plan* and its update (the latter forthcoming at the time of publication of the strategy). Although the strategy refers to a number of nature-based solutions for reducing emissions, there is nothing in it to suggest

it is in any way intended to be inconsistent with or to supersede the *Climate Change Plan* or *Scottish Energy Strategy*.

The balance to be struck

2.177 The reporter in the North Lowther application (CD27.12.2) found that proposals which aid the reduction in greenhouse-gas emissions and help tackle climate change should be given *disproportionate* weight in decision-making to the extent that other considerations should be set aside or downgraded (our emphasis). We consider that this is no more than a statement of the obvious. The weight to be accorded to the reduction in emissions and to meeting statutory and policy targets should be proportionate to the importance of these targets and Ministers' duties in respect of achieving them. It is in this context also that we understand the reporter's comment that there was limited justification to suggest that the case for the development proposed was "materially strengthened".

2.178 Ministers' duty to act in the way best calculated to achieve the statutory targets must be considered in the light of the evidence that:

- in order to achieve the UK's target for net zero by 2050, a near-doubling of generating capacity of onshore wind (specifically) is required in the UK
- the Scottish Government and UK government are both relying upon an increase in onshore-wind capacity to achieve their statutory targets
- the Scottish target for 2030 of a 75% emissions reduction is extremely challenging.

2.179 Given that the Scottish Government's level of ambition for onshore wind is subject to consultation, the precise amount of additional capacity sought cannot be certain. It is possible that the Scottish Government might identify a pathway to net zero that would involve the development of less onshore-wind capacity than is set out in OWPS21. It is just conceivable that the amount of onshore-wind capacity needed to meet the UK target is not required to meet the Scottish target (though this is unlikely, given that the targets were set following the advice of the same body, the CCC). However, in the context of achieving a target set by law that must be met by 2030, until there is a conclusion on the consultation, it is – in our view – better to err on the up-side than on the down-side, so that Ministers can ensure they comply with their duty in respect of the target. We consequently consider that Ministers' duty in respect of the emissions-reduction target is a factor that in principle points in favour of a grant of permission for onshore wind specifically. This is not to say that Ministers' duty to act in the way they consider most sustainable will not take precedence, if it should point to a different outcome.

2.180 There was already strong policy support for renewable-energy development before the publication of the SES and OWPS, as the North Lowther reporter acknowledged. The reporter in the Paul's Hill II application found that the support a renewable-energy development could draw from SPP was strengthened by the publication of subsequent policy and strategy documents such as SES and the OWPS. We consider that the position is strengthened further by evidence which has appeared since the report was written: the evidence from the CCC on the Sixth Carbon Budget, the UK Government's adoption of the Sixth Carbon Budget, and the update to the Climate Change Plan made in the context of the UK and Scottish Governments' declaration of a climate emergency. Furthermore, we have found in these more recent documents specific recognition of the vital role of increased deployment of onshore wind in achieving the statutory targets and an indication of the scale of increase required.

2.181 None of this suggests that there is not still a requirement, in terms of SPP, to ensure the right development in the right place, or that there is no need to consider the adverse effects of onshore-wind development or balance them against the benefits. This is plainly

still required. We have referred to the specific requirements to strike such a balance in respect of landscape in national energy policy. Furthermore, no one particular development is by itself necessary or sufficient to achieve the statutory targets. However, the urgency of meeting those stringent targets, set with the purpose of avoiding dangerous climate change, must necessarily affect the balance to be struck. This is so for every particular development, notwithstanding that no particular development is required by policy to be permitted. We acknowledge that that is a different view from the position one of us took in making recommendations on the proposed Golticlay windfarm. However, it appears to us that the evidence of the need for new onshore-wind development in particular has moved on since that report was made in early 2020.

2.182 If built, the original proposal would have a maximum installed capacity of up to 137.4 MW and the alternative proposal would have a maximum capacity of up to 116.8 MW. In the context of the increase in onshore wind capacity envisaged in the *Net Zero Strategy* and the Scottish Government's *Programme for Government 2021,* this would represent a tangible advance towards achieving the emissions-reduction targets. Given the potential for renewable generation and consequent reduction in emissions from the current energy mix, we agree with the applicant that both proposals can draw considerable support from national policy.

Need for development as a material consideration

2.183 SWM has suggested on the basis of Ministers' decision on a variation of an existing consent for the Gordonbush windfarm that the question of need for such development is not a material consideration. It is plain from policy and from the duty in section 44 of the Climate Change (Scotland) Act 2009 that it is a material consideration. In our understanding, SWM have misconstrued the reference to need in the Gordonbush decision, which would appear to relate to the particular situation in that case in which Ministers were considering a variation in an existing consent.

2.184 Climate Change Secretary, Roseanna Cunningham, said in a statement to the Scottish Parliament on 14 May 2019:

> "There is a global climate emergency. The evidence is irrefutable. The science is clear."

National policy is aimed at reducing Scotland's contribution to the ongoing global emergency by reducing the emission of greenhouse gases. It may well be, as SWM suggest, that no study has been carried out to measure the effect of existing Scottish windfarms in moderating the effect of climate change on the Scottish climate. The problem that Scottish (and UK) policies are intended to address is global and any benefits arising globally would also arise for Scotland and the UK. Achieving the global goal of avoiding dangerous climate change must necessarily involve many incremental contributions. While these might seem large locally, when looked at globally any individual contribution is likely to appear very small and may not make a difference that is clearly measurable. International agreements have been made to require the states that are parties to them each to make an agreed contribution. It is in pursuit of this, that the UK and Scotland have created statutory targets for emissions reduction.

2.185 It is also evident that the favourable policy environment created for renewable-energy development, including onshore wind, is just one element of many strands of Scottish and UK policy to address climate change, and further that Scottish and UK policy is part of an international framework, created by international agreements, aimed at addressing the problem globally. The CCC's *Sixth Carbon Budget* report clearly addressed

the options for UK policy in the context of its international obligations and relied upon further development of onshore wind as part of the mix. Just because there are many individual elements to the policy that must succeed to achieve the goal does not mean that any one element is unimportant or may be dispensed with.

The draft fourth National Planning Framework (NPF4)

2.186 In November 2021, the Scottish Government published its draft of NPF4. Although the name suggests continuity, NPF4 will have a new and expanded role. As a consequence of the Planning (Scotland) Act 2019, it will form part of the development plan. Where there is an incompatibility between it and an existing local development plan, it will take precedence. Furthermore, NPF4 has been drafted to take the place of both NPF3 and SPP.

2.187 However, before NPF4 takes effect, the draft must be consulted upon with the public and statutory consultees and laid before the Scottish Parliament. It cannot be adopted until a draft has been approved by the Scottish Parliament. The draft published by the Scottish Government is therefore at an early stage. It could change substantially before it is adopted. This necessarily limits its materiality as a consideration, even though it indicates the government's current views on future policy.

2.188 Its part 1 sets out the overarching spatial plan for Scotland. Its introduction refers to the 2045 statutory net-zero target, affirms the requirement to make significant progress by 2030 and for a just transition, and identifies a need for new development and infrastructure across Scotland to achieve it. It also states that the strategy is to value, enhance, conserve and celebrate the best places. Just transition is one of six spatial principles for Scotland 2045. The strategy explains that rapid transformation is needed across all sectors of society to achieve Scotland's climate ambition, but that it must be ensured that the journey to reduce emissions is fair and creates a better future for everyone.

2.189 Scotland is to play a full role in tackling the climate emergency and crisis in the health of the planet's ecosystems. Several measures are proposed, including diversifying and expanding renewable-energy generation.

2.190 Part 2 would make a renewable-energy development of 50 MW or more a national development as strategic renewable-electricity-generation infrastructure. Consequently the proposed development would be a national development. The draft states that national developments are proposed to support the spatial strategy and that Ministers will work with key partners to ensure that the final list of national developments is supported and delivered.

2.191 Part 3 sets out policies for the development and use of land to be applied in the preparation of local development plans and for determining applications for planning consent. Policy 19 on green energy is the lead policy on renewable-energy generation. It excludes development of windfarms from national parks and national scenic areas. In other areas of Scotland, though, it no longer applies a spatial framework similar to that in the current SPP. The policy is simply that development proposals should be supported unless the impacts identified are unacceptable. The policy includes a list of factors to consider as regards acceptability. These are not dissimilar to the factors in paragraph 169 of the current SPP.

2.192 Although policy 1 is entitled "a plan-led approach to sustainable development", contrary to SWM's claim, there is nothing in the policy that would suggest a change to the

current treatment of the development plan in applications for generating stations under the Electricity Act 1989 or that future local development plans would acquire a status similar to that for applications under the Town and Country Planning (Scotland) Act 1997 in determining such applications. The emphasis in the policy is on the content of local development plans, rather than their status. The development plan is, of course, a material consideration in the determination of an application under the Electricity Act.

2.193 While emissions-reduction is a factor to be considered under policy 19, policy 2 separately requires significant weight to be given to the global climate emergency. This policy requires the scale of a development's contribution to meeting emissions-reduction targets is to be taken into account in determination of the application.

2.194 Policy 3 indicates development proposals should contribute to the enhancement of biodiversity, including restoring degraded habitats. A proposal's effect on biodiversity is a material consideration at present, as a result of Ministers' general duty under the Nature Conservation (Scotland) Act 2004 in the exercise of their functions to further the conservation of biodiversity and also in the light of the adoption of the *Scottish Biodiversity Strategy.*

2.195 Policy 4 on human rights and equality requires consultation and engagement that is meaningful, collaborative and proportionate by planning authorities, key agencies and communities. This policy does not, however, mean that the number of objections an application receives is to be treated in the manner of a local referendum – particularly not for a national development, the need for which is already determined in principle.

2.196 Policy 8 provides for the principle of "infrastructure first". SWM suggests that this means there must be evidence of grid capacity for the proposed development (which would run counter to current policy in SPP paragraph 165). Policy 8 is, however, set within a chapter in NPF4 entitled "liveable places", and alongside policies such as policy 7 on 20-minute neighbourhoods, policy 9 on quality homes, and policy 10 on sustainable transport. From its context, we understand that it is intended to ensure infrastructure is provided for settlements (in the broadest sense) and developments within them, and is not really relevant to the grid connection of generating stations.

2.197 Notwithstanding the limited materiality of the draft NPF4, it appears to us to confirm our conclusions above: Ministers still take the view that applications for renewable-energy development generally should be determined case by case, weighing benefits and adverse effects. In the draft policy, though, emissions reduction is a benefit that is of increased prominence.

<u>Development plan</u>

2.198 The 2015 LDP has been superseded by the 2020 LDP. Moray Council's references to policies in its 2015 LDP are relevant insofar as they provide an understanding of the objection and indicate what policies in the 2020 LDP are relevant to its ongoing objection. In other respects, the 2015 LDP has no policy force and no weight.

2.199 We find that policy DP9 on renewable energy is the principal policy of relevance to the proposed development in the 2020 LDP. While we consider that the 2020 LDP should be read as a whole for a full understanding, DP9 is a specific policy on renewable energy, providing a full set of considerations to be taken into account. DP1 is a general policy on development principles, covering all types of development. While it is not irrelevant, the matters it covers – insofar as they relate to the proposed development – are largely covered with greater specificity by policy DP9.

2.200 The council has drawn to our attention to the requirements in policy DP1 that development "must be integrated into the surrounding landscape" and that development proposals are to "demonstrate how they will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape". As regards landscape and visual effects, policy DP9 states that renewable-energy must "avoid or address any unacceptable significant adverse impacts including landscape and visual impacts". This wording implies that there can be significant adverse landscape and visual impacts that are acceptable. There is therefore a degree of apparent tension between policy DP1 and policy DP9. It seems plain to us that, insofar as renewable-energy development is required to comply with the requirements of DP1, that policy is to be interpreted in the understanding that significant adverse impacts on landscape can be acceptable. In our view, the issues dealt with for development generally in DP1 are dealt with in more specific terms for renewable energy in DP9.

2.201 LDP policy EP3 deals with protection of SLAs and landscape character. The general provision in the policy's part (ii), requiring new development to be designed to reflect the landscape characteristics identified in the Landscape Character Assessment, applies. The specific provision in part (i) on SLAs, however, only applies to development within such an area. It does not apply to development outside the area, such as that for which the application is made. Nonetheless, we consider the effect of a development outside the SLA on the landscape and visual qualities of the area is a material consideration in Ministers' decision.

2.202 PP2 indicates that development that supports the *Moray Economic Strategy* to deliver sustainable economic growth will be supported subject to certain criteria. The council's witness made the case that renewable energy is not identified as a key growth sector in the strategy. There is nothing express in the wording of policy PP2 to suggest that development that does not support the strategy would represent an infringement of the policy PP2 or would not find support in other LDP policies. It might be implied that an adverse effect on the aims of the strategy was contrary to the plan. An adverse socio-economic effect would clearly be a material consideration for Ministers. While the council implied that an adverse effect on tourism would be contrary to policy PP2, it made no case itself that the proposed development would have an adverse effect on tourism. Others did though. We deal with questions of the proposed development's effect on tourism in chapter 5 on socio-economic effects.

2.203 The council raised PP3 in respect of matters relating to transport and access to the site. Parties have subsequently agreed that these matters may be resolved by condition.

2.204 DP5 part (g) relates to rural businesses and farm diversification. It is not applicable to a renewable-energy development, which is covered by policy DP9. Even if DP5 was relevant, the need for a rural location for a development such as that proposed is unarguable. The *Moray Onshore Wind Energy guidance* (discussed in the next paragraph) identifies the area as one of the more suitable areas in Moray.

<u>Other council policy guidance</u>

Moray Onshore Wind Energy Guidance (MOWE) and Moray Wind Energy Landscape Capacity Study (MWELCS)

2.205 MOWE expands on LDP policy DP9 and sets out an overall strategy for considering wind-turbine-development proposals. The guidance states that it aims to safeguard from inappropriate development Moray's high-quality and diverse natural and built environment;

that there is limited scope to accommodate further large-scale wind-turbine developments in Moray in landscape and visual terms; and that there are some limited opportunities for the expansion and/or repowering of existing wind-turbine developments in certain landscapes. The guidance includes maps of constraints and guidance on areas of greatest potential for different types of turbines.

2.206 MOWE draws upon MWELCS in identifying areas of potential for very large turbines (up to 150 metres in height) and for extension of windfarms. MOWE Map 4 identifies these areas. The council's planning witness in the appendix to his inquiry report provides maps showing the location of the proposed turbines of the original proposal and alternative proposal relative to the areas of potential. It is not disputed that most turbines of the original proposal and most turbines of the alternative proposal are within such an area, though some are not. The proposed development is an extension in the sense that it is beside the Rothes I and II windfarms and uses the same access infrastructure. MOWE indicates that there is no presumption in favour of development arising from location within an area of potential. The broad areas of potential are to be refined using strategy guidance in MWELCS along with consideration of constraints and site investigation. MOWE further states that, where turbines of more than 150 metres in height are proposed, the onus is on the applicant to demonstrate how the impacts could be mitigated and the proposal supported. Both parties agree that the guidance in MOWE on areas of greatest potential is not prescriptive. This accords with our finding that MOWE adds no further constraints to the spatial framework derived from national policy.

2.207 MWELCS is included in MOWE as an appendix. We consider its recommendations in more detail in the next chapter on landscape and visual effects. It is common ground between the council and the applicant that the guidance is a strategic-level policy document and that every proposal has to be considered on its own merits. We agree.

2.208 While MWELCS is useful as a starting point in assessing the acceptability of landscape and visual effects, it is not a substitute for individual assessment of a particular proposal. It was produced without any particular requirement for onshore wind in mind. Consequently, it is useful in considering the relative landscape sensitivity, but less useful in determining any absolute limits on what development can be accepted in the landscape.

2.209 There was initially some contention about the status of the predecessor to the current MOWE, and whether it was part of the development plan or not. The current version, (adopted by the council in October 2020) is non-statutory planning guidance and not part of the plan. However, since the development plan has no special statutory status in an application under section 36 of the Electricity Act, we find (like the reporter in the Paul's Hill II decision) that little would have ridden on the question of its status anyway.

The Moray Woodland and Forestry Strategy

2.210 The council referred to the *Moray Woodland and Forestry Strategy*, which was adopted as supplementary guidance under the Moray Local Development Plan 2015. We understand the council has continued to apply it as a material consideration following the adoption of the 2020 LDP. It highlights opportunities within the forestry and woodland sectors that the council supports in principle. The strategy also supports the role of woodland expansion in adapting to and mitigating impacts of climate change.

Moray Council Climate Change Strategy

2.211 We acknowledge that the council has adopted its own measures to address the climate emergency. We agree that the evidence does not suggest the council has taken a

negative approach in this regard. The work that has already been done in Moray and that is proposed to reduce emissions does not take away from the requirement to consider the proposed development on its merits, in the context that there is no cap on development and that the area's full potential should be achieved.

The Cairngorms National Park Partnership Plan 2017-2022

2.212 The Cairngorms National Park Partnership Plan is the overarching management plan for the national park. It is not the park's development plan. Though the park's local development plan takes direction from it, the local development plan does not itself apply outside the park. Policy 3.3 of the Partnership Plan is a policy that supports development of a low-carbon economy. It states that there is a particular focus on increasing renewable-energy generation that is compatible with conserving the special qualities of the park and maintaining the integrity of designated sites. Large-scale wind turbines are stated not to be compatible with the landscape character or special landscape qualities of the park and to be inappropriate within the park or where outside it they significantly adversely affect its landscape character or special landscape qualities.

2.213 This policy should be considered in the context of SPP. This provides at paragraph 212 that development that affects a national park should only be permitted where the objectives of designation and the overall integrity of the area will not be compromised or any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

2.214 Set in this context, we consider that the term "significant adversely affect" in policy 3.3 of the Partnership Plan is not to be interpreted as meaning the same as a "significant effect" in EIA terms. Rather, we consider it refers to the first branch of paragraph 212 – the compromise of the objectives of the park's designation or of its overall integrity.

2.215 We note that draft NPF4 policy 19 states that "outwith National Parks, and recognising the sensitivity of any other national or international designations, development proposals for new wind farms should be supported unless the impacts identified (including cumulative effects), are unacceptable". While NPF4 is of limited weight, we consider the form of the draft policy confirms our understanding of Ministers' view that windfarm development outside a national park that affects a national park to some degree can be acceptable.

CHAPTER 3: LANDSCAPE AND VISUAL EFFECTS

The landscape and visual assessment

Original proposal

3.1 The Landscape and Visual Impact Assessment (LVIA) in chapter 8, together with appendices 8.2 (Landscape Assessment), 8.3 (Visual Assessment) and 8.4 (cumulative LVIA) of the EIAR provide an assessment of the potential effects on landscape character, views and visual amenity of the original proposal. A summary of landscape and visual effects is provided in table 8.8 of chapter 8. The update of predicted cumulative effects is summarised at paragraphs 8.13.6 to 8.13.9 in chapter 8 of the 2019 AI.

3.2 The landscape effects of the proposed development are assessed against baseline landscape character types described in existing studies for Moray, the Cairngorms National Park and other surrounding areas. The proposed development's visual effects are assessed through use of 19 viewpoints, for which visualisations are provided.

3.3 In summary, for the original proposal, the LVIA predicts:

- that there would be a significant (major/moderate) effect during the construction phase on the landscape of the proposed development area. The construction works would be of short duration and would be reversible, in that operational effects would take over at the end of the construction phase. There would also be a significant (major/moderate) effect during operation.

- significant effects on landscape character, including
    - a significant (major) effect on the character of the Upland Moorland and Forestry landscape character type (LCT 10) for the area between the Dallas-to-Knockando pass and a significant (moderate) effect for more distant areas of the LCT.
    - a significant effect on the Broad Farmed Valley landscape character type (LCT 7) within 8 kilometres of the proposal. LCT 7 largely falls within what was then the candidate Spey Valley Area of Great Landscape Value and is now designated in the adopted 2020 LDP as the Spey Valley Special Landscape Area (SLA).

- Significant visual effects at viewpoint 4: Ben Aigan; viewpoint 5: East of Craigellachie; viewpoint 6: A95 south of Aberlour; viewpoint 7: Ben Rinnes; viewpoint 11: B9102 west of Archiestown; viewpoint 13: Duke of Gordon Monument in Elgin; viewpoint 18: Speyside Way Blacksboat Bridge; viewpoint 19: B9102 between Blacksboat Bridge and Cardhu; the A95 between Cragganmore and Aberlour; B9102 between Blacksboat and Upper Knockando and Macallan to Cardhu; B9010 Elgin to Edinvale by Dallas; Core Path SP20 Lower Mannoch Path and Right of Way GM7.

- Significant visual effects at the residential properties of Blackhillock and Lynes to the west of Archiestown; four properties at Newlands, Old Croft, east of Old Croft, west of Newlands, and one property at Manscroft on the northern edge of Archiestown (Archiestown E in the Residential Visual Amenity Assessment - RVAA).

3.4 The LVIA refers to its assessment of the effects of the original proposal on the existing baseline of development as "scenario 1". It also considered cumulative effects by assessing the effect of the addition of the proposed development to a notional baseline, in

two further “scenarios”. The first of these was the addition of the proposed development to a baseline including not only existing but also consented development (“scenario 2”). The second was the addition of the proposed development to a cumulative baseline including existing, consented and proposed development (that is, development for which an application had been made) (“scenario 3”).

3.5 During the inquiry, the applicant submitted evidence that an undertaking had been made and registered by the owner of land at Hunt Hill in respect of which consent had been granted for the Hunt Hill windfarm (CD15.1.10). The undertaking provides that, if consent is granted for the proposed Rothes III windfarm (and is not revoked or quashed) then the Hunt Hill windfarm will not be constructed unless the Rothes III windfarm is not implemented within the timescale shown in the consent.

3.6 The environmental information provided by the applicant makes separate predictions for the cumulative effects of the proposed development for a situation in which Hunt Hill forms part of the notional baseline and for a situation where it does not. Given the terms of the planning obligation, we have not included the effects predicted for the situation in which Hunt Hill would form part of the notional baseline for scenario 2 in summarising the significant cumulative effects predicted in the environmental information. We take a similar approach in summarising parties’ cases.

3.7 Having made its assessments for scenario 2 and scenario 3, the EIAR predicted the following:

- Significant cumulative visual effects as a result of the relationship between the original proposal and the consented Hill of Towie II at viewpoint 4[1].

- No other significant cumulative landscape or visual effects in either scenario 2 or 3, even when Clash Gour is added to the scenario 3 baseline.

3.8 The applicant has proposed the removal of turbine T15 from the design of the original proposal. No party suggests that the omission of turbine T15 would result in any change to the assessed degree of significance of landscape or visual effects identified for the original proposal.

3.9 The LVIA refers to the original proposal as having a combined effect with other wind farms of change in the landscape from a “landscape with windfarms” to a “landscape with windfarm clusters”. It states that the original proposal would not be alone in causing the trend towards such a landscape change.

Alternative proposal

3.10 Chapter 8 of the 2019 AI provides the LVIA of the alternative proposal. In summary, for the alternative proposal, the LVIA predicts:

- significant landscape effects on the proposed development area during construction and operation; significant (major) effects on LCT 10 between the Dallas-to-Knockando pass and Glen Rothes and significant (moderate) effects elsewhere in that LCT; significant (major/moderate) effect on part of LCT 7 within 8 kilometres of the proposed development. The degree of landscape effects would be less than the

[1] The addition of the proposed development to a baseline including also the now-consented Paul’s Hill II and Clash Gour did not at viewpoint 4 increase the degree of significance of the cumulative effect assessed (moderate) beyond that of the cumulative effect with Hill of Towie II.

original proposal due to the lesser number and scale of turbines and their visual relationship with existing wind farms.

- fewer significant visual effects than the original proposal. Significant visual effects would remain at viewpoint 4; viewpoint 6; viewpoint 7; viewpoint 18; viewpoint 19; part of the A95; the B9102; the Mannoch Road Right of Way GM7; and the residential property at Lynes.

- As with the original proposal, the alternative proposal would have significant cumulative visual effects at viewpoint 4 where it is added to a baseline including the consented Hill of Towie II.

Agreed Matters

3.11 In advance of the inquiry, a statement of agreed matters was submitted by the applicant and the council. Although the statement is submitted as a 'draft', the council and applicant agree that it presents a comprehensive summary of these parties' positions.

3.12 The general matters relating to landscape and visual effects agreed are:

- the methodologies employed in the assessment of landscape and visual effects are based on Landscape Institute and Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Assessment Third Edition 2013 (GLVIA3); and SNH: Visual Representation of Wind Farms version 2.2 (2017);
- the LVIA study area and relevant areas of focus, i.e. areas within the Zone of Theoretical Visibility (ZTV), are within accepted thresholds;
- the inquiry only needed to cover landscape and visual effects within approximately 15 kilometres of the proposed development;
- the viewpoints included in the EIAR, 2019 AI and April 2020 SI are representative of the types and locations from which there may be views towards the proposed development on a solus and cumulative basis;
- ZTVs, wirelines and photomontages in the EIAR, 2019 AI and the April 2020 SI are appropriate to inform the assessment of landscape and visual effects, including cumulative effects, and accord with SNH's Visual Representation guidance;
- effects on LCT 10, LCT 7 and the Spey Valley SLA are the most relevant;
- there would be no significant effects on the nearest Wild Land Areas.

3.13 The agreement of these matters between the applicant and council does not take away from our consideration of comments made by SNH and others in respect of alleged significant effects at a distance greater than 15 kilometres.

Main points for Moray Council

3.14 Key documents submitted in evidence by the council include:

- Committee report 25 June 2019
- Committee report 25 February 2020
- Inquiry statement
- Inquiry report and appendices (Mark Steele)
- Precognition (Mark Steele)

Preliminary

The decision to lead evidence from Mark Steele

3.15 It was implied in the applicant's questioning at the inquiry that the decision to engage Mark Steele as a witness was because Carol Anderson, the council's standing landscape consultant, had not expressed concern about Rothes III. This is conjecture. It was explained at the pre-inquiry meeting that it was too much for Carol Anderson to deal with both developments. It was confirmed by Mark Steele in evidence that she had other commitments.

3.16 Carol Anderson's review of the alternative proposal (January 2020), provided in evidence at the inquiry, was a draft. It was followed through with telephone calls to the planning officer. It was clear she did have concerns about the proposed development. She acknowledged it was an error not to state the concerns in the review. Similarly, her review of the original proposal (May 2019) was a draft, followed through with telephone calls to the planning officer. She had concerns about the original proposal. As she said in evidence, the person in the street "would find horrors in the proposals". She discharged her professional duty in advising on the proposals. Mr Templeton, the council's planning officer had understood that she had significant concerns about the scale of the proposal and had expressed those. Any suggestion that the council did not lead evidence from Ms Anderson because she did not express concern about either the original or the alternative proposal is groundless.

Mark Steele as an expert witness:

3.17 The council acknowledges that Mark Steele has acted for objectors to other windfarm developments and in some cases the objectors have been unsuccessful and in some cases successful. In the Limekilns case (CD 11.25), it is clear the reporters were of a different view to Mark Steele. They nonetheless acknowledged that the conclusions he had drawn could be made in good faith and represent a professional judgement on the evidence available. There is no basis not to accept Mark Steele as a credible and reliable witness.

Methodology:

3.18 The methodology applied by the council's landscape witness in assessing the proposed development's landscape and visual effects is set out in appendix 1 of the inquiry report.

3.19 The council has a number of criticisms of the methodology in the applicant's EIAR.

3.20 The visual susceptibility and sensitivity of roads, core paths and rights of way and their users in the applicant's methodology is not consistent with GLVIA3 guidance and is not consistently applied in the EIAR. In particular:

- the users of the GM7 right of way, the Lower Mannoch Road core path (SP20) and Pikey Hill to Burn of Rothes core path (SP01) are treated as being of low (the first two) or medium (the latter) sensitivity. In the case of core path SP01, the lower sensitivity is related to use, but there should be no link in principle between sensitivity and use.
- A higher sensitivity should also have been accorded in the EIAR to users of the Malt Whisky Trail, and to viewpoints and routes associated with it, such as viewpoint 19 and the B9102.

- Sensitivity of road users in local plan landscape designations is not consistently assessed in the EIAR. A medium sensitivity is accorded to viewpoint 6, at the time of the EIAR in an Area of Great Landscape Value, but low sensitivity to other viewpoint 5 (A95 east of Craigellachie) and to viewpoint 9 (Dallas Castle), both also in an Area of Great Landscape Value at the time.

3.21 The council witness's methodology applies a range of sensitivity to road users that reflect a range of susceptibility (commercial drivers of low sensitivity to tourists of high sensitivity). Road users can also include horse riders and cyclists, who would be considered of higher sensitivity than those in vehicles.

3.22 It is not clear that the EIAR took account of scaling factors such as relative height of turbines, their blade diameter and rotational speed and the proximity of scale indicators. It is also not clear that the EIAR consistently treated the proposed development as irreversible.

3.23 As regards cumulative effects, the applicant's EIAR assesses the effect of the addition of the proposed development to two notional baselines, first including consented developments, and second of consented and other proposed developments. It acknowledges that this does not provide a view on the overall effect of combined windfarm developments that may occur, depending on which proposed windfarms are consented and built. The council's approach is to assess the combined effects of existing, under-construction and proposed windfarms and then assess the contribution of the proposed windfarm to these combined effects.

Hunt Hill windfarm and the assessment of cumulative effects

3.24 The applicant gave notice at the inquiry that it had concluded a planning obligation with the landowner of Hunt Hill for the construction of the consented windfarm there not to go ahead should the Rothes III proposal receive consent. An inference could be drawn from the timing of the notice, the day before the council's evidence, that it was lodged late as part of a deliberate intention to undermine his opinion on cumulative effects. Even with the removal of Hunt Hill, the combination of Rothes I and II, Meikle Hill and Kellas with Rothes III would provide visual confusion. The removal of Hunt Hill did not address that. The agreement in respect of Hunt Hill makes no difference overall to the opinion of the council witness on cumulative impact (though his evidence was that he had not reviewed the effects at every viewpoint).

Landscape character effects

Baseline

3.25 The council witness's assessment of landscape-character effects is set out in appendix B of the inquiry report. LCT 10 can be described as a 'with-windfarms landscape' rather than a 'windfarm landscape'. The landmark hills at the edges of the LCT provide a backdrop to the smaller-scale valleys, and immediate skylines to adjacent, lower-lying, well-settled-valley character types and from where they are the focus of views.

3.26 The nearest adjacent LCT to the proposed development is LCT 7 with its characteristic changing views from the valley and dominance of surrounding hillsides, hilltops and skylines, both from within the valley floor and elevated viewpoints on the valley sides. Although there is visibility of Hill of Towie, Paul's Hill and Rothes, they are not considered a 'key characteristic' of the LCT.

Original proposal

3.27 Effects on LCT 10 and LCT 7 would be significant.

3.28 For LCT 10 there would be direct landscape effects. The proposal would substantially extend windfarm development and also introduce much larger turbines to this landscape. Although much of LCT 10 has a large scale and simple landform, which reduces sensitivity to larger wind turbines, the lower hill fringes in the Upper Knockando area, at the transition with LCT 7, feature dispersed settlement, farmland and small woodlands which reduce scale and increase the diversity of the landscape. The scale of the proposal would dominate these smaller-scale upland fringes and contribute to the significant adverse impacts that would occur on LCT 10. The council witness's assessment attributes a significant (major) effect to the area between the Dallas-Knockando pass, the hills to the west of Glen of Rothes and the lower hill fringes in the Upper Knockando area, and a significant (moderate) effect for other parts of the LCT.

3.29 LCT 7 would be subject to indirect landscape effects. While operational windfarm development is already visible on containing skylines in views from parts of LCT 7, the proposal would introduce a greater extent of windfarm development with very large turbines prominent on the backdrop of hills to the north-west of the Spey. There would be significant and adverse effects on the character of LCT 7, which would be appreciated from more open and elevated valley sides and a small part of the highly sensitive narrow incised valley floor of the Spey. The magnitude of landscape effects would range from medium to high within 8 kilometres. Effects would reduce with distance and would not be significant beyond that.

Alternative proposal

3.30 Effects on LCT 10 and LCT 7 would be significant.

3.31 For LCT 10, the alternative proposal would reduce effects on the smaller-scale and more diverse landscape of the lower hill fringes in the Upper Knockando area. The LCT (as a whole) would be subject to moderate, significant and adverse direct landscape character effects. The area between the Dallas-Knockando pass, the hills to the west of Glen of Rothes, and the lower hill fringes in LCT 10 in the Upper Knockando area would be subject to moderate/major, significant and adverse direct landscape character effects from the alternative proposal. The effect on the LCT10 lower hill fringes would be less in extent than the original proposal.

3.32 For LCT 7, the alternative proposal would have a lesser extent of visibility and incidence of significant effects as compared with the original proposal. The reduction in landscape effects is not as great as that implied in the 2019 AI's landscape assessment. The magnitude of landscape effects would be medium to high within 8 kilometres and landscape effects would reduce with distance. The LCT would be subject to moderate to moderate/major, significant and adverse indirect landscape-character effects within 8 kilometres.

Creation of a windfarm-landscape-character sub-type

3.33 Both the original and alternative proposals would have the combined effect with existing windfarms of creating a windfarm-landscape-character sub-type. This is the greatest level of cumulative change to the landscape defined in SNH guidance. It is inappropriate in Moray. Such a sub-type can be created where turbines are a dominant characteristic of the area, up to 2 to 3 kilometres from the turbines.

3.34 The council witness's evidence is that the original proposal, with existing windfarms, would create such a sub-type in the area centred on the three Rothes windfarms to the east of the Dallas-Knockando Road. With consented windfarms, such a landscape would extend to include the Meikle Hill and Kellas windfarms. The effect of Clash Gour and Paul's Hill II would be to create a separate windfarm landscape sub-type across LCT 10 and 11 as well as the sub-type centred on the Rothes windfarms.

3.35 The alternative proposal would also create a windfarm-landscape-character sub-type with existing windfarms, and also when added to a baseline of consented development. The lesser extent of the alternative proposal's visibility to the south would mean the sub-type would not extend as far in that direction.

3.36 The applicant's witness did not accept that the relevant part of SNH guidance applied although he acknowledged that there would be an area where turbines were the dominant characteristic in the landscape. His evidence as to the existence and extent of such a sub-type is inconsistent with the conclusions of other landscape professionals at the inquiry, including that of James Welch (the witness for the Clash Gour applicant).

Effect on landscape designations

3.37 The original proposal would have a significant adverse effect on part of the Spey Valley SLA. Although landform and woodland would be likely to screen the proposal from much of the narrow incised valley (floodplain and immediate side slopes) of the Spey, there would be occasional views from parts of this area (such as viewpoint 18). The proposed development would be visible on prominent skylines, as is demonstrated by the effects at viewpoints 6, 18 and 19. The Moray Landscape Designation Review (CD5.16) noted that wind-energy development in adjacent upland areas and visible on prominent skylines would affect the character and views from the well-settled and well-visited valley. The character of settled and more open hill slopes below the upper Knockando area would be significantly and adversely affected as would the more distant slopes and hill tops lying to the south-east of the Spey.

3.38 The alternative proposal would also be visible on prominent skylines. This would adversely affect the character and views from this well-settled and visited valley. The alternative proposal would not minimise the landscape and visual impact on the SLA.

3.39 The EIAR and 2019 AI do not assess cumulative effects on designated landscapes. Paul's Hill II would compound the significant cumulative landscape effects of the original proposal on the Spey Valley SLA. Clash Gour would further compound these adverse effects. The same is the case for the alternative proposal.

3.40 There would not be a significant adverse effect on the Ben Rinnes SLA.

Visual effects at viewpoints

3.41 For the original proposal, the council finds significant visual effects at the same viewpoints as the EIAR assessment. This implies that significant visual effects would extend up to 13.5 kilometres.

3.42 For the alternative proposal, the level of visual effects would be reduced, but not at all viewpoints. It would not be less than those identified for the original proposal at viewpoints 6, 7 and 18. The level of significance would be reduced at viewpoint 4 but would still be significant. Effects at viewpoints 5 and 13 would no longer be significant. The effect at viewpoint 11 would still be significant if the forestry was removed in the life of the windfarm. Effects at viewpoint 19 would be reduced but would remain significant.

3.43 Although the applicant's witness claimed there were few viewpoints from which the proposed development would be seen, there are viewpoints other than those in the LVIA from which it would be seen, such as on the A95 between Cragganmore and Georgetown.

Comments on particular viewpoints

3.44 Viewpoint 4 (Ben Aigan) has very high / high sensitivity. The council finds the original proposal would have a high level of effect. Consequently there is a very major/major effect.

3.45 For the alternative proposal there remains a high magnitude of effect. Consequently there would be a very major/major effect for the alternative proposal (rather than the moderate effect assessed in the 2019 AI).

3.46 The significance of the combined effect of existing, consented and proposed development, including the original proposal, at the viewpoint would be high. In the view of the proposed development, turbines would be of differing scale and would overlap in the view, with more distant turbines creating a complex array. In the opposite direction, Hill of Towie I and the consented Hill of Towie II would be close to the viewpoint. There would be the same degree of effect for the alternative proposal.

3.47 The cumulative effect of the addition of the original proposal to a scenario-2 baseline would be of moderate / major significance. Its addition to a scenario-3 baseline, including particularly Paul's Hill II and Clash Gour, would also result in a moderate/major and significant effect. There would be the same degree of significant effect for the alternative proposal in scenarios 2 and 3.

3.48 Viewpoint 5 (A95, East of Craigellachie) has low to medium sensitivity depending on the type of road user. The original proposal's magnitude of effect is high. Consequently there is a moderate to moderate/major significant effect, depending on the road user. Given the lesser height and visibility of the turbines of the alternative proposal, it would not have a significant effect.

3.49 Viewpoint 6 (A95) is important because it is on the main arterial route through Moray, a road along which those living and working in Moray and visiting the area would pass. The experience of the more prolonged view at the viewpoint is amplified by the initial fleeting views through woodland. The skyline between Càrn na Cailliche and Hunt Hill, forming the backdrop to the Spey Valley SLA, seen across from the viewpoint, and Càrn na Cailliche itself, are important features. The landscape capacity study advised of the adverse effect turbine development would have on prominent skylines. SNH guidance (CD7.17) identifies the sensitivity of skylines generally. The council witness's evidence is that the proposed development would be a dominant feature having regard to the horizontal and vertical extent of the turbines and their contrast with other scale indicators in the view. The turbine movement would draw the eye. Both the original and alternative proposal would overwhelm the view. This evidence is to be preferred to Mr Denney's evidence that the proposed turbines would merely be prominent.

3.50 As regards the combined effect of existing, consented and proposed development Clash Gour would increase the number of turbines in the view. There would be a moderate to major significant combined effect (taking account of the range of sensitivity of road users). The effect of adding either the original or alternative proposal to a notional baseline including existing, consented and proposed development would range from moderate and not significant to moderate/major and significant (depending on the sensitivity of road users).

3.51 Viewpoint 7 (Ben Rinnes) provides panoramic views across Moray, to the coast and Cairngorms that make it a popular hill-walking destination. It is an important view. Both the alternative and original proposals would be prominent in the view and all turbines would be seen. There would be a disparity of scale with Rothes I and II and the rate at which turbine blades turned. The proposed turbines would contrast with scale indicators such as forestry and would contrast with the landform backdrop. Both the original and alternative proposals would have a moderate/major and significant adverse effect.

3.52 The original and alternative proposals would have a combined effect with existing and consented development that in its magnitude would be high because turbines would be visible in all directions from Ben Rinnes. The effect would be major, adverse and significant. The magnitude of the effect of adding the original or alternative proposal to a notional baseline including consented development would be medium. This is due to the proposed development's horizontal extent, scale and relative prominence (greater than other windfarms in the view, other than the nearby Dorenell). The additional effect would be of moderate/major significance.

3.53 The magnitude of the combined effect of existing, consented and proposed development (including either the original or alternative proposal, Paul's Hill II and Clash Gour) would be high (at the upper extent of the level of effect), given the compounding of the large-scale alteration to the visual baseline. The combined effect would be major and significant. The effect of the addition of either the original or alternative proposal to a notional baseline including existing, consented and proposed development would be moderate and significant.

3.54 Viewpoint 11 (B9102, west of Archiestown) is of low, medium or medium-high sensitivity, depending on the sensitivity of road users passing it. The original proposal would have a high magnitude of effect and consequently an effect of moderate to moderate-major significance. If the forestry to the north is cleared, the alternative proposal would have a moderate and significant effect, but otherwise the effect would not be significant.

3.55 Viewpoint 13 (Duke of Gordon Monument, Elgin): The council agrees with the applicant that the original proposal would have a moderate and significant effect, given the larger scale, different blade-rotation speed, consequent visual complexity when seen with Rothes I and II, the uneven density and overlapping of turbines and the negative effect of their partial screening. The alternative proposal would not have a significant effect, given the reduced height of some turbines.

3.56 Viewpoint 18 (Blacksboat Bridge) offers an iconic view of the Spey. The view is towards the north end of the bridge but a similar view can be obtained at the middle. It is a representative view. There are high-sensitivity receptors present including walkers, fishermen, kayakers and tourists on the Malt Whisky Trail. Càrn na Cailliche is the focus of the view. Its heather covering in summer would make it more prominent still. Both the original proposal and alternative proposal would cause the focus to shift to the turbines in the view rather than the hill. SNH guidance advises of the negative effect of the intermittent appearance of blade tips on the hillside. There would be a significant adverse effect on the view from either proposal. The degree of effect of the original proposal would vary from moderate to moderate/major (road users) to major (for walkers). The degree of effect of the alternative proposal would vary from moderate to major.

3.57 Viewpoint 19 (B9102) is representative of the view from the road between Bishop Croft and Upper Knockando, for about 3.5 kilometres of the route. Càrn na Cailliche is a prominent moorland skyline in the view. The forestry plantation shown in the photomontage as partially screening the proposed development does not do so for the route's whole length. The road is part of the whisky trail. The view is of medium value. Users of the trail

are likely to follow the ascending numbering and so travel towards the proposed development. Tourists, residents and cyclists would have heightened susceptibility to such development.

3.58 Views of both the original and alternative proposals would show a composition of uneven density, stacking, and the negative effect arising from partial screening behind the skyline, while scale indicators such as forestry and buildings would increase the perceived scale of the turbines. The original proposal would have a high magnitude of effect. The alternative proposal would have a medium/high effect.

3.59 The degree of significance of effect would vary depending on the susceptibility of the receptors. The original proposal's effect would vary from moderate (commercial drivers) to major (residents, tourists, cyclists) significant and adverse. The alternative proposal would have a moderate to moderate/major and significant adverse effect.

3.60 The combined effect of scenario-2 development (including Hill of Towie II), with either the original or alternative proposal would be major, adverse and significant. The proposed development (whether the original or alternative proposal) would be the main element of the effect. Consequently the additional effect on such a baseline would range from moderate to major, significant and adverse, depending on the receptor's sensitivity.

3.61 Scenario-3 development (including Paul's Hill II and Clash Gour) combined with the proposed development would result in a large-scale alteration to the visual baseline. The significance of the effect would range from moderate to major, depending on the receptor's sensitivity. The extent and prominence of either the original or alternative proposal as an element of the effect would result in an additional cumulative effect of high significance.

Visual effects along routes

Roads

3.62 The council agrees with the LVIA that the proposed development (both original and alternative proposals) would have a significant effect on users of the A95 between Cragganmore and Aberlour. It also agrees that the cumulative effect on the road's users of adding either the original or alternative proposal to a baseline including existing and consented development would be significant. Unlike the LVIA, the council considers the cumulative effect of adding the proposed development to a baseline including existing, consented and proposed development would also be significant.

3.63 Similarly, the council agrees that the original proposal would have a significant adverse effect on users of the B9102 between Blacksboat and Macallan.

3.64 The applicant's assessment understates the sensitivity of users of the B9102, which would have views across a designated landscape and forms part of the Malt Whisky Trail in Speyside. This results in a higher degree of effect for such users of the B9102 than the LVIA predicts and consequently a significant effect between Blacksboat and Macallan, assuming a worst case of removal of forestry west of Archiestown.

3.65 The council agrees that the cumulative effect on the road's users of adding either the original or alternative proposal to a baseline including existing and consented development would be significant. Unlike the LVIA, the council considers the cumulative effect of adding the proposed development to a baseline including existing, consented and proposed development would also be significant.

3.66 The visual effects of both the original and alternative proposals on the B9010 would be significant, but there would not be significant cumulative effects on the route.

Paths

3.67 The council acknowledges the LVIA's assessment that the original proposal would have a significant visual effect on users of the Lower Mannoch Path (SP20), but that the effect of the alternative proposal would not be significant.

3.68 As regards the GM7 right of way, the council agrees that the effect of both the original and alternative proposals would be significant for users. It questions the LVIA's finding that there would not be significant cumulative effects.

3.69 Users of paths (including a promoted route) in Forestry Commission land near Archiestown and Càrn na Cailliche would be subject to significant visual effects, where intervening forestry is felled.

Visual Effects on Settlements

3.70 The council agrees with the LVIA that there would be no significant effect on settlements. This is notwithstanding the significant effect at viewpoint 13 in Elgin, since it would not be representative of views from Elgin.

Visual effects on residential properties

3.71 The council has no objections in respect of impact on residential visual amenity.

Visual effects of aviation lighting

3.72 The council has no objections in respect of the visual effects of aviation lighting.

MWELCS

3.73 MWELCS found only "some limited scope" for turbine development in LCT 10 (Upland Moorland and Forestry). Turbines should be "set well back into the core of upland areas avoiding ridges … which form immediate skylines to … the Broad Farmed Valley" and Spey Valley SLA. Turbines should not be sited on or close by landmark hills, which include Càrn na Cailliche. Significant cumulative effects on the Dava Way and A95 should be avoided. Turbines of up to 150 metres should be sited to minimise cumulative effects with smaller turbines of nearby operational and consented windfarms in key views.

3.74 The development site lies partially within an area identified in the council's guidance as having the greatest opportunity for windfarm development up to about 150 metres. Ten turbines of the original proposal would lie outside this area, while four are at or close to the boundary. Five turbines of the alternative proposal lie outside that area, while four are at or close to the boundary. The applicant's evidence was that the turbines in the alternative proposal that were outside the area of potential were in areas of the highest windspeed in the vicinity. To the north-west of the application site, there are areas free of constraint, where there appears to be scope for development. This evidence indicates the applicant's primary design consideration was maximising its return rather than guidance in the capacity study or the landscape and visual implications of the proposed design.

3.75 LCT 10 does not have capacity to accommodate turbines of the proposed size and scale. It is evident from viewpoint 6 that the topography of Hunt Hill and Càrn na Cailliche does not provide substantial screening of the proposed turbines of the original proposal. It

would not be set well back into the core: the turbines would be located on the north-eastern flank of the ridgeline between Càrn na Cailliche and Hunt Hill, the skyline to LCT 7. They spill out of the land to the north. The original proposal's location on the ridge means it would introduce large-scale turbines on a sensitive skyline. The site of either the original proposal or the alternative proposal cannot be regarded as "low-lying".

3.76 Turbines sited on the north-east flank of Càrn na Cailliche and close to Hunt Hill are in conflict with the guidance for LCT 10 in MWELCS. Turbines 10, 13, 14, 9, 5 and 6 would be situated on the slope of Càrn na Cailliche. MWELCS identifies both Càrn na Cailliche and Hunt Hill as 'Landmark Hills'. The LVIA demonstrates that Càrn na Cailliche is indeed sensitive to wind-turbine development sited at or near it. The prominence of Càrn na Cailliche relates to its role as a skyline, as well as its open moorland characteristics (which contrast with the adjacent forestry) rather than its form. Viewpoints 6, 18 and 19 clearly demonstrate that the topography of Càrn na Cailliche (and the ridge running to Hunt Hill) contain visibility of the existing Rothes wind farms such that there is minimal or no visibility from the Spey Valley viewpoints. The contrast with the degree of visibility of the original proposal or the alternative proposal is stark. Càrn na Cailliche would not limit and contain views of the turbines as envisaged in MWELCS. Unlike Rothes I and II, the turbines of the original and alternative proposals would be strikingly visible from the A95 (viewpoint 6) and B9102 (viewpoint 19). The original and alternative proposals also have significant visual effects on the A95. Neither minimises the combined effect with smaller existing turbines.

3.77 While the Moray and Nairn Landscape Character Assessment 1998 (CD7.25) stated that the potential for windfarm development was foreseen throughout a large part of LCT 10, it did not suggest that such developments would be acceptable. Turbines were much smaller at the time. It was not a capacity study and was not commissioned by the council. No weight should be given to it.

Design

3.78 The council told the applicant during pre-application consultations that turbines as high as 225 metres would likely be of excessive height. The design iterations of the proposed development described in EIAR chapter 3 failed to arrive at a well-designed proposal.

3.79 This is confirmed in SNH's view that the original proposal would not reflect the existing pattern and scale of development in the Moray uplands, would breach the sensitive visual containment afforded to the Spey Valley, would cause the proposal to appear prominent in views from the CNP's northern fringes, and would thereby contribute substantially to significant cumulative visual effects on sensitive receptors to the south and introduce significant effects on the special landscape qualities of the CNP. Further, it would exceed the local landscape capacity and would not accord with SNH siting and design guidance.

3.80 The original proposal fails to achieve the design objectives set in the Planning, Design and Access Statement (CD3.5 paragraph 3.1.2) and further design objectives identified in EIAR paragraphs 3.5.8 and 3.5.10. Its failure to address constraints identified in MWELCS demonstrates it does not provide "a turbine layout, which relates to the landscape character of the site and its surroundings". Its failure to relate well to the smaller-scale upland fringes of the Upper Knockando area demonstrates that it does not create "a turbine layout which takes into account the scale of the landscape in which it is located". It would not achieve "a balanced composition of the turbines against the landscape and

skyline" at viewpoints 4, 9, 10, 13, 18 and 19. It fails to "reflect the pattern of nearby existing windfarms" as SNH noted.

3.81 The claim in the Planning, Design and Access Statement (paragraph 9.1.14) that most people would not notice the difference in turbine size of the original proposal and the neighbouring Rothes I and II windfarms takes no account of differences in rotational speed and in the density of turbines. The contrast in density is illustrated in the EIAR figures 1.2 and 1.3.

3.82 The proposed turbine heights in the original proposal do not necessarily reflect the elevation of the site. Some of the larger turbines (such as turbines 5 and 6) are set at a higher elevation than smaller turbines (such as turbine 13).

3.83 The alternative proposal is not sited well back into the core of upland areas. The proposed turbines would still be located on the north-eastern flank of Càrn na Cailliche and the northern and southern flanks of the ridge between Càrn na Cailliche and Hunt Hill.

Conclusion

3.84 Neither the original nor the alternative proposal is the right development in the right place.

Main points for Scottish Natural Heritage (SNH)

- SNH consultation response to EIAR
- SNH consultation response to 2019 AI

3.85 SNH does not object to the proposed development on landscape and visual grounds. It would not have an adverse effect on the integrity of the Cairngorms National Park (CNP) or the objectives of its designation. SNH did however have comments upon the impacts of the proposed development.

The original proposal

3.86 SNH advised in scoping that it considered turbines towards 200 metres in height were too large to accommodate within its landscape character area. This advice took account of the relatively limited extent of uplands in Moray, the smaller scale and design of the existing Rothes development and the presence of significant landscape and visual constraints within the upland landscape, such as the presence of landmark hills or transitions to areas of more complex landform. Reduced turbine heights, different turbine numbers and different layout were recommended. This advice was not taken up.

3.87 The Rothes III original proposal bears little design relation to the existing development at Rothes I and II. The scale and spacing of turbines leads to the impression of a substantially larger development, the prominence of which introduces significant adverse effects on the special landscape qualities to the north of the park.

3.88 Càrn na Cailliche is important having been identified as a landmark feature in the Spey Valley. It is also important in that it provides visual containment of the existing development at Rothes. The significantly larger turbines of the proposed Rothes III surrounding the hill summit to the east mean that the original proposal would breach the sensitive visual containment afforded to the wider Spey Valley, and would appear prominent in views from the northern fringes of the CNP.

3.89 The original proposal does not comply with most of the nine objectives in its design strategy (EIAR paragraph 3.5.8). It does not reflect the existing pattern and scale of development in the wider Moray uplands or the adjacent development at Rothes. It creates a complex layout and composition, which significantly impacts on local landscape character and on the sensitive transition to smaller-scale glen landscape character particularly to the south, contributes substantially to the extent of significant cumulative visual effects in views from the highly sensitive receptors to the south, and introduces significant effects on the special landscape qualities of the CNP. The design and scale of the development exceeds the capacity of the local landscape. It is not in accordance with SNH siting and design guidance.

3.90 The original proposal would have no adverse effect on landscape character in the CNP.

3.91 There would be a significant adverse visual effect on the northern extent of the Cromdale Hills at Càrn a' Ghille Cheàrr. Cumulatively with existing development at Paul's Hill (and to a lesser extent, Berry Burn and Hill of Glaschyle) the original proposal would increase the extent of large-scale wind-energy development along and down from the immediate horizon, breaching the screening the landform previously afforded. The level of cumulative effect would be increased by the proposed Clash Gour wind farm, which would extend the horizontal spread of turbines and increase the visual density and intensity of cumulative visual effect of development where it overlaps with Paul's Hill. The Rothes III original proposal introduces the greater extent of cumulative change within the view.

3.92 Although the assessment in the EIAR of the proposed development's effect on the park's special landscape qualities is a useful baseline, it does not follow current guidance and underplays the impact on certain qualities. The effect would better have been assessed by grouping the special qualities, rather than assessing the magnitude of change and effects individually against each quality.

3.93 The special qualities of the park most impacted (underlined), especially when viewed from the Cromdale Hills and Càrn Daimh and along the Speyside Way, particularly when travelling north, are the surrounding hills, their extensive moorland and attractive and contrasting texture and balance of elements that they introduce into the landscape. The scale and elevation of the hills contributes to the vastness of space, scale and height, which is also drawn from the surrounding rolling uplands to the east and west, the pronounced peak of Ben Rinnes to the north and the much wider extent of the Cairngorms massif to the south. This gives rise to a landscape of layers, which is experienced as receding ridgelines in many panoramic views.

3.94 The original proposal, given its extent and large scale, would appear in views, such as that from Càrn a' Ghille Cheàrr, to be of a comparable scale to Paul's Hill. It would introduce large turbines in an additional loose composition over 18 degrees of view. These would be seen in combination with existing turbines at Rothes, Paul's Hill and to a lesser extent Berry Burn and Hill of Glaschyle.

3.95 The impacted special landscape qualities together contribute to the special landscape quality of wildness, which is greater on the Cromdales than at Càrn Daimh. Since they would be perceived as of a comparable scale and spread as Paul's Hill, the original proposal's turbines would extend the experience of turbines on the immediate upland horizon to the north, eroding the tangible wildness special landscape quality.

3.96 The introduction of the original proposal in addition to Clash Gour and existing development would contribute to a significant adverse cumulative visual effect and further

intensify the level of significant effects on the special landscape qualities on the north fringes of the park, and in the Cromdale Hills in particular.

3.97 The dark-skies special landscape quality is a distinctive feature for both Càrn Daimh and the Cromdale Hills, where the intermediate skyline is created by the darker contrast of the closer uplands and lighter Moray Firth in the distance. The level of impact is supported by experience of other lighted development, where aviation lighting is distinguishable at distances of 20 kilometres. From Càrn Daimh and the northern extents of the Cromdales lighting will impact on the dark-skies special landscape quality.

3.98 No significant effects on the special landscape qualities of the park are envisaged at the more distant locations (over 30 kilometres) from the proposed development and therefore not at viewpoints 16 or 17. At Càrn na Lòine (viewpoint 14), the proposed development would be seen through Paul's Hill. Clash Gour, if it formed part of the cumulative baseline, would have a greater cumulative influence there.

The alternative proposal

3.99 The removal of six turbines would reduce visual density as compared with the original proposal. The reduced height would improve the scale relationship with the underlying landscape and with the existing turbines of Rothes I and II. However, several issues would remain. The alternative proposal:

- would still appear as a substantially larger development than the existing Rothes I and II, occupying a wider angle of view;
- would maintain a loose arrangement and uneven spacing of turbines, which contrasts markedly with the clustered and compact Rothes I and II;
- would introduce large vertical structures to the gently undulating plateau-moorland character of the site, remaining prominent in views.

3.100 Aviation lighting on eight turbines within the 2000-candela angle of intensity would be visible even at the closest distances of 20 kilometres from the windfarm. The lighting would impact on the sensitive wildness and dark-skies special landscape qualities. Much of the previous advice remains relevant.

3.101 The alternative proposal in design and scale exceeds the capacity of the local landscape, and introduces potentially significant cumulative effects to the special landscape qualities of the park.

Main points for Save Wild Moray (SWM)

- objection to original proposal June 2019
- objection to alternative proposal January 2020
- Inquiry Statement
- Inquiry report
- Precognition

3.102 SWM criticises the visual material: The baseline photography is dark, often fuzzy (such as for viewpoints 12 and 16) and from various dates. Existing turbines are not as visible as in real life. Some may not be shown. The quality of the visualisations minimises the impact of the contrast of existing and proposed turbines when seen from more distant viewpoints. Viewpoint visualisations show woodland screening. The applicant has no power to retain this, and it cannot be relied upon as mitigation. Not all current windfarm proposals (such as Berry Burn II) are shown on the wirelines. The cumulative tunnel effect

for road users is not properly depicted. The viewpoint selection is poor, with only six viewpoints showing significant effects, notwithstanding the height of the proposed turbines.

3.103 In accordance with SPP paragraph 170, sites for proposed turbines should be assessed on the basis that they are suitable in perpetuity. Landscape and visual assessment should not be on the basis that the proposed development is reversible.

3.104 SWM supports the detailed assessments and objections by Moray Council. Its objection relates to the geographic location of the proposed development (rather than its design), to the consequent significant adverse visual effects and adverse effects on landscape, and to the adverse effect on relative wildness.

3.105 Although MWELCS indicates that there is some scope for turbine development in LCT 10, the proposed development does not adhere to the guidance that turbines should be set well back into the upland, not be situated on landmark hills, avoid significant cumulative effects on the A95, and minimise effects on sensitive skylines in LCT 7. There would be adverse visual effects arising from the complex views of the windfarm, including cumulative effects with smaller existing turbines for instance at viewpoints 4, 12, 13, 14, and 15. The sensitivity of the Dallas-Knockando road is understated: it is part of the Malt Whisky Trail, from Cardhu to Dallas Dhu distilleries, and the main route between Speyside and the Findhorn valley. Cumulative effects would be particularly adverse on the Dallas-Knockando road and at the summits of Ben Aigan and Ben Rinnes. SWM agrees broadly with the EIAR assessment, but considers more viewpoints are required in recognition of the potential for sequential effects on tourists travelling in Moray.

3.106 Cumulatively, the situation would be complex. SNH should have but has not provided Ministers with a single comprehensive scheme-specific and cumulative assessment of the natural heritage aspects of both the Clash Gour and Rothes III proposals. This could have been provided. Ministers are not aware of what the comprehensive up-to-date position of SNH is.

3.107 There would be a windfarm landscape across a wider area of Moray. The current and emerging spatial pattern of wind farms in the area between Dallas, Knockando and Archiestown, alongside the multiple iterations of potential scheme-specific and cumulative effects from the proposed development, Clash Gour, Paul's Hill I and II and Berry Burn I and II, leads to the conclusion that this geographic area is the wrong location for these large scale commercial wind farms. There is a lack of spatial separation between these wind farms in a limited geographic area. The threshold of unacceptable cumulative impact has already been breached by the existing wind farms and there is no landscape capacity for more commercial-scale wind farms. Views from Ben Rinnes illustrate that conclusion.

3.108 The CNPA's Park Partnership Management Plan provides a clear basis for assessment of and objection to major windfarms on the park's periphery. Cumulative effects and aviation lighting are a growing and additional consideration. Given the legal significance of oral evidence at an inquiry under the Electricity Act, the CNPA ought to have appeared at the inquiry.

3.109 The arrival of turbines as high as 225 metres represents a step-change from previous development. This was recognised by SNH in respect of an application in the Lammermuirs. It should be dealt with as a national planning issue, not case by case.

3.110 The present assessment techniques arose at a time when turbines were around 70 metres high. The same techniques may struggle to visualise turbines of 225 metres, such as those proposed. The visual effects of very large rotating turbines are constantly varying. These effects are not evident in A3 sized pictures of static turbines at a limited number of

viewpoints. The size and format of the photomontages also significantly underrepresents real-life scheme-specific and cumulative visual effects of turbines of the scale proposed.

3.111 Given the likely individual and cumulative adverse impacts on valued local landscapes, the applicant, by not securing reasonable mitigation has not met the Schedule 9 test in the 1989 Act.

Main points for Speyside Community Council

- Objection to original proposal 27 March 2019
- Objection to alternative proposal January 2020
- Inquiry report

3.112 The Upland Moorland and Forestry (LCT 10) has limited scope for turbines up to 130 metres in height. MWELCS states that turbines over 150 metres are too large to be accommodated in the landscape given the relatively limited extent of the uplands within Moray, with significant effects more widespread and unacceptable on adjacent landscapes. There is no scope therefore for the size of turbines proposed for Rothes III (up to 225 metres).

3.113 Turbines would be introduced into views where currently there are none and would also add to the cumulative clutter of existing windfarms. The B9010 Knockando to Dallas road would be particularly affected if this application and Clash Gour were to be approved. There are also likely to be visual and cumulative effects to both the Speyside Way and the River Spey, popular with walkers and for water sports respectively.

3.114 The proposal would result in unacceptable impacts in terms of visual appearance and landscape character. The proposal would also result in unacceptable cumulative impact and would, if consented, add to the cumulative impact of an estimated 273 large scale turbines from operational windfarms, with at least another four in the planning process.

3.115 The proposal is near to Càrn na Cailliche, an identified Moray landmark hill.

3.116 Turbines over 150 metres require aviation lighting and turning blades will result in a flashing effect during the hours of darkness.

Main points for Yvonne Mandel

- Inquiry Statement
- Photographs

3.117 Yvonne Mandel is the owner of the property at Glenarder which is used as a second home and as a holiday let.

3.118 The proposal would have a major and devastating adverse visual effect on the landscape and inherent character of the setting of the property. Presently there are no visible turbines in views from the property, with the exception of two to three very distant views of the turbine blades of Hill of Towie, approximately 20 kilometres away. Glenarder is set in an elevated position with wide-open valley landscape. There are no significant trees, scrub or any other natural factor which would distract or provide any screening from Rothes III (or Paul's Hill II and Clash Gour).

3.119 If Paul's Hill II, Rothes III and Clash Gour are all approved, the total cumulative number of turbines would be approximately 40, and 180 degrees of views from the property

would be overwhelmed by turbines and a wind farm landscape. With the introduction of Rothes III, the current 360-degree unobstructed landscape views would effectively be permanently destroyed. With the addition of Paul's Hill II directly west and Clash Gour north west, all primary outdoor recreation area views from the property will be impacted to a major degree. There would no longer be an open wild landscape but a turbine landscape.

3.120 The visual impact on interior views would also be major, changing the character of the scenic views from the property. Overall the cumulative visual impact would be major and significant.

Main points for Andrew Chadderton

- Original objection to application 2019
- Inquiry Submissions and correspondence
- Inquiry report
- Precognition

3.121 Andrew Chadderton is resident at Tapp Farm which lies approximately 3.5 kilometres from the application site's boundary. The property is accessed via an existing forestry track off the minor Dallas-Knockando road.

3.122 Existing turbines are in direct line of sight, bar a thin depth of commercial forestry. That will be felled within 5 years. Within a 7 mile radius of the site, the proposal would potentially add to the adverse, cumulative visual impact of an estimated 273 large-scale turbines from operational windfarms and five in planning on the upland landscape of the West Moray Moors from Upper Knockando to the Dava Moor SLA. Approval of this application would potentially result in skylines dominated by large wind turbines on the Malt Whisky Trail's B9010 Upper Knockando - Dallas Road to Forres, B9102, A95, A96 and A941 as well as on the Highland Tourist Route A939 and A940 to Dava and the scenic gateway to Moray.

3.123 The proposed 29 giant turbines would potentially add cumulatively to the erosion of Moray's wild-land qualities in the uplands as well as adverse visual impact on protected areas attractive to tourism, specifically Moray landmark hills Ben Rinnes and Ben Aigan, Speyside AGLV, the candidate SLAs of Ben Rinnes and Spey Valley, Cairngorms National Park, and popular recreational routes including the Malt Whisky Trail, the Speyside Way and Dava Way.

3.124 The representations of the proposed development's visual effect bear no relation to the actual size impact. If all existing and proposed turbines are approved, 245 degrees of the property's horizon will contain turbines. Currently there is zero light pollution locally so in addition to direct visual impact there would be a degradation in night sky views as a result of aviation lighting.

Main points raised in representations from the public

3.125 Objections made in response to the application for the original proposal referred to the adverse landscape and visual impacts; the potential cumulative visual impact of an estimated 273 large-scale turbines from operational wind farms, with five in the planning stage on the upland landscape of the west Moray Moors; domination of skylines by large wind turbines on the Malt Whisky Trail's B9010, Knockando-Dallas Road, B9102, B9010, A95 and A941; the cumulative erosion of Moray's wild land qualities in the uplands and adverse visual impact on protected areas attractive to tourism such as Moray landmark hills Ben Rinnes and Ben Aigan, Speyside AGLV, the candidate SLAs of Ben Rinnes and Spey

Valley, Cairngorms National Park, and recreational routes including the Malt Whisky Trail, the Speyside Way and Dava Way.

3.126 In response to the 2019 AI alternative proposal, objections referred to the adverse cumulative effects of turbines in the landscape and on the tourism industry; the excessive height of turbines and effects on AGLVs, the A941 and lack of content in the photomontages.

3.127 A number of written submissions (45 objecting and 2 in support) were also submitted by members of the public at the close of the inquiry. Landscape and visual matters raised largely reflect those of the objectors who participated in the inquiry and include: the extensive visibility and cumulative adverse impacts on Moray's iconic upland scenery and wild landscape; size and number of turbines; impacts of turbine lighting; no spatial separation between developments; erosion and destruction of the countryside; creation of an industrial landscape; adverse impacts on AGLVs, SLAs, tourist trails and long distance footpaths.

Matters raised in resolutions and purported objections of the Cairngorms National Park Authority (CNPA)

- Committee report 24 May 2019
- objection to original proposal 31 May 2019
- objection to alternative proposal 24 January 2020
- Minute of planning committee of 24 May 2019
- Minute of planning committee 24 January 2020
- Email dated 18 August 2020 in response to reporters' questions

3.128 The CNPA's planning committee passed a resolution to object to the original proposal. The resolution stated that the objection was due to its significant adverse effects on the special landscape qualities of the park, including dark skies, and the cumulative impacts of the development as a result of the scale and siting of the development extending the visual envelope of wind turbines around the park.

3.129 The CNPA's purported objection asserted that it objected to the proposed development as contrary to policy 3.3 of the Cairngorms National Park Partnership Plan 2017-2022, due to the significant adverse effects it would have on the special landscape qualities (SLQs) of the CNP, in particular the dark-skies SLQ as a result of aviation lighting and the cumulative impacts of the development as a result of the proposal's scale and siting.

3.130 The CNPA's planning committee also resolved to object to the alternative proposal, though gave no further reason. The CNPA's purported consultation response to the 2019 AI, setting out its objection to the alternative proposal, was in the same terms as its objection to the original proposal.

3.131 We have dealt in this report's chapter 1 with the weight to be given to the committee's resolutions and the purported objections.

Main points for the applicant

3.132 Key documents submitted in evidence by the applicant include:

- Inquiry statement
- Inquiry report LVIA original proposal (Brian Denney)

- Inquiry report LVIA alternative proposal (Brian Denney)
- Inquiry report Residential Visual Amenity Assessment (RVAA) original proposal (Brian Denney)
- Inquiry report RVAA alternative proposal (Brian Denney)
- Precognition LVIA original proposal (Brian Denney)
- Precognition LVIA alternative proposal (Brian Denney)
- Precognition RVAA original proposal (Brian Denney)
- Precognition RVAA alternative proposal (Brian Denney)
- Inquiry report Aviation Lighting Regulatory Matters (Sqd Leader Hale)
- Inquiry report Aviation Lighting Light Propagation (Professor Best)
- Precognition (Sqd Leader Hale)
- Precognition (Professor Best)

Methodology

3.133 The applicant's witness (although not the author of the LVIA methodology in the EIAR or 2019 AI) stated that whilst his own LVIA methodology in the inquiry report may not be identical in all respects to that used in the LVIA, both follow and apply best-practice guidance in GLVIA3. He stated that the same overall conclusions would have been reached through application of either approach.

3.134 The applicant's evidence dealt separately with a situation in which Hunt Hill windfarm was constructed and was not constructed.

Level of agreement on effects

3.135 There is a high degree of agreement between the council and the applicant on the significant effects of the proposed development, with one relatively minor exception relating to the significance of the effect of the alternative proposal at viewpoint 13. While there is some disagreement on levels of effects, it is not essential in terms of the EIA regulations to establish the degree of a significant effect, simply whether the effect is significant. The disagreement on degree of effects is not significant or major. It is agreed that there are no significant effects on settlements, on the Speyside Way or on any residential property for either proposal.

Landscape character effects

Original proposal

3.136 The significant (major/moderate) landscape effect caused by construction of the windfarm is limited to the proposed development area, there being only a slight magnitude of change elsewhere in the Upland Moorland with Forestry (LCT 10). During operation, there would also be a significant (major/moderate) effect on the development area. This was assessed as being of low to medium sensitivity, even though it was adjacent to Càrn na Cailliche, identified as a "landmark hill" in MWELCS.

3.137 The operational windfarm would only have significant effects on two of the landscape character types of the nine in the LVIA study area – the Upland Moorland with Forestry (LCT 10) and the Broad Farmed Valley (LCT 7).

3.138 The effect on the character of LCT 10 would be major between the Dallas-Knockando pass and the hills west of the Glen of Rothes. A number of key characteristics of LCT 10 indicate that it has capacity to accommodate the original proposal. These include its large scale, its rolling landform, and its simple land-use pattern of forestry

plantations in which human activity was evident both in the forestry and existing windfarms. These characteristics include the Rothes I and II windfarms, to which the proposed development would be a natural extension.

3.139 There would be intermittent visibility of the original proposal in LCT 7, which is four kilometres from the nearest proposed turbine. There would be limited visibility on the well-wooded narrow valley floor. The proposed development in some cases would be introduced into views where the turbines of Rothes I and II could already be seen, and in other cases would introduce new views to turbines. There would be a significant (major/moderate) effect up to 8 kilometres from the original proposal.

Alternative proposal

3.140 As regards LCT 10, the number of operational turbines that would be seen in the LCT's lower-lying areas and the extent of the visibility of the proposed development would be less than that of the original proposal. There would be less of a perception of difference of scale between the alternative proposal's turbines and existing development at Rothes I and II. The proposed development would be perceived as more associated with the central, more elevated areas of the upland and more closely aligned with existing development. Consequently, the landscape effect of the alternative proposal in LCT 10 would be significant (major/moderate) for areas between the Dallas-to-Knockando pass and the hills to the west of Glen Rothes, and moderate for areas beyond (and so would be reduced as compared with the original proposal).

3.141 The alternative proposal has less extensive theoretical visibility within LCT 7 than the original proposal. The omission of turbines in closest proximity to LCT 7, the reductions in turbine heights and number, and in the number that require aviation lighting, not only reduce the extent of the theoretical day-time visibility, but also the effect upon night-time views from within LCT 7. The overall magnitude of change experienced within LCT 7 is assessed as medium, resulting in an overall significant (moderate) effect within 8 kilometres (reduced from that of the original proposal). For locations within the LCT beyond this, effects are assessed as not significant.

Visual effects

Original proposal

3.142 The LVIA identifies significant effects at only seven of the eighteen originally agreed viewpoints. There would also be a significant effect at the additional viewpoint 19 on the B9102, assessed in the April 2020 SI. These effects would be within 12 kilometres of the original proposal.

3.143 Viewpoint 4 (Ben Aigan) is a popular summit for walkers and cyclists and is identified as a "landmark hill" in the landscape capacity study. The original proposal would be seen against a backdrop of the existing Rothes I and II windfarms. It would extend the group towards the viewpoint. Other wind development would be visible. The high receptor sensitivity, coupled with medium magnitude of change would result in a significant (moderate/major) effect.

3.144 Viewpoint 5 (A95 East of Craigellachie) represents the only location east of Craigellachie where there would be theoretical visibility of the proposed development. There is existing development in the view including large buildings associated with whisky production and a power-plant chimney with lighting. The location, 8.1 kilometres from the proposed development, though in the Spey Valley SLA, is of low sensitivity given the glimpsed nature of the view from the busy road. Given the medium magnitude of change,

there would be a significant (moderate) effect. Growth in roadside vegetation will screen the view.

3.145 Viewpoint 6 (A95 South of Aberlour) represents a more prolonged view with a broad panorama across the northern slopes of the Spey Valley SLA to the Upland Moorland with Forestry beyond. All the turbines of the original proposal would be prominent on the horizon. The viewpoint is of medium sensitivity and the magnitude of change substantial. Consequently, there would be a significant (major) effect.

3.146 Viewpoint 7 (Ben Rinnes) is a popular recreational hill summit, 11.6 kilometres from the nearest turbine. Its high sensitivity combined with a medium magnitude of change leads to a significant (moderate) effect.

3.147 Viewpoint 11 (B9102 west of Archiestown), 3.7 kilometres from the proposed development, has low sensitivity. The high magnitude of change would lead to a significant (major/moderate) effect.

3.148 Viewpoint 13 (Duke of Gordon Monument, Elgin) is a location of high sensitivity in a park within the settlement, 13.5 kilometres from the proposed development. The area within which a view of the original proposal can be obtained is limited. The proposed development would be seen as part of a group of turbines seen on the wide low panorama beyond the townscape. The array would have a relatively uneven distribution of turbines. The size of the proposed turbines as compared with the existing turbines may distort the sense of distance to the hills. The visual effect would be significant (moderate).

3.149 Viewpoint 18 (Blacksboat Bridge), 8.1 kilometres from the proposed development is located within the floor of the Spey Valley in the SLA close to the Speyside Way. The view to the proposed development is screened by woodland and the valley sides at either end of the bridge. It is not on the Speyside Way and there would be no significant effect on the Speyside Way. It is not representative either of anglers or of kayakers on the river. It would have medium sensitivity. The magnitude of change would be medium. There would consequently be a significant (moderate) effect.

3.150 Viewpoint 19 (B9102 between Blacksboat Bridge and Cardhu) is 6.6 kilometres from the nearest turbine on the boundary of the Spey Valley SLA, which follows the B9102. The receptor is of low sensitivity. The magnitude of change would be substantial. The effect would be significant (major/moderate).

3.151 There would be no significant effects on settlements.

3.152 As the LVIA found, there would be significant effects on five sequential routes: the A95 between Cragganmore and Aberlour, the B9102, the B9010, Moray core path SP 20, and right of way GM7.

Alternative proposal

3.153 The alternative proposal would have significant visual effects at four viewpoints. It would also have a significant effect at viewpoint 19 assessed in the April 2020 SI.

3.154 Viewpoint 4 (Ben Aigan): The alternative proposal would appear more comparable in scale to the existing Rothes I and II windfarms than the original proposal and would present a more coherent array. It also relates better in scale to the existing Hill of Towie turbines, seen to the viewpoint's east. The lateral extent of the windfarm in the view would be less. The magnitude of change is medium/slight. The effect would be significant (moderate). This is less than the major/moderate significance of the original proposal's effect.

3.155 Viewpoint 5 (A95 East of Craigellachie): The reduced height of the alternative proposal's turbines would mean only three hubs would be seen in the view. The magnitude of change would be moderate/slight, and the effect would not be significant.

3.156 Viewpoint 6 (A95 South of Aberlour): The width of the alternative proposal's turbine array would remain as for the original proposal. The lesser turbine height and greater set-back in the upland landscape would improve the perception of turbine scale from the original proposal. There would be less stacking and blade clash. The array would appear more coherent. Nonetheless, the magnitude of change would be substantial. Consequently the effect is still assessed as significant and major, like the original proposal, though the degree of effect would be less.

3.157 Viewpoint 7 (Ben Rinnes): The alternative proposal would be more distant from the viewpoint than the original proposal. There would be less of a perception of it extending into lower-lying valley landscapes. The turbines' blade sweep would not extend in front of the views to the North Sea. There would be a better relationship with Rothes I and II. The height reduction would make the turbines seem more distant, set back in the landscape and comparable in scale to Hill of Towie turbines. The magnitude of change would be medium to slight. The effect would be moderate and significant.

3.158 Viewpoint 11 (B9102 West of Archiestown): The reduced height of the alternative proposal's turbines means that they would be screened by forestry. It is unlikely that there would be wholesale forestry felling, such that the turbines would become visible. Even if that were to happen, only three hubs would be visible over the bare ground. The magnitude of change would be slight. The effect would not be significant.

3.159 Viewpoint 13 (Duke of Gordon Monument, Elgin): The alternative proposal would not have a significant effect at the viewpoint.

3.160 Viewpoint 18 (Blacksboat Bridge): Fewer turbines would appear in the view than would for the original proposal. There would be a discernible change to a small and more distant part of the panorama, though one upon which the view is focused. The magnitude of change would be medium. The visual effect would be moderate and significant. This is the same as the assessment for the original proposal, though the visual effect would be reduced.

3.161 Viewpoint 19 (B9102 between Blacksboat Bridge and Cardhu): The magnitude of change would be medium/substantial. The effect would be moderate and significant.

3.162 Like the original proposal, the alternative proposal would have no significant effects on settlements.

3.163 As the LVIA identified, the alternative proposal would have significant visual effects on the A95 between Cragganmore and Aberlour, on the B9102, and on the right of way GM7. There would not be significant effects on the B9010 or on the Mannoch Road.

<u>Landscape designations effects</u>

Cairngorms National Park (CNP)

3.164 Neither the original proposal nor the alternative proposal would have a significant effect on the Cairngorms National Park or its special qualities. No significant effects on landscape character or visual amenity would occur within the CNP.

3.165 The Cairngorms National Park Authority's planning officer found that the original proposal's impacts on the park's landscape character would not be significantly adverse, given the distance from the park, topography and context of the development in the Moray uplands, distinct from the park's landscape. The effect on the park of the original proposal's aviation-lighting scheme approved by the CAA would be minimal.

3.166 The effect of the alternative proposal would be less than that of the original proposal.

Spey Valley Special Landscape Area (SLA)

3.167 The original proposal would have significant effects on the Spey Valley SLA by virtue of the significant landscape character effects identified for areas up to 8 kilometres from the proposed development within the Broad Farmed Valley LCT and its significant visual effects identified within that area (viewpoints 4, 5, 6, 11, 18 and 19) and on part of the A95 and part of the B9102.

3.168 The alternative proposal similarly would have significant effects on the SLA by virtue of its landscape effects within 8 kilometres on the Broad Farmed Valley LCT 7 and its significant visual effects within that area (viewpoints 4, 6, 18 and 19), on part of the A95 and part of the B9102.

Ben Rinnes SLA

3.169 There would be a single significant visual effect in the Ben Rinnes SLA at viewpoint 7, the summit of Ben Rinnes.

Visual effects of aviation lighting

3.170 CAA agreement was received on 14th August 2020 for a reduced lighting scheme. For the original proposal, steady red lights of 2000 candela intensity would be required on the nacelles of only eight perimeter turbines: 1, 5, 8, 17, 20, 27, 28 and 29. The previous requirement for 32 candela tower lighting would be omitted. The 2000 candela lights would automatically dim to 200 candela intensity when visibility was greater than 5 kilometres. Consequently, effects would be less than those assessed in the LVIA, which assumed a much larger number of turbines would require visible lighting, with 2000 candela lights on each.

3.171 Taking account of atmospheric attenuation, dilution of light and the response of the human eye, at distances of 5 to 15 kilometres, the 200-candela turbine lights would have an apparent brightness comparable to bright stars in the night sky. They would be visible, but not prominent.

3.172 When visibility is poor, the intensity of the lights would be increased to 2000 candela, but at distances beyond 5 kilometres, their visual impact would be less than that of the 200-candela lights on account of the restricted visibility.

3.173 The lights are designed so that light intensity is suppressed below the horizontal plane. For that reason, from most nearby locations, impact would be reduced by up to a factor of 10.

3.174 At each of the 19 viewpoints, the intensity of the lights would be comparable to that of bright stars or fainter. The effects would not be significant. The ambient light produced by all the turbine lights would be comparable to or less than that of the moonless, starlit night beyond a distance of 3 kilometres. When viewed from the Cairngorms National Park with the sky-glow of Elgin and Lossiemouth beyond, the effect would be minimal.

3.175 For the alternative proposal, lights would be required on five perimeter turbines: 1, 8, 14, 20, and 25. Its lighting would have less of an effect than the original proposal's. Although lighting on turbine 14 is not considered in the LVIA, the evidence of the applicant's witness was that it would cause no additional significant effect.

Cumulative landscape and visual effects

3.176 Cumulative issues feature large in the council witness's inquiry report. The council's witness relied heavily on cumulative impacts with Hunt Hill windfarm. It is the largest factor in his cumulative assessment. Since Hunt Hill windfarm would not be developed if either proposal proceeds, this means that little or no weight can be attached to the comments of the council witness on cumulative matters.

Original proposal

3.177 If the original proposal is added to a notional baseline of consented developments, leaving out Hunt Hill, it would have no significant cumulative landscape effect. In such a scenario, as the LVIA found, the only significant cumulative visual effect would be at viewpoint 4 (Ben Aigan) in respect of the effect with Hill of Towie II.

3.178 If the original proposal is added to a notional baseline of consented and proposed developments, it would have no further significant cumulative landscape effect. This is also so if the proposed Clash Gour windfarm forms part of the notional baseline. There would be no alteration in the relationships that would exist between other windfarms, which is the key to consideration of cumulative effects. There would be no significant cumulative visual effects in such a scenario other than that at viewpoint 4.

3.179 The future pattern of development depends upon what is consented and what is ultimately built. If there is maximum development, the overall combined cumulative effect for the original proposal would change from a zone 'with occasional wind farm clusters' to a zone 'with wind farm clusters'. The Clash Gour proposal would strengthen and add to the overall extent of cumulative effects through the increase in scale of wind-energy development adjacent to the existing Berry Burn windfarm, extending towards the Hill of Glaschyle. Should Clash Gour and Paul's Hill II be constructed, there would be two large windfarm clusters within LCT 10 and LCT 11. One cluster would be the Rothes I, II and III schemes, in LCT 10. The other cluster would be Berry Burn, Clash Gour, and Paul's Hill I and II in LCT 11 and the western part of LCT 10. The original proposal would act as an extension of Rothes I and II, following an emerging pattern.

3.180 The combined effect would be significant, in terms of the expansion of the existing windfarm clusters. LCT 10 as a whole would not become a 'windfarm landscape', though. Both LCT 10 and LCT 11 are large-scale landscapes with strong and simple characteristics that are sufficiently robust to accommodate the additional change that would arise through the introduction of further turbines, without the existing character being subsumed. There is no change in degree of effect if Berry Burn II also forms part of the western cluster.

Alternative proposal

3.181 As with the original proposal, if the alternative proposal is added to a notional baseline including either consented developments or consented and proposed developments other than Hunt Hill windfarm, it would not have a significant cumulative effect on landscape character, either for LCT 10 or LCT 7. The only significant cumulative visual effect (as with the original proposal) would be on viewpoint 4 (Ben Aigan) as a result of the relationship with the Hill of Towie II windfarm.

3.182 If there is maximum development, the combined effect of consented and proposed development would be similar to the original proposal. The combined effect would be significant, changing the upland area from a zone 'with occasional wind farm clusters' to a zone 'with wind farm clusters'. The alternative proposal would act as an extension to Rothes I and II as part of an emerging pattern of development. The effect on LCT 10 would not be such as to cause it to become a windfarm landscape.

Capacity of the landscape

3.183 Whether the landscape has capacity for such development is a matter for the decision-maker's judgement, taking account of wider benefits and harms of the proposals.

Visual effects on residential properties

3.184 The residential visual effects of the original proposal are as set out in the Residential Visual Amenity Assessment (RVAA) of residential properties within 3 kilometres of the turbines of the original proposal, and described above in the summary of the LVIA. For the alternative proposal significant visual effects are as set out in the 2019 AI.

3.185 Overall, neither the original nor the alternative proposal would affect any residential property to such a degree that it would become widely regarded as an unattractive place to live or where the development is inescapably dominant or unpleasantly overwhelming (the test applied by many reporters when considering residential visual amenity).

3.186 Although some minor changes and reductions in visual effect would arise with the omission of turbine 15 from the original proposal (as the applicant has proposed), these are not of a degree that the overall effects on residential amenity would be reduced.

Glenarder

3.187 Glenarder lies 6.5 kilometres south west of the closest turbine of the original proposal (turbine 17), and so outside the 3 kilometre RVAA study area. The original proposal would be visible, set against the sky to the north/north east. It would be seen on arrival along the access drive and from parts of the curtilage. The property is oriented east-west and no window faces towards the proposed development. The proposed development would not be overbearing or dominant. Notwithstanding the original proposal's visibility from the property, its effect individually on views would not be major, as the owner claims. The effect would not be significant.

3.188 Clash Gour (scenario A, as amended, or scenario B) – like Rothes III – would not individually have a significant visual effect on Glenarder. Paul's Hill II, though, if built, would have a significant (moderate/major) visual effect. Combined, the three developments would have a significant (major) cumulative visual effect, though this would arise mainly from the Paul's Hill II wind farm. Without Paul's Hill II, the Rothes III original proposal and Clash Gour scenario A would have a significant (moderate) effect. In none of these instances would the effect be such as to be overwhelming or overbearing upon the property at Glenarder. It would not become an unattractive place to live.

3.189 The degree of effect assessed in each of these instances would be the same if the Rothes III alternative proposal was developed rather than the original proposal.

Tapp Farm

3.190 Andrew Chadderton's property at Tapp Farm lies approximately 3.5 kilometres west of the application site, outside the 3 kilometre RVAA study area. Tapp Farm is not

orientated towards the proposed development. Even if the forestry between Tapp Farm and the proposal was felled, the felled forestry would become the dominant view. There are also a lot of trees around the property which would provide screening. There would not be a significant effect on Tapp Farm.

Design

Original proposal

3.191 Design evolution is discussed in chapter 3 of the EIAR. The windfarm design seeks to achieve a balance between addressing site constraints, minimising environmental impact and ensuring commercial viability. It sought a sympathetic and balanced composition in views from surrounding areas. The omission of T15 does not undermine this approach.

3.192 The relationship between the original proposal and the Rothes I and II windfarms and windfarms in the wider landscape was a key design consideration. Analysis of the viewpoints and surrounding landscape confirms that there are few readily accessible public locations where clear views to the site are obtained. The viewpoints are not representative in this regard.

Alternative proposal

3.193 The aim of the alternative proposal's design was that the scheme should continue to appear as a balanced and rational composition when seen from key viewpoints and that residential amenity would be protected through minimisation of effects on nearby properties.

Moray Wind Energy Landscape Capacity Study (MWELCS)

3.194 MWELCS is strategic guidance, not a policy document. It is not an appropriate tool to determine whether a proposed development is likely to be acceptable. The scheme should be judged on its individual merits.

3.195 The character-type key map for LCT 10 shows two areas of "potential scope for large and very large turbines (80 to 150 metres)". One of these areas extends to cover the Rothes I and II windfarms and includes the greater part of the Rothes III site. It encompasses the locations of 17 of the 28 turbines (following the omission of T15) of the original proposal and 18 of the 23 turbines of the alternative proposal. The capacity study noted the opportunities of LCT 10 for locating wind energy as its simple landform, the large scale of its interior plateau, and its sparsely settled nature, all of which reduced visual sensitivity.

3.196 The guidance also identified a number of constraints. The original proposal performs well against these. There would be either no visibility or almost no visibility of the original proposal in Glen Rothes, the Lossie Valley between Kellas and Dallas, the Upper Lossie Valley, or on the Findhorn or Divie rivers. There would be almost no potential visibility of the original proposal on the A940. There would be no notable combined visibility of the original proposal and either of the hills of Brown Muir or Mill Buie in views from the north, including from the Coastal Farmland (LCT 4). While there would be some visibility of the original proposal from the Spey Valley, the hill of Càrn na Cailliche would serve to limit and contain these views. There would be some visibility of the original proposal from the Dallas-Knockando road, but it would not be such as to detract from the experience of using the route. There would be some views of the original proposal from LCT 7, but they would be limited in nature and not such as to detract from the overall valley landscape.

3.197 The guidance identifies key cumulative landscape and visual issues. The following can be said as regards existing and consented development. Given its limited impact to the north, the original proposal would contribute little to any cumulative effect on the skylines to the north. Given the original proposal's distance from the Berry Burn windfarm and location in a different landscape character type, there would be little potential for the two developments to have significant combined effects. The proposed development would be seen in the Broad Farmed Valley as would Paul's Hill and Hill of Towie, but the combined impact is not such as would detract from the character of the valley landscape. There would be no visibility of the original proposal from the Dava Way or A940 and limited visibility from the Lossie Valley and B9010.

3.198 MWELCS provides guidance for development in respect of the limited scope it identifies for very large turbines, around 150 metres high. The original proposal is set well back into the core of the upland area. As stated, views in the Broad Farmed Valley (LCT 7) would not be such as to detract from the overall character of the valley landscape. There would be limited visibility in the Upper Lossie Valley. There is sufficient offset from the landmark hills, and in particular from Càrn na Cailliche and Hunt Hill. The scheme benefits from the visual containment they provide. The proposed turbines would be located so as not to detract from the experience of using the Dallas-Knockando Road. While there would be a significant visual effect on users of the A95, it would not be such as to detract from the overall experience of using the route or from any particular view of note. The siting of the proposed development next to Rothes I and II means it would form a logical extension. The site would serve to contain the development in the upland moorland landscape. The design would relate well with the existing pattern of development.

3.199 Similar comments may be made for the alternative proposal on the identified constraints, cumulative issues and development guidance.

3.200 MWELCS identifies a number of strategic landscape issues. As regards these, neither the original proposal nor the alternative proposal is in a less-developed upland area or in the extensive forests and dramatic narrow valleys referred to in the guidance. It would not have a significant effect on coast or seascape or on the approaches to Moray by the A939 or A940. The last strategic issue relates to landmark hills, dealt with further below.

3.201 MWELCS also contains a recommended landscape strategy for very large turbines (greater than 130 metres). These comments may be made on the matters the strategy raises. As stated, there would be no visibility or minimal on the coast or from the A939 and A940. While the original proposal would have a moderate visual effect on the view from the summit of Ben Rinnes, there would not be an effect on the hill's setting of a degree that would prevent its understanding or appreciation in a wider landscape. Turbines would be introduced in a view from Ben Rinnes already characterised by existing wind-energy development. The proposed development would be well set back in an upland area, with little or no visibility in surrounding LCTs, except LCT 7. As stated, the views in LCT 7 would not detract from the overall character of the valley landscape. As regards cumulative effects, the original proposal would be largely in an area identified by the council as being able to accommodate such development notwithstanding the presence of existing and consented development in the surrounding landscape. The addition of Clash Gour or other proposed schemes to the baseline would not alter the suitability of the landscape that is the site of the original proposal. Similar comments may be made in respect of these matters for the alternative proposal. The protection of landmark hills and their setting is dealt with below.

3.202 Càrn na Cailliche, located to the south west of the site, and Hunt Hill to the south east of the site are both identified in MWELCS as 'Landmark Hills'. Their prominence in

very localised views close to their foot is not evident in the wider landscape. They are not visually distinctive, notable or iconic in appearance. They are generally seen from the Spey Valley as undulating high points in a wider massif. Physical containment seems to be the primary reason for their listing as landmark hills.

3.203 Neither the original proposal nor the alternative proposal would be on or in front of either Càrn na Cailliche or Hunt Hill. Whether any proposed turbines would detract from the focus or diminish the scale of a designated hill is a matter of perception (dependent on the location of the viewer and the particular relationship seen between the turbines and the hill, as well as the form and character of the hill) and of judgement.

3.204 Càrn na Cailliche would limit and contain views to the original proposal from the Spey Valley in the manner envisaged by MWELCS. For the alternative proposal, the width of the array remains the same as that of the original proposal. However, the omission of six turbines at the southern extent of the array, in combination with reductions in the heights of most remaining turbines, sets the proposed turbines back within the upland landform and improves the perception of the scale of the turbines against the higher ground of Càrn na Cailliche and Hunt Hill. Instances of stacking and blade clash are reduced, and the alternative proposal would be more recessive within the landscape.

3.205 Both the original and alternative proposals would therefore properly address the constraints, development guidance and cumulative issues identified in the MWELCS and comply with its strategic recommendations.

Moray Onshore Wind Energy Supplementary Guidance

3.206 The council's supplementary guidance incorporates MWELCS as an appendix, states it is a material consideration in assessing turbine proposals, and repeats much of the guidance it gives.

3.207 It is not fully consistent with MWELCS in certain respects. Its map 1 identifies areas of greatest potential for turbines of large typology, said to be greater than 80 metres high. These areas are not identified in MWELCS. They are said to be identified by removing additional constraints from the spatial framework map created in accordance with Scottish Planning Policy. All but five turbines of the original proposal fall within an area so identified. The same is the case for the alternative proposal.

3.208 Map 4 of the supplementary guidance is entitled "landscape capacity for potential development areas for extensions and repowering". The text indicates that developers should refer to the map and the landscape-capacity study for further guidance on the potential to accommodate extensions and clustering in the Moray landscape and for the related landscape sensitivities. The areas so identified in map 4 are the same as those identified in MWELCS as having potential scope for large and very large turbines (80 to 150 metres).

3.209 The applicant has demonstrated how the relevant elements of strategy, constraints, and cumulative considerations adopted from MWELCS are addressed for both the original proposal and alternative proposal and how the two proposals accord with strategic recommendations.

Response to Moray Council

Original proposal

3.210 As stated, MWELCS is not policy. It is not an appropriate tool for determining the acceptability of a proposed development. This is a matter for the planning balance.

3.211 Most proposed turbines (17) of the original proposal would be within the MWELCS area of potential for larger turbines. There is continuity of the LCT 10 landscape on either side of the area's boundary. Turbines would be sited north of Càrn na Cailliche and west of Hunt Hill. Those hills partially screen the proposed turbines in views from the south and east and provide delineation between the upland landscape where the turbines would be located and the valley landscape to the south and east. It is evident that full screening of development in the uplands is not required: Rothes I and II are visible in some parts of the landscapes surrounding the uplands. Windfarm design must take into account factors such as environmental constraints (including landscape and visual matters) and matters concerning wind speeds. Among the matters taken into account for the original proposal was the relationship with the existing Rothes I and II. A balance of such considerations was sought in respect of the original proposal. The layout and choice of turbine heights represents an appropriate response to the site based on principles of good design.

3.212 The original proposal would have some significant effects in the Upper Knockando area. It would not dominate the landscape in a way that by itself would represent a reason for refusal. The turbines would be partially screened in views from the area by topography and woodland. The characteristics of the area, a mix of those of LCT 7 and LCT 10 are able to accommodate the indirect effects of turbines on higher ground without the overall integrity of the area being compromised.

3.213 The significant landscape and visual effects of the original proposal are typical of a commercial wind-energy development. They should be considered in the planning balance. They are rather limited and localised and would be clearly related to the upland landscape where the original proposal would be located. This is so taking account of the effects on Ben Rinnes, Ben Aigan and the A95 and the sensitivity of tourists and people taking recreation at those locations. Although there would be significant effects in the Spey Valley SLA (and former area of great landscape value), they would not be of a degree that would compromise or change the overall defining characteristics of that landscape or diminish its overall value or quality.

3.214 Although there would be cumulative effects associated with the original proposal and other consented and proposed developments in the area, even if there was maximum development, it would not result in the creation of a windfarm landscape across LCT 10. In such circumstances, even the addition of Clash Gour to the baseline would not alter the suitability of the original proposal.

Alternative proposal

3.215 The council's first reason for objection for the alternative proposal refers to effects on views from and on the character of the Spey Valley. This is not expressly mentioned in the reasons for refusal for the original proposal. It is odd that the scope of the reason would increase for a development involving a reduced number of turbines.

3.216 Of the 23 proposed turbines, 18 would be within the MWELCS area of potential scope for large and very large turbines (80 to 150 metres). The containment of the proposed development within the upland would be increased over that of the original proposal. Like the original proposal, the alternative proposal would have significant

landscape and visual effects that, though they would be less than those of the original proposal, would be typical of commercial wind-energy development.

3.217 Unlike the original proposal, there would not be a significant effect in the Spey Valley SLA at viewpoint 11 (B9102 west of Archiestown) or viewpoint 5 (A95, east of Craigellachie).

3.218 In other respects, similar comments may be made in response to the council's reasons for objection as those made to its reason for objecting to the original proposal.

Carol Anderson's advice to Moray Council

3.219 Carol Anderson is the landscape consultant retained by Moray Council. She is the author of MWELCS. She is not giving evidence on Rothes III. Another consultant was asked to do so at short notice. It is reasonable to conclude that she did not give evidence because the Rothes proposals are consistent either entirely or largely with her professional judgement.

3.220 MWELCS zoned an area at Rothes as suitable for very large turbines. Carol Anderson had produced a capacity study previously that also indicated the Rothes site was an area suitable for turbines. In 1998 another study carried out by Turnbull Jeffrey for the council had found the area to have potential for windfarm development.

3.221 Moray Council lodged in evidence advice from Carol Anderson on Clash Gour but did not do so for Rothes III. They gave inadequate reasons why they should not do so, and only did so after encouragement from the reporter. The advice on Rothes III does not criticise the proposed development or suggest it is inappropriate or should be objected to. This is in contrast to the advice given on Clash Gour or on other developments such as Meikle Hill or Kellas. Counsel for the council in re-examination of Carol Anderson sought to give the consultation response a meaning it did not have, indicating refusal. The council's planning witness refused to give an answer as to the meaning of the conclusions section of Carol Anderson's advice. This refusal undermined the witness's credibility.

Mark Steele's evidence

3.222 Mark Steele's only difference with the applicant on significance is in respect of the alternative proposal's effect at viewpoint 13, which he considers significant. He differs on degree of certain effects from the applicant's witness. He has been found in another inquiry to have overstated matters (Limekiln).

Response to Scottish Natural Heritage

3.223 Scottish Natural Heritage did not object to the original proposal. It considered that it was unlikely to affect the integrity of the Cairngorms National Park.

3.224 SNH was incorrect that the original proposal would be of a prominence that would introduce significant adverse effects on the special landscape qualities to the park's north. There would be no significant adverse effect to landscape character or visual amenity in the park, notwithstanding the original proposal's visibility there. The original proposal would not be prominent in views from the northern edge of the park. It would appear as only one element of a much wider panorama and would relate well to its upland moorland context beyond the park's landscape. The impact of the reduced scheme of aviation lighting approved by the CAA on the park would be minimal.

3.225 The logic that informed the development of Rothes I and II has not been neglected in the original proposal, since it would be located next to them in the same broad tract of upland moorland. The original proposal would not exceed its local landscape context, given the scale of the landscape. The proposed turbines would not be perceived as overbearing or dominant in the surrounding lowland. The original proposal complies with SNH siting and design guidance.

3.226 Similar comments may be made in respect of the alternative proposal.

Response to Cairngorms National Park Authority (CNPA)

3.227 The significant effects of the original and alternative proposals on the park are dealt with above.

3.228 The CNPA's objection to the original proposal (CD4.1.4) was made contrary to its officer's recommendation. It does not appear consistent that the CNPA should have objected to the original proposal but not to Clash Gour, when the effects of the two developments on the park are compared.

3.229 The wording of the CNPA's objection to the original proposal is materially different from the minuted wording of its resolution to object (CD15.1.6). The latter contains no mention of the effect of aviation lighting, while the former does. The reference to aviation lighting appears to have been added without authority.

3.230 There was no written report to the authority in respect of the decision to object (CD4.2.3) to the alternative proposal, as is shown by the CNPA's minutes for the relevant meeting (CD15.1.7).

3.231 No person from the CNPA attended the inquiry. Its written submission to the inquiry failed to give a proper reasoned response on these matters.

3.232 Consequently no weight should be given to the CNPA objection.

Conclusion

3.233 The original proposal is a well-sited windfarm extension which would contribute to the generation of renewable energy in Scotland in an appropriate and acceptable manner when set against the context of the capacity of the local landscape, its features and visual sensitivities. It is a viable windfarm project with limited environmental effects.

3.234 The alternative proposal allows the Scottish Ministers to consider an alternative layout that further reduces the landscape and visual and other environmental effects associated with the original proposal, should it be considered necessary to do so.

Reporters' reasoning

Methodology

3.235 The method of assessment of the proposed development's landscape and visual effects in the LVIA and the applicant's and the council's witnesses' evidence differs to a degree. While this can sometimes cause some difficulty in comparing the evidence, we recognise that different experts may legitimately, in accordance with the Landscape Institute's Guidance on Landscape and Visual Impact Assessment, third edition (GLVIA3), take different approaches in the description of significant effects. The EIA regulations require only that significant effects are identified and described.

3.236 As regards the visualisations for the proposed development provided by the applicant, we found them adequate to the purpose of considering the effects of the proposed development, alongside other evidence, including that of our site inspections. We found that the selection of viewpoints was adequate, along with our site inspections, to provide sufficient evidence of the proposed development's significant effects. In our site inspections, we visited other locations where parties had requested us to do so to consider what effects might occur there.

3.237 We agree with SWM that assessment should be carried out on the basis that the proposed site is suitable in perpetuity. We understand that the LVIA was carried out on the assumption that the proposed development is irreversible. We agree with the point made by SWM that the visualisations can only be two-dimensional representations of how the proposed turbines might appear in the landscape. In making our findings, we have taken account of turbine movement and that it can draw the eye.

3.238 The council's witness raised issues in respect of the treatment of the sensitivity of viewpoints on the Malt Whisky Trail and the consistency of the treatment in the LVIA of the sensitivity of walking paths and of viewpoints in locations within landscape designations.

3.239 As regards the Malt Whisky Trail, we have been provided evidence of an extract from a website recommending visits to sites in Glenlivet, Knockando and Craigellachie. The website does not actually designate a route between these sites as "the whisky trail". It appears to us that the trail as promoted is of visits to locations, rather than the route in between those locations. We acknowledge that it is likely that tourists travelling from Glenlivet to Knockando might pass viewpoints 18, 19 and 11, and those going on to the Speyside Cooperage in Craigellachie might pass viewpoint 5 (though most likely in the opposite direction from the proposed development). We observed brown signs on the route with directions to the locations mentioned. However, we do not consider that this gives the most likely route between those points any special value, beyond the fact that it is likely that tourists would use the route, and they may - in some circumstances - have a higher degree of susceptibility to visual effects.

3.240 As regards the sensitivity of paths, we consider as a matter of broad principle that paths where people take recreational walks are likely to have a higher degree of sensitivity to visual effects. It does not follow that every path where people might walk has a high degree of sensitivity. This is so even if they are designated as core paths. Core paths are designated for the purpose of giving the public reasonable access throughout the council area. They need not necessarily be primarily recreational or have a high baseline amenity value. We see no difficulty with assessing the sensitivity of each path individually.

3.241 Within an area designated for its landscape value, the value accorded by the designation will be a consideration in the sensitivity of any given viewpoint. It does not follow that every viewpoint in a designated area must have a higher level of sensitivity. We consider it is appropriate to consider the sensitivity of each viewpoint individually.

3.242 There is a difference in the reporting of the cumulative effects between that in the LVIA for the proposed development and in the LVIA for the Clash Gour development.

- The Rothes III assessment of cumulative effects identifies when the addition of the proposed development to the cumulative baseline causes a significant effect that differs from (and generally is additional to) that identified from an assessment of the proposed development's addition to current baseline. In other words, it reports the significance of the increment.
- The Clash Gour LVIA simply reports the significance of the effect of adding the proposed development to the cumulative baseline.

Therefore, in the Rothes III method, if the assessment were to find the proposed development individually would have a significant effect at a particular viewpoint, and in the consented scenario, there is only a minor change to the baseline, it would be likely to report no significant effect in the cumulative scenario. The assessment for Clash Gour, though, in similar circumstances would report a significant effect.

3.243 This difference in the approaches to assessment was not commented on by any party. We consider that both approaches are valid. Although the formal identification of significant effects would differ as a result of the differing methodologies, the methodologies do still result in the substance of significant effects being described. Therefore, although we are reporting at the same time on both windfarms, we have not sought to apply a single methodology to our findings for both, but rather have followed the approach to cumulative assessment in each LVIA and the other evidence of professional witnesses. The Rothes III LVIA does also generally refer to the significance of the effect of adding the proposed development to the cumulative baseline, as well as the significance of the increment.

Changes in baseline for cumulative effects

Hunt Hill windfarm

3.244 As we have noted, the applicant introduced evidence of a planning obligation by the owner of the land on which the Hunt Hill windfarm was consented at the inquiry, the day before the council's witness was due to give evidence. Whether or not the explanation for the lateness of notice of this undertaking was adequate, neither the council nor any other party objected to its introduction. The council did not suggest that the time available before the council's witness was to give evidence was insufficient to consider it. The separate assessment of the Hunt Hill windfarm as part of the cumulative baseline in the applicant's LVIA suggested a view on the part of the applicant that it might not be developed, which would – to some extent at least – have put the council on notice of the possibility that such an undertaking might be obtained.

3.245 In view of the granting of the planning obligation, we do not consider it is necessary for us in this report to make findings on cumulative impact as if the consented Hunt Hill windfarm was part of the cumulative baseline for scenario 2.

Berry Burn II windfarm

3.246 An application was made in the course of the inquiry for the Berry Burn II windfarm (which had previously been at scoping stage). It has since been consented. Although the written evidence in advance of the oral inquiry session on landscape and visual effects refers to Berry Burn II as a scoping-stage windfarm, parties at the inquiry were aware of its change of status and able to comment upon it. We received wirelines in evidence from the Clash Gour applicant showing the location of Berry Burn II turbines (CD14.39). This evidence has proved sufficient for the purpose of understanding their cumulative effects with the proposed development. In our conclusions in this report, our findings will be made on the basis that Berry Burn II forms part of the second cumulative scenario (in which the proposed Rothes III development is added to a notional baseline including existing, consented and proposed developments).

Paul's Hill II windfarm

3.247 Following the inquiry, we received evidence that the application for the Paul's Hill II windfarm had been granted, subject to the deletion of its proposed turbine 1. Parties had given evidence on the basis that the Paul's Hill II windfarm would form part of the cumulative baseline as part of the third scenario rather than the second (a proposed

development rather than a consented development). Parties were given the opportunity to comment in writing in respect of the decision on Paul's Hill II.

3.248 Our findings on cumulative effects of the proposed development therefore take Paul's Hill II as appearing in the second cumulative scenario (in which the proposed development is added to a notional baseline of existing and consented development) rather than in the third (in which the proposed development is added to a notional baseline of consented and proposed development).

Landscape character effects

LCT 10 Upland Moorland and Forestry

3.249 There is no dispute that both the original and alternative proposals would have a significant effect on LCT 10. Differences between Moray Council and the applicant relate to the sensitivity of, and effects on the lower hill fringes in the Upper Knockando area at the transition with LCT 7, the degree of cumulative effects, and the extent of the windfarm landscape that would arise as a consequence of the proposals.

- Susceptibility of and effects on transitional areas

3.250 Moray Council argues that there is increased susceptibility of the transitional areas of LCT 10 including the lower hill fringes in the Upper Knockando area and that the proposed turbines would dominate those areas. The council's witness did not give a precise definition of what those areas are beyond the reference to lower hill fringes in the Upper Knockando area. Upper Knockando itself is located just inside LCT 7, rather than in LCT 10. We consider the effects on LCT 7 below. We understand the areas relevant for consideration as transitional near Upper Knockando would be the part of LCT 10 where the landscape descends towards the Knockando Burn, of which the generally lower-lying areas south of Lyne of Knockando (property 1 in the RVAA) are incorporated in the Spey Valley SLA. This is roughly a triangle with its apex around Lyne of Knockando and its base extending between the Upper Knockans area and Upper Bruntlands.

3.251 This transitional area does have a smaller scale and more diverse features than LCT 10 generally. Consequently, the susceptibility of its landscape to the development of turbines is rather greater than other parts of LCT 10. The designation of at least part of the transitional area as part of the Spey Valley SLA also indicates an increased value as compared with other parts of LCT 10. These two factors do result in a higher sensitivity to development of turbines than elsewhere in LCT 10. There are already some views of turbines in the uplands from these areas. There is no significant visibility of Rothes I and II, so the proposed development would introduce new views of turbines on the uplands to the north east. We consider that there is also a susceptibility to additional views of turbines in this direction, given the existing views of turbines to the south west at Paul's Hill and the consented turbines of Paul's Hill II in that direction.

3.252 The proposed turbines would not themselves be in the transitional area. They would be around 3 and 5 kilometres from the transitional areas near Upper Knockando in LCT 10. We do not consider that, in landscape terms, any heightened sensitivity of relatively small transitional areas at the edge of LCT 10 is a substantial factor in considering the overall sensitivity of LCT 10. We agree with the applicant that LCT 10 has medium sensitivity as a landscape receptor and do not consider an adjustment to that assessment is required in respect of any particular sensitivity of transitional areas.

3.253 The visibility of the turbines of both the original and alternative proposals in the transitional areas would vary. Closer views of the original and alternative proposals from

the lower-lying land of the transitional area would often be screened by topography and vegetation. This is the case even for the farmhouses located higher on the south-west-facing slopes east of the Knockando Burn. The orientation of the houses is to the south, west or south-west.

3.254 There would be some visibility of the original proposal to the rear of Lyne of Knockando and Knocknagore (both about 3 kilometres from the proposed turbines), but it would be limited to a few hubs and partially screened by vegetation. There would be a greater degree of visibility on the Knockando-Dallas road just on the boundary of LCT 7 and LCT 10 (Clash Gour viewpoint 5 illustrates this, though it is just inside LCT 7 – see Clash Gour 2019 AI figure 7.54b for original proposal and Clash Gour 2020 SI figure 7.60b for alternative proposal). At this range, rather over 4 kilometres from the nearest turbine, many hubs of the original proposal would be visible, even across the existing forestry plantation. The turbines would extend across Càrn na Cailliche on either side of the summit. We find that the proposed development, even at this range, given its extent and position and the size of the turbines, would be a strong presence on the north-eastern skyline, dominating the outline of the low upland even over the forestry. The view would be similar at Knockhourn to the south west though with more hubs visible at a greater distance – rather over 5 kilometres from the turbines.

3.255 There is some screening in the landscape, such as the plantation on the slopes of Càrn na Cailliche, the plantation north east of Cardow, and small woodlands at Pitchaish and north of Upper Knockando. All of these would limit views to some extent. Nonetheless, the original proposal in its extent and the scale of the turbines would be a prominent feature of the landscape across the area west of the Knockando Burn and to the lower slopes of the Hill of Slackmore, becoming very prominent in the latter area.

3.256 For the alternative proposal, the impact would be considerably less. There would only be three blade tips theoretically visible at Lyne of Knockando, two hubs and a few blade tips at Knocknagore, and little actual visibility at either location likely over vegetation. North of Upper Knockando visibility would be restricted to two or three turbine hubs close to the horizon and a few blades likely to be visible just north of Upper Knockando across the forestry, while blade tips in the southern part of the development would be hidden by forestry. There would be similarly limited views travelling north along the Dallas-Knockando road through the transitional area. The landscape in the area in which the alternative proposal would be prominent would be limited mainly to the lower slopes of the Hill of Slackmore, outside the SLA.

- Combined and cumulative effects in LCT 10

3.257 Siting and Designing Windfarms in the Landscape (SNH 2017, CD7.17) defines a windfarm landscape as a cumulative effect in which multiple windfarms appear as a dominant characteristic of the area, seeming to define the character type.

3.258 There is broad agreement between the applicant and Moray Council that a windfarm landscape character type would be created locally should the construction of Rothes III proceed. In our view, this local character type would extend to include the area of the proposed development and the existing Rothes I and II windfarms. Should the consented Kellas and Meikle Hill developments proceed, it would extend further to include those developments.

3.259 If Clash Gour were also to proceed, the combined effect would be to create two large windfarm clusters that would each form a local windfarm landscape in LCT 10 (and the Clash Gour landscape would extend to LCT 11). This would be the case whether the original or alternative proposal was included in the combination – though there would be a

minor variation in extent of the local windfarm landscape centred on Rothes I, II and III. We agree with the applicant that LCT 10 would, as a consequence, best be described as a landscape with large windfarm clusters. LCT 10 would not become a windfarm landscape as a whole.

3.260 Such a combined increase in turbines in the LCT 10 landscape would result in less of the upland landscape being without turbines. There would be prominent views of turbines in much of the LCT 10 landscape that was not itself within the windfarm landscape and where the landcover permitted such views. This can be viewed as a reduction in the existing LCT 10 landscape type as a resource. As the council points out, the value of the resource can increase as it becomes rarer.

3.261 MWELCS and the council's supplementary guidance do recognise, though, that the characteristics of LCT 10 – its large scale, its simple form, its landcover with large areas of commercial forestry, and its sparsity of human settlement – make it one of the more suitable areas within Moray for such development. While we agree that the creation of a windfarm landscape is the highest degree of landscape change that SNH guidance recognises, that does not make the creation of such a landscape unacceptable in itself. In our view, such effects will arise, at least in some places, as the inevitable consequence of achieving the government's policy aims for renewable energy and onshore wind in particular.

3.262 The combined effect of existing, consented and proposed turbines on the landscape is undoubtedly a consideration for Ministers, particularly in a context where Ministers are to take a decision on consent for two separate proposed developments – Clash Gour and Rothes III. There is no dispute that the combined effect of consented and proposed developments with existing development, with either the original or alternative proposal, would represent a significant change to the LCT 10 landscape. However, in our view, the particular contribution of the proposed development itself to the combined effect is a more immediately relevant consideration for informing Ministers' decision on each particular application.

3.263 In a context in which there is an increase in the number of turbines in a landscape, the location of one windfarm development beside another can have advantages in terms of limiting cumulative effects. This is the case particularly if the proposed development is consistent in its design so that it is perceived in the landscape as an extension of an existing windfarm. The SNH guidance in CD7.17 advises that cumulative effects can arise where there is not similarity of design and windfarm image. Separation and difference in design can result in contrast.

- Contribution of the original proposal to the combined effect and cumulative effects in scenarios 2 and 3

3.264 The original proposal would undoubtedly increase the number of turbines in the LCT 10 landscape. In many respects, though, it would make a limited change to the relationship of windfarms in the landscape. In the Dallas-Knockando pass, Rothes I and II make the main contribution to combined effects with the group of windfarms west of the pass. Rothes III would be located to the east beyond Rothes I and II, so would make little difference to the combined landscape impact of windfarm development on either side of the pass. It would still make little difference to the combined landscape effects in that area if the consented Kellas, Meikle Hill and Berry Burn II and the proposed Clash Gour were added to the combination.

3.265 It may be that there would be some adverse effect from the contrast in rotation speeds between the original proposal's large turbines and the Rothes I and II turbines when viewed from within the LCT 10 landscape. The contrast would be unlikely to have a very

large adverse impact within the landscape itself, though, given the limited opportunities that would be allowed by the developments' relative positions in the topography and by the landcover of commercial forestry to compare the existing and proposed turbines. There would be an opportunity to contrast the turbine speeds in the more open landscape around viewpoint 10 on the Dallas-Knockando road. However, this would be a relatively rare opportunity. The proposed turbines would be seen beyond Rothes I and II and the contrast in blade-rotation speeds is unlikely to be the most prominent element of the effect. In other parts of LCT 10, for instance in the glen of the Knockando Burn and in the area immediately north of Archiestown, the views of the Rothes I and II turbines are very limited where they can be obtained at all, and so there would be limited opportunity for comparison of the two.

3.266 The contrast in size and layout of the turbines of the original proposal with those of the existing Rothes I and II, and with the consented Kellas and Meikle Hill, would be noticeable though when seen from certain generally elevated locations beyond LCT 10 itself, including viewpoint 13 in Elgin, viewpoint 4 on Ben Aigan, viewpoint 7 on Ben Rinnes, and viewpoint 16 on Càrn a' Ghille Cheàrr. The perception of ill-assorted turbine sizes and rotation speeds would represent an adverse effect on LCT 10's character. However, the distance from which such views would be obtained would mitigate the impact to a degree. This would primarily be an effect with the existing turbines, which are taken into account in the LVIA's scenario-1 assessment (the proposed development added to the existing baseline).

3.267 The assessment of the effect of adding the original proposal to a notional baseline (the cumulative assessments of scenario 2 and 3) is also important in determining its contribution to the overall combined effect.

3.268 We agree with the applicant that in scenario 2, there would not be a further significant landscape effect on LCT 10. This is the case even including the consented Paul's Hill II (without its prominent turbine 1) in the baseline of consented development. In scenario 2, the now-consented Paul's Hill II would form part of the cumulative baseline and would be prominently visible in the hills to the south west from the transitional area of LCT 10 around the Knockando Burn. The original proposal would introduce another development, prominent in the transitional area, in the uplands to the north east, opposite Paul's Hill. However, there would not be a great change in the relationship of the developments from the assessment of the individual landscape effects of the original proposal. Consequently, we do not consider that there is a further significant cumulative effect in scenario 2.

3.269 However, in scenario 3, with Clash Gour also added to the baseline, the original proposal would introduce prominently visible turbines on the skyline in a third direction in the transitional area. We consider that this does amount to a significant cumulative landscape effect. It would give the impression of prominent turbines in the upland in several directions above the lower-lying area around the Knockando Burn. Taking this together with the increase in the windfarm landscape in LCT 10 and the original proposal's contribution to this, we consider that there would be a significant cumulative effect on LCT 10 in scenario 3. Given the particular prominence of the original proposal, in some views in the transitional area dominating the outline of Càrn na Cailliche, the original proposal would be the greatest contributor to this effect.

- Contribution of the alternative proposal to the combined effect and cumulative effects in scenarios 2 and 3

3.270 The alternative proposal would also add to the extent of turbines in LCT 10. The lesser size of the turbines would cause less of a contrast with the existing turbines when the

landscape is seen from elevated viewpoints beyond LCT 10, such as viewpoints 4, 7, 8 and 13. Even though the layout of the alternative proposal's turbines would contrast with the tight layout of the existing Rothes I and II turbines, while the effect would be noticeable, it would not be so immediately striking. The contrast in speed of turbine rotation would also be less than for the original where it is possible to compare the two, such as at viewpoint 10.

3.271 In the transitional area around the Knockando Burn, the cumulative effect would be greatly reduced by the reduced visibility of the alternative proposal. Nonetheless, given the increase in extent of the windfarm landscape in LCT 10 and the alternative proposal's contribution to this, we find that the cumulative effect would be over the threshold of significance in scenario 3.

LCT 7 Broad Farmed Valley

3.272 There is agreement between Moray Council and the applicant that the landscape effects of the original and alternative proposals on LCT 7 would be significant within 8 kilometres of the proposed development.

Original proposal

3.273 The applicant found a moderate to major effect on LCT 7 within 8 kilometres of the proposed development. The council's finding was similar. A number of factors are referred to in this finding. The landscape is relatively sensitive, particularly that of the inner valley. The original proposal would be intermittently visible in the landscape. The forested landscape of the valley sides and, in near views, the plantations on the slopes of the uplands, would contribute to the intermittency of its visibility. It would often be prominent when visible, particularly in parts of the intensely farmed land on either side of the inner valley (such as in the area around Upper Knockando, particularly to its south and west, on the braes west of Aberlour and Edinvillie, and south, east and west of Archiestown, where it would be seen to dominate the skyline of Càrn na Cailliche). It would also be visible in a small area of the sensitive incised valley around Blacksboat Bridge (viewpoint 18).

3.274 There are existing views to turbines in the uplands around LCT 7. These include particularly views of Paul's Hill and Hill of Towie. Paul's Hill can also be seen intermittently from the sensitive inner valley. While there is some theoretical visibility of Rothes I and II in LCT 7, those existing developments are largely hidden from view by topography or land cover. The proposed development would therefore be perceived as adding prominent new views to turbines in the uplands in areas in which there are no noticeable views of turbines at present.

3.275 Given these factors, we see no reason to disagree with the findings of either the applicant or the council.

3.276 The main differences between the council and the applicant in respect of LCT 7 arose in addressing the acceptability of such effects, rather than their degree. In this regard, the council raised the prominence of the skylines on which the original proposal (and alternative proposal) would appear and made reference to the sensitivity of the landscape to change identified for the Spey Valley SLA in the *Moray Local Landscape Review*. Although the SLA is not contiguous with LCT 7, broadly the same issues arise. We find it convenient to address these matters in dealing with the effect on the SLA designation.

Alternative proposal

3.277 The applicant finds the alternative proposal would have a moderate landscape effect on LCT 7 within 8 kilometres of the development. The council finds moderate to moderate/major effects within that distance. Given the different assessment scales applied by the applicant and the council, we consider these findings reasonably compatible with each other. The factors cited are similar, although the areas in which the alternative proposal would be prominent are less than for the original proposal and consequently the magnitude of effect is reduced. We do not disagree with the findings of either the applicant or the council as to significance or with their findings on the degree of effect.

Cumulative effects on LCT 7

- With consented windfarms (scenario 2)

3.278 Parties did not suggest that the original or alternative proposal would have any significant cumulative landscape effect on LCT 7 when added to a baseline including consented development.

3.279 Paul's Hill II is now among the consented developments. It would be seen in the same field of view as the existing turbines of Paul's Hill, though more prominently, given the greater scale and proximity of the turbines to LCT 7. The inclusion of Paul's Hill II in the scenario-2 baseline would not, though, result in a greatly changed relationship between either the original proposal or the alternative proposal and existing turbine development. We do not consider that cumulative landscape effects would pass the threshold of significance, even when Paul's Hill II is added to the baseline.

- With other proposed windfarms (scenario 3)

3.280 As regards the area in LCT 7 around Upper Knockando, Clash Gour and the Rothes III original proposal would both be prominent simultaneously in views from relatively limited areas. They would both be prominent in an area just south of Upper Knockando, through which the B9102 runs. Paul's Hill and Paul's Hill II would also be relatively prominent in this area. Across a wider area around Upper Knockando, though, there would be a pervasive sense of turbine development in the uplands, seen sequentially when passing through the landscape. Clash Gour, Paul's Hill and Paul's Hill II would tend to be more prominent in views in an area to the east of Upper Knockando (for instance at the Knockando Kirkyard), while the original proposal would tend to be prominent just to the north (Clash Gour viewpoint 5) and south and west. The Rothes III original proposal would also be prominent in the relatively near view (4.2 kilometres) represented by viewpoint 11, though Clash Gour is not seen from that viewpoint, but hidden by the immediate topography.

3.281 The other area in which both the Rothes III and Clash Gour turbines would be prominently visible would be on the north-west-facing landscape above the Spey around viewpoint 6 on the A95 west of Aberlour and at Clash Gour viewpoint 13 at Brodie Croft on the A95. This area would also be limited in geographical extent. It would be likely to extend south of the A95 some short distance towards Edinvillie, though views to Rothes III soon become screened by the hillock of Tom na Bent. To the north of the A95, although both Clash Gour and Rothes III would be theoretically visible on the steeper north-facing side of the incised valley, the land cover is such that both would be largely screened from view.

3.282 Although there would be theoretical visibility of Clash Gour and Rothes III elsewhere in LCT 7 on the north side of the Spey, west of Archiestown, given the forestry to the north,

there is unlikely to be any extensive visibility of both from the same viewpoint. Similarly south of Marypark, although both developments would be visible, the extent of any views and screening by topography and vegetation would limit the cumulative effect. Nonetheless, the intermittent views would add to the sense of increased turbine development in the uplands around LCT 7.

3.283 Overall, we consider that the cumulative increase in views to turbines in the uplands brought about by the original proposal does represent an aspect of the significant landscape effect on LCT 7.

3.284 The cumulative impact would be materially greater for the original proposal than for the alternative proposal, given the relative degree of prominence of the turbines of either proposal in the landscape. The degree of cumulative effect would be much less near Upper Knockando. This can be observed by comparing the cumulative visualisations for Clash Gour viewpoint 5 and Rothes III viewpoint 19 for the two layouts (Clash Gour 2019 AI figure 7.54 and Clash Gour 2020 SI figure 7.60, and for Rothes III viewpoint 19, see figures 8.72, 8.73 and 8.74.) The screening of the alternative proposal by forestry at viewpoint 11 is likely to reduce the sequential views of turbines in the landscape considerably. Nonetheless, we agree with the council that the cumulative effect on LCT 7 would be over the threshold of significance for the alternative proposal too. There would be no great difference in the cumulative impact if Clash Gour scenario B formed part of the baseline, rather than scenario A.

Landscape designations

The Cairngorms National Park (CNP)

Original proposal

3.285 The proposed development would not affect the integrity of the CNP as a designation. Neither the LVIA nor SNH found that the proposed development would have any significant effect on landscape character in the CNP. We agree. We also agree with SNH that there would be no significant effects on the park notwithstanding the visibility of the proposed development in locations beyond 30 kilometres from it.

3.286 The main areas of visibility in the CNP within 30 kilometres would be the north-facing slopes of the Cromdale Hills and from the hills between Strathavon and Glenlivet, represented by viewpoints 8 (Càrn a' Ghille Cheàrr) and 15 (Càrn Daimh[2]). There would also be some visibility at the summit of Càrn na Lòine (viewpoint 14), though seen through the existing Paul's Hill.

3.287 We deal with the significance of visual effects at viewpoints 8 and 15 below. The remaining question relates to the significance of the effect on the park's special landscape qualities.

- *Aviation lighting and the dark-skies special landscape quality*

3.288 SNH's assessment of aviation lighting is based on an assumption that the lights would have an intensity of 2000 candela. This was also the assumption made in the EIAR. The evidence to the inquiry, however, was that the lights would only be of an intensity of 200 candela, except when visibility was less than 5 kilometres. In times of low visibility, the effect of aviation lighting at the park's edge would be less than on clear nights, notwithstanding the lights' greater intensity. While the lights may be seen at the viewpoints

[2] This is referred to in the EIAR and 2019 AI with the incorrect spelling "Carn Diamh"

at the edge of the park, the applicant's unchallenged evidence is that their effect would be minimal, beyond the range at which they would be perceived as having the intensity of bright stars. They would not create substantial sky-glow. Insofar as they are seen, they would not be mistaken for stars. Their colour and position in an otherwise dark area of the night-time landscape would indicate the presence of the development. That would represent a change in the view. From the nearest views, such as Càrn a' Ghille Cheàrr, the lights would be seen across the settled valley of the Spey, and the lights of Archiestown and Cardow may also be seen in the view. We do not consider that such a degree of visibility of lights seen outside the park would reduce either its dark-skies special landscape quality or its wildness special landscape quality.

3.289 There would be similar limited visibility of the three aviation lights of Clash Gour's eastern group within the park. We do not consider that the addition of the original proposal to a baseline including Clash Gour would result in a significant cumulative effect on its dark-skies special landscape quality.

- *The wildness special landscape quality*

3.290 The turbines of the original proposal would be seen in views to the north and north east, outside the park. The views available at the northern park edge would not be particularly extensive. The slopes of the Cromdale Hills to the north of Càrn a' Ghille Cheàrr are outside the park, and there the communications tower on Tom a' Chait is already a direct influence, while there are also views across the valley of the Spey to the Paul's Hill windfarm to the north and the consented Paul's Hill II. The view from Càrn Daimh, though looking across country within the park, includes commercial forestry and managed moorland. Consequently, we do not consider that the views immediately containing the original proposal exhibit a high degree of wildness. While the immediate location of the viewpoint at Càrn a' Ghille Cheàrr and the Cromdale ridge has a quality of wildness, we do not consider that the original proposal seen in its particular context would greatly detract from this.

- *Other special landscape qualities*

3.291 The extensive moorland of the surrounding hills in which the original proposal would be visible is, in most views, clearly a separate landscape from that which provides the context of the original proposal, separated by the broad settled valley of upper Speyside. The undulating upland context and commercial forestry in which the turbines would be seen is not comparable to the views that are obtained to the south. The landscape of receding ridgelines is a strong impression in views to the south, but not to the same degree to the north from the park's edge. Nonetheless, the view north is still of an attractive landscape, particularly because of the contrast the green valley gives to the immediate elevated context of the hills and the perceived enclosure of the valley by the uplands beyond.

3.292 The original proposal would be visible in the wide panoramas, particularly from the high points including Càrn a' Ghille Cheàrr, Càrn Liath, Càrn Ghrantaich and Càrn Daimh near the edge of the park. The sense of elevation in these panoramas, and particularly at Càrn a' Ghille Cheàrr, does contribute to a sense of vastness, space, scale and height. We agree with SNH that the original proposal's scale and extent would to a degree adversely affect the vastness, since it would diminish the scale of the upland enclosing the valley of the Spey. The contrast in scale and layout between the original proposal and the existing turbines would detract from the attractiveness of views to the north.

3.293 Consequently we do find the original proposal would adversely affect the special landscape qualities of vastness, space, scale and height, the wide panoramas, the landscape of layers, and the attractive and contrasting texture. The extent of these adverse

effects would be limited. Nonetheless, given the sensitivity of the national park as a receptor, we find them to be above the threshold of significance.

3.294 Cumulatively, the consented Paul's Hill II would be seen in similar locations to the original proposal – a rather wider area in the Cromdale Hills (mainly its eastern group beyond the existing turbines of Paul's Hill and some visibility of its southern group) and a rather smaller area north of Càrn Daimh. The proposed Clash Gour would be seen widely on the north-west-facing slopes of the Cromdale Hills, though only glimpsed around Càrn Daimh. Clash Gour would be contained within views of existing turbine groups, increasing visual density. The original proposal would increase the extent of turbines in the view. Given the size of the original proposal's turbines, they would appear similar in size to those of Paul's Hill. There would be an adverse synergy, although that would primarily arise from the original proposal's addition to the existing baseline. We do not find the further cumulative effect of adding the original proposal to a scenario-2 or scenario-3 baseline would be significant.

Alternative proposal

3.295 The turbines of the alternative proposal would appear somewhat larger, even at viewpoints at the edge of the national park, than the existing development and have a contrasting layout. They would be noticeable in the view. They would extend the views to turbines from the north of the park. However, in our opinion, given the reduced size of the turbines and consequently the reduced contrast, the adverse effects on the special landscape qualities of the park would fall below the threshold of significance.

Spey Valley Special Landscape Area

3.296 Moray Council's objection refers to effects upon the Spey Valley Area of Great Landscape Value (AGLV). That was a designation of the previous local development plan, which has since been superseded. The council's evidence indicates it considers there is an unacceptable effect upon the Spey Valley Special Landscape Area (SLA), a designation of the adopted Moray LDP 2020 which is not coterminous with the former AGLV. We have found that adverse impact upon the SLA designation would be a material consideration in Ministers' decision.

3.297 A description of the character and special qualities of the SLA is provided in Moray Local Landscape Review (CD5.16). The SLA is broadly similar in area to the Broad Farmed Valley landscape character type (LCT 7). Much of the discussion above of LCT 7 is relevant to the proposals' effects on the SLA. The SLA does extend further north from Upper Knockando, though, to take in part of LCT 10. It also includes the western slopes of Ben Aigan as far as the summit.

3.298 Parties are agreed that the incised river valley is of particular sensitivity (and this is also evident in the reasons given for the SLA's designation and description of its character and special qualities). The reasons for its designation also refer to its distinctive settlements and the romance associated with the Spey due to its connection with whisky distilling.

- *Prominence of skylines*

3.299 The Landscape Review refers to the sensitivity of the SLA landscape to wind-energy development in the adjacent upland visible on prominent skylines. The fact the text refers to "prominent skylines" rather than just "skylines" suggests that not every skyline in the SLA is necessarily to be treated as prominent in terms of the landscape review.

3.300 The council argued that the proposed development would appear on prominent skylines in the SLA. Our finding is that the proposed turbines would in some cases be prominent in the landscape and would appear on skylines. The skylines on which the turbines would appear would have a degree of prominence, in that they are skylines of the upland, enclosing the lower-lying Broad Farmed Valley and the SLA. There are views across the SLA from its western edge, which follows the B9102 route through the SLA, to the skyline of Càrn na Cailliche, and from the south side of the Spey Valley to the skyline of the ridge between Càrn na Cailliche and Hunt Hill. We acknowledge that this does give the skylines an increased degree of sensitivity.

3.301 The skylines are not prominent in the sense of outlining a very characterful landscape (such as a rugged hill) or otherwise forming the particular focus of a view. Even Càrn na Cailliche, designated as a landmark hill, is not especially distinctive. It gives the impression in views from the valley more of an undulation in the higher ground, albeit with the distinctive colour of the upland landscape. Houses in the SLA landscape do not tend to be oriented to the skyline on which the proposed development would appear, with the exception of the valley side west of Aberlour, where there are a few houses oriented to the opposite side of the valley. In this sense, the council's emphasis that the proposed development would be located on a prominent skyline somewhat overstates the sensitivity.

- *Original proposal*

3.302 The original proposal is acknowledged to have adverse visual effects at viewpoints 4, 5, 6, 11, 18 and 19, all within the SLA. It would be visible in the incised valley around Blacksboat Bridge, though the area of visibility would be relatively limited. It would also be prominent on some of the valley's broad stepped shoulders (as the *Moray Local Landscape Review* refers to these parts of the upper valley sides) in the Archiestown and Knockando areas.

3.303 The description of the character and special qualities of the SLA refers, in respect of the Knockando area included within it, to the survival of its historic field patterns, which add to the sense of the longevity of human activity in the landscape, the complexity of its landform, with a number of small tributary burns, cut steeply down to the Spey, the containment and intimate scale of the landscape, enhanced by the presence of smaller distilleries, the Victorian woollen mill, the historic kirk, and old railway station set in folded hills and valleys.

3.304 It would not be possible to obtain views to the original proposal from all the Upper Knockando area. At the SLA's western edge, though, both to the north and south of Upper Knockando, the original proposal's large scale turbines would diminish the intimacy and sense of containment of that area. As we have found, the original proposal's turbines would dominate the skyline of Càrn na Cailliche, seen from those locations. There would be a similar effect in the area west of Archiestown, represented by viewpoint 11, though the turbines would be seen close to the horizon beyond commercial woodland. The proposed development would have relatively limited impact on other aspects of the Upper Knockando area's character and special qualities as described in the Landscape Review. The settlements in the area and historic features would largely be screened by the topography of the area or landcover, and views would be limited close to the Knockando Burn.

3.305 In other respects our assessment is similar to that for LCT 7, which we have dealt with above. We also deal elsewhere with significant visual effects in the SLA at the viewpoints and on routes through the designated landscape, particularly the A95 and B9102.

3.306 We agree with the applicant's witness that the original proposal would have a significant effect on the SLA up to 8 kilometres from the proposed development.

- *Alternative proposal*

3.307 The alternative proposal is acknowledged to have adverse visual effects at viewpoints 4, 6, 18 and 19 (and there is a further question about viewpoint 11, dealt with below).

3.308 Like the original proposal, it would be visible in the incised valley. Its visibility would be over a similarly small area as the original proposal, though less of the development would be seen.

3.309 It would have considerably reduced prominence in the Upper Knockando area within the SLA. Although it would be prominent south of Upper Knockando along the western edge of the SLA as far as Blacksboat Bridge, that area is rather less intimate than to the north of Upper Knockando since wider panoramas over the valley may be obtained, in which the windfarm would be one feature.

3.310 We agree with the applicant's witness that the alternative proposal would have significant effects on the SLA up to 8 kilometres from the proposed development, though the degree of effect in the Knockando area would be considerably reduced.

- *Cumulative effect on the SLA*

3.311 We have discussed cumulative landscape effects in the context of LCT 10 and LCT 7. The original proposal would have significant cumulative effects with existing, consented and proposed development (in scenario 3) in the SLA. These would arise particularly from its relationship with Clash Gour, and from the more pervasive sense of turbines in the enclosing uplands to the SLA's north on skylines that have some heightened sensitivity particularly because of the enclosure they provide. Turbines would be seen sequentially from particular viewpoints within the landscape or sequentially when travelling through the landscape.

3.312 The alternative proposal would also have a cumulative impact in scenario 3. It would be considerably less than the original proposal, particularly in the area east of Upper Knockando but still above the threshold of significance.

3.313 Although the whisky industry plays a part in shaping the SLA landscape, and is an aspect of the landscape and its particular character, we find that the applicant's assessment of the landscape's sensitivity generally takes account of the value placed on it arising from the designation, including the value that the whisky industry contributes to it. In our view, visitors to whisky distilleries and sites of associated businesses, such as cooperage facilities, will be aware that they are industrial installations, albeit of industries with tradition in the area. They will be aware that such installations require power, and views towards facilities for power-generation will not be entirely surprising. There are sensitive receptors associated with the industry, such as historic buildings and visitor attractions, but we have not had evidence that any specific such receptor is significantly adversely affected. We acknowledge that tourists passing between sites on the whisky trail may have higher susceptibility as receptors, and we have taken that into account in our assessment of the visual effect of the routes through the landscape.

<u>Visual effects</u>

Viewpoints

3.314 There is broad agreement between the applicant and the council that the original proposal would result in significant visual effects at eight locations (viewpoints 4, 5, 6, 7, 11, 13, 18 and 19). As regards the alternative proposal, the applicant and the council agree that there would be significant effects at viewpoint 4, 6, 7, 18 and 19. We also agree that the effects at those locations would be significant. The council also refer to the potential of the alternative proposal having a significant effect at viewpoint 11 if forestry is removed. We consider the degree of these effects below.

3.315 The CNPA's resolution, its officer's report and SNH all refer to significant effects at the northern edge of the national park. We therefore consider the degree of visual effects at both the viewpoints on the park's boundary: viewpoint 8 at Càrn a' Ghille Cheàrr and viewpoint 15 at Càrn Daimh.

Viewpoint 4 Ben Aigan

Original proposal

3.316 Although views to turbines are not unusual from Ben Aigan's summit, the particular relationship of the original proposal to existing turbines causes adverse effects. Notwithstanding the proposed turbines' distance from the viewpoint, the contrast in size of the turbines of the original proposal as compared with the existing Rothes I and II turbines would be striking. We agree with the LVIA's assessment, though, that only part of the wide panorama at the viewpoint would be affected. Within the panorama, the views to the Moray coast and beyond particularly draw the eye, as well as views to the distant Cairngorms and the landscape of Ben Rinnes and the Convals. The proposed development's setting, on high rolling moorland and in existing commercial forestry with existing turbines beyond – though it does form the backdrop and context to the Spey Valley SLA – lacks detailed features to scale turbines and does not have the same degree of visual interest as these other elements of the view. While we acknowledge that the edge of the commercial forestry in LCT 10 is a feature against which the turbines might be scaled, generally the forestry is perceived as a large-scale horizontal feature, and any effect in identifying the scale of the proposed turbines would be limited.

3.317 We acknowledge, as the council's witness suggests, that sensitivity of receptors is likely to differ, depending on their reasons for being at a particular location or viewpoint. The assessment for the council rates the sensitivity of recreational walkers as 'very high'. The applicant assesses their sensitivity as high. Both represent the top level of receptor-sensitivity ratings used in their respective assessment methods, and in practice there appears to be little difference between the applicant and council in this regard. The view at the summit is undoubtedly sensitive, but does not represent a wide area - views out to the application site from the forested hill side are relatively rare.

3.318 We agree with the applicant's assessment that the magnitude of visual effects would be medium, and that the original proposal's effect would be of major to moderate significance. Given the proposed development's context, we consider that the council witness's assessment (in his methodology) of an effect of very major/major significance somewhat overstates the impact.

Alternative proposal

3.319 For the alternative proposal, the proposed turbines would be visually prominent features in the landscape. However, the reduction in height of turbines would make for a less striking contrast with existing turbines. The reduction in the number of turbines in the

southern part of the proposed site would result in perception of a development that was somewhat more contained within the landscape than the original proposal, with no turbines appearing south of Hunt Hill. We agree with the applicant's assessment of a moderate significant effect. For these reasons, we find again that the council's witness's assessment of an effect of very major/major significance is somewhat overstated.

Cumulative visual effects at viewpoint 4

Original proposal

3.320 The Paul's Hill II, Meikle Hill, Kellas, Berry Burn II and Hill of Towie II windfarms are consented at the time of this report. Paul's Hill II would be located in front of the existing Paul's Hill turbines. Although appearing slightly larger in the view, they would not - in the context of the wide panoramic views of the landscape - be prominent when seen from Ben Aigan. The Meikle Hill and Kellas proposals would, similarly – at some distance from the viewpoint – be seen as a group with the Rothes I and II turbines. We agree with the LVIA that there would be synergy of effects between the original proposal and Hill of Towie II, creating the perception for the viewer of being between two large turbine groups. The addition of the original proposal to a baseline including the consented developments would result, as the LVIA finds, in a moderate significant cumulative effect.

3.321 The council witness's assessment of the cumulative effect of the proposed development in scenario 2 is similar. He also finds, though, that the combined effect of existing and consented turbines in the view with the proposed development would be of major significance. Given the synergy between the emerging group at Hill of Towie and the emerging group to the viewpoint's west, including Rothes I, II, Kellas and Meikle Hill, of which the proposed development would be the closest and most prominent element, and the complexity in the view introduced by the proposed development's having larger turbines than others within its group, we agree that the scenario-2 combined effect is properly assessed as major in the council witness's terms. We also consider that the original proposal would make a substantial contribution to that combined effect.

3.322 As regards existing, consented and proposed developments (cumulative scenario 3), Clash Gour would be the main further addition to the baseline. Ourack and the Carn Duhie redesign, both to the west, are at scoping stage. We agree with the assessment in the LVIA (2019 AI paragraph 8.10.40) that Clash Gour would add to the layering effect of windfarms in the view extending towards Rothes III, but would not substantially change the degree of cumulative effect arising from adding the proposed development to a baseline including Clash Gour. The effect in scenario 3 would not be significant. This is also the case for the scoping-stage developments referred to in evidence. We agree with the council's witness that there would be an increment in the degree of combined effect on the view.

Alternative proposal

3.323 We agree with the LVIA (2019 AI paragraph 8.10.143) that the relationship at the viewpoint between the proposed development and the consented Hill of Towie II would result in a moderate significant effect. The lesser size of the proposed turbines would contrast less with the existing and consented turbines of the Rothes/Kellas/Meikle Hill group and the Hill of Towie group. Given the reduction in the adverse synergy, we find the combined cumulative effect would be rather less than for the original proposal, though still significant. The contribution of Rothes III would be considerably less, given the reduced contrast with existing development.

Viewpoint 5: A95 East of Craigellachie

Sensitivity

3.324 This viewpoint represents a relatively rare view across the valley from this part of the A95, where views are otherwise restricted by landform and tree cover. Although it is a rural view, it is not of undeveloped countryside. It includes commercial and industrial development (including distilleries and a heat and power plant). The effect of these features is limited to a degree either because they are low in the valley or of a recessive colour seen against the hill. We acknowledge that the susceptibility of at least some road users, such as tourists arriving in Speyside from Aberdeenshire, would be somewhat higher than that estimated by the applicant. The location of the viewpoint in the Spey Valley SLA indicates a heightened value. Consequently, we consider that its overall sensitivity should be treated in terms of the LVIA's method as medium rather than low, notwithstanding the fleeting nature of the view.

Original proposal

3.325 Twenty turbines in the original proposal would theoretically be visible on the skyline across the valley, at a distance of more than 8 kilometres. The council argues that the perceived scale of these turbines would increase when viewed in the context of the existing forestry. We acknowledge that there is an element of scaling from the woodland on the hill, though the commercial forestry that forms the immediate context of the view of the turbines would be seen more as a horizontal element in the landscape. The proposed turbines would be viewed in context with the existing distilleries and other commercial elements in the landscape. Overall, given the brief nature of the view for road users, we agree with the applicant's assessment of a moderate magnitude of visual change at this viewpoint. We are also in agreement with the applicant's assessment of a moderate significant visual effect.

Alternative proposal

3.326 For the alternative proposal, the combination of fewer turbines and lower turbine heights would result in only three turbine hubs being visible on the skyline. The proposed turbines would appear further set back beyond the horizon and would not be a prominent feature in views. Consequently we agree with both the applicant and the council that visual effects would not be significant.

Cumulative effects

3.327 Although the consented Paul's Hill II, a couple of blades of the consented Hill of Towie and part of the proposed Clash Gour would theoretically in part be visible in the view, they are likely to be largely hidden by land cover. None of the evidence before us suggested that there would be a more-than-negligible cumulative effect (without Hunt Hill windfarm included in the baseline).

Viewpoint 6: A95 South of Aberlour

Sensitivity

3.328 Disagreement between parties about the effects of the proposed development on this view relate mainly to its sensitivity, rather than the magnitude of change (both parties accord a magnitude of change of the highest degree in their respective assessment scales for both proposals). The *Moray Local Landscape Review*, in assessing the sensitivity to

change of the Spey Valley SLA refers to its sensitivity to "wind-energy development in adjacent upland areas and visible on prominent skylines". There was discussion at the inquiry as to whether the proposed development was on a prominent skyline in this view.

3.329 The viewpoint is one of the few open views across the Spey Valley from the A95. The skyline would no doubt be prominent in views from the houses near the viewpoint on the south side of the road. However, the largest group of receptors at the viewpoint are users of the A95. For them, the view of this skyline is likely to be relatively brief. The skyline incorporates the landmark hills of Càrn na Cailliche and Hunt Hill. We acknowledge, particularly for Càrn na Cailliche, its contrast in colour with the valley landscape and sense of a different landscape beyond. That said, we do not consider either hill is perceived from this viewpoint as a very strong or characterful geographical feature outlined on the skyline. The enclosure the skyline provides to the valley and the change of colour of Càrn na Cailliche does give it a degree of prominence, and consequently a degree of sensitivity. It is not the same degree of sensitivity that would pertain, for instance, to the slopes of Ben Aigan or Ben Rinnes, or to views of the uplands from the sensitive valley floor.

3.330 Although the proposed turbines would be prominent in views from this particular stretch of the road, they would also be viewed on one part of the relatively broad skyline. We do not regard the skyline itself as very prominent for users of the A95, even though the turbines would be.

Original proposal

3.331 The applicant acknowledges the visual effect of the original proposal at viewpoint 6 to be significant and major, the highest degree of effect on the LVIA's scale. The council witness's methodology applies a range of susceptibility to different road users on the A95, and consequently a range of sensitivity, from residents, tourists and cyclists (high) to commercial drivers (low). It finds a high magnitude of effect and consequently effects from moderate to major significance, depending on the receptor. We agree that there can be a range of sensitivity of receptors. Undoubtedly the residents of the houses near the viewpoint would have high sensitivity. We doubt that users of a busy main road, even tourists or cyclists, would have the highest level of sensitivity or that their susceptibility and hence sensitivity would vary as dramatically as the council's evidence suggests.

3.332 Nonetheless, we agree with both the council and the applicant that, for many receptors, there would be a significant effect towards the upper end of the scale. The council's assessment puts the effect at "major", the second top level of its scale, which appears to us to be broadly correct. The immediate area of the effect would not be very great in extent. The viewpoint is representative, though, of other intermittent effects that occur on the A95 as far west as the layby above Cragganmore and east to around Kinermony (these are generally of a lesser degree than at the viewpoint).

Alternative proposal

3.333 For the alternative proposal, the applicant continues to rate the significance of the visual effect at the viewpoint as being major, notwithstanding the reduction in turbine numbers and scale and their being set further back. Similarly, the council continues to rate the significance of the effect as moderate to major. Again, we find no reason to disagree with the rating of significance given by either in terms of their methodologies.

3.334 The proposed development would be better contained within the landscape between the gentle summit of Càrn na Cailliche and Hunt Hill. Unlike the original proposal, its turbines would not be perceived to spill down the hill towards Archiestown, and the reduction in turbine height would somewhat reduce the impact of the scale of the turbines in

comparison with scale indicators in the view, such as the buildings of Archiestown. Nevertheless, the degree of visual effect would be only a relatively small degree less than that of the original proposal.

Cumulative visual effects at viewpoint 6

Original proposal

3.335 There was substantial disagreement over the cumulative effects of the original proposal.

3.336 The council's position was that there was a range of cumulative effects from moderate to major (depending on the sensitivity of the receptor) when the proposed development was added to a scenario-2 baseline including consented turbines (even without Hunt Hill), while the applicant argued that the cumulative effect was negligible.

3.337 At the viewpoint itself, the views to consented windfarms forming part of the notional scenario-2 baseline are limited. Consequently, we agree that – as regards the effect at the viewpoint itself – the scenario-2 cumulative effect would be negligible. We will consider the sequential effects on the A95 below (there are sequential views with the consented Paul's Hill II slightly to the east of the viewpoint along the road).

3.338 There is also a difference of opinion over the cumulative effect in scenario 3 of the proposed development with the proposed Clash Gour turbines. At the nearby Clash Gour viewpoint 13, north of Brodie Croft, the Clash Gour applicant finds a significant cumulative effect, where Clash Gour is added to a baseline including the original proposal (even though at that viewpoint itself, the Rothes III original proposal's turbines would be screened by trees).

3.339 At viewpoint 6, the eastern group of Clash Gour turbines would be seen to the west (AI figures 8.19a and 8.19d). The original proposal would be of a larger scale and in closer proximity to road users than Clash Gour, increasing the presence and extent of turbines on the skyline above the Spey Valley SLA. This would result in an adverse synergy. In our view, the cumulative effect would be well above the threshold of significance (for the more sensitive receptors at the viewpoint, at least).

Alternative proposal

3.340 For the alternative proposal, the visual relationship between the wind farms in the cumulative baseline would be similar to that for the original proposal. Consequently, we find that there would be a significant cumulative effect of a slightly lower degree than that of the original proposal.

Viewpoint 7: Ben Rinnes

Original proposal

3.341 Given that the viewpoint is a popular summit for walkers, we consider that it is correctly assessed in the LVIA as having high sensitivity. The proposed turbines would be visible in many places on the popular walking route from the car park to the summit, including from Roy's Hill (the shoulder of Ben Rinnes), where we observed walkers stopping to look out over the landscape to the north.

3.342 The difference of scale between the existing operational turbines of Rothes I and II (almost half the height of the proposed turbines in the original proposal) would be apparent

notwithstanding the distance of the group from the viewpoint. The existing turbines would appear both beside and behind the proposed turbines. The difference in scale and rotational speed would be noticeable, notwithstanding the distance. The incongruity would draw attention.

3.343 There would also be a reduction in undeveloped parts of the view. This would contribute somewhat to the adverse effect of the proposed development.

3.344 There are wide panoramic views from the summit. There is particular visual interest in the Cairngorms to the south and the coast of Moray and the Black Isle to the north. Turbines are not an uncharacteristic feature in the middle-ground views towards the proposed development site. Even with the proposed development, such views only detract somewhat from the summit outlook. We do not fundamentally disagree with the applicant's assessment of a moderate significant visual effect. The assessment covers a relatively broad band, and in our view it would be at the higher end of the band.

3.345 The council's assessment is of a moderate/major effect. The slightly different result arises from different treatment of the sensitivity of the receptors (walkers) whose sensitivity the council assesses on its five-point scale as very high/high (rather than just high, which is the applicant's assessment on its three-point scale). We do not consider the degree of effect found by the council on its methodology to be substantially different within the context of the different methodologies.

Alternative proposal

3.346 The alternative proposal's lower turbine heights would result in a better relationship with the existing Rothes I and II turbines than that of the original proposal. There would be considerably less incongruity than with the original proposal. The proposed turbines would be somewhat more contained by and in scale with the landscape than those of the original proposal. Both the council and applicant assess a moderate significant visual effect. We agree.

Cumulative visual effects at viewpoint 7

Original proposal

3.347 As regards scenario 2, the consented Pauls Hill II, Meikle Hill, and Kellas would all be visible at some distance in views to the north west. These would be perceived in the view as extensions of existing turbine groups (Paul's Hill and the Rothes I and II group respectively). Hill of Towie II to the east would be closer to the viewpoint and enlarge the existing Hill of Towie group of turbines. The incongruity in scale of the turbines of the original proposal would be evident in its immediate group, though the incongruity would primarily be an effect arising from the original proposal's interaction with the existing turbines of Rothes I and II rather than consented turbines. We consequently acknowledge the council's finding that there would be a significant combined effect, taking existing and consented turbines together with those of the original proposal. However, focusing on the further effect that would arise from adding the proposed development to a scenario-2 baseline, we agree with the applicant that it would not be significant.

3.348 We also acknowledge the council's finding that the combined effect of existing, consented and proposed development would be significant and major. We agree with the council's finding that the further effect of adding the proposed development to a notional scenario-3 baseline would be significant, given the addition it would make to the horizontal extent and visual prominence of turbines in the view. The scoping-stage Ourack and Carn

Duhie redesign would extend the former group to the west and compound the significant effect.

Alternative proposal

3.349 Similarly the scenario-2 cumulative effect of the proposed development would not be significant. In scenario 3, although the proposed turbines would not add quite such a prominent element, they would extend the view of turbines almost as far across the middle ground. Consequently, like the council, we find that the cumulative effect would be significant.

Viewpoint 8 Càrn a' Ghille Cheàrr

Original proposal

3.350 The broad summit of Càrn a' Ghille Cheàrr is on the boundary of the national park. Although the view is from the park, the context in which the proposed development would be seen would be outside the park. The original proposal's turbines would be seen beside Rothes I and II in the distinct upland landscape north of the Spey Valley. It would appear to be of similar scale to the existing Paul's Hill turbines, which are rather closer to the viewpoint. Even at just over 18 kilometres, the proposed turbines would be of noticeably different scale and layout. This contrast together with the extension of the area in the field of view along the skyline would cause the visual effect to be significant, notwithstanding the wide panorama and the distance of the proposed turbines from the viewpoint.

Alternative proposal

3.351 The alternative proposal's turbines would be of a scale somewhat more in keeping with the existing turbines and the surrounding landscape. The reduced contrast with neighbouring development would result in an effect that would, in our view, not be significant.

Cumulative visual effects at viewpoint 8

3.352 At this range, the baseline impression in scenario 2 is of two distinct groups of turbines in the Moray uplands, with the existing Paul's Hill extended to east and west respectively by Paul's Hill II and Berry Burn II. The original proposal's effect would be to extend to the eastern group, and so strengthen the impression of turbines being a feature of the Moray uplands. The impression would be somewhat further intensified if the original proposal was added to the notional scenario-3 baseline, including Clash Gour (though Clash Gour's turbines would be beyond the existing and consented Paul's Hill group). The relationship between the original proposal and the baseline turbines would not greatly change from its relationship with the existing Rothes group though. Consequently, in neither case would the further cumulative effect be over the threshold of significance. A similar comment may be made in respect of the alternative proposal.

Viewpoint 11: B9102, West of Archiestown

Original proposal

3.353 The council's witness attributes a range of sensitivity ratings to likely road users/receptors, including cyclists and tourists on the whisky trail in particular. He made specific reference to potential visitors to the nearby Cardhu Distillery. While we acknowledge that the susceptibility of road users can vary, we doubt that it would cause the sensitivity of the view to vary to the degree the council's evidence suggests. We consider

the value of the view, assessed by the council as medium, is a considerably greater factor in the overall sensitivity of the viewpoint.

3.354 Nonetheless, there appears to us little disagreement between the council and the applicant as to the degree of significant effect the original proposal would have. We agree that the applicant's assessment of a major/moderate significant visual effect is appropriate.

Alternative proposal

3.355 The alternative proposal's turbines would largely be screened by the existing forestry on the skyline. We acknowledge that the screening forestry is commercial forestry. If the forestry was removed, part of the alternative proposal, mostly blade tips, would be seen over the slope of Càrn Crom. The forestry plan for the woodland on Càrn Crom is included in the applicant's evidence on residential amenity (CD15.1.4). Parts of the forestry are to be felled and replanted in different coupes and other parts are to be retained in the long term. It appears likely that the combination of forest retention and felling and replanting would provide screening for the alternative proposal throughout its life. We acknowledge that forest may be affected by disease, and it is possible that some of the screening would be lost for a period. We consider, given the limited likelihood of such an event, the likelihood that visibility would be for only a limited duration until replanting, and the limited degree of effect that would occur in the worst case, that the effect at the viewpoint would not be significant.

Cumulative visual effects at viewpoint 11

3.356 The applicant and council agree that cumulative effects at this viewpoint would not be significant, notwithstanding the visibility of Paul's Hill II. We agree.

Viewpoint 13: The Duke of Gordon Monument Elgin

Original proposal

3.357 From this elevated viewpoint in Elgin, the proposed turbines would be seen on the southern skyline in the distance to the east of the existing Rothes I and II wind farms, extending the horizontal extent of turbines on part of the skyline, beyond the town. The larger scale of the turbines, at approximately double the height of the existing Rothes turbines, even at the proposed distance of 13.5 kilometres, would, in comparison, also be apparent. Both the council and applicant assess a moderate level of significant visual effect. We agree.

Alternative proposal

3.358 The proposed turbines in the alternative proposal would also result in an extension of the horizontal extent of turbines on part of the skyline, beyond the town. The reductions in turbine height however would improve the visual relationship with the existing Rothes I and II wind farms. The smaller turbines would also be more contained by, and integrated into the landscape than those of the original proposal. Consequently, we agree with both the applicant and the council's assessment that visual effects would not be significant.

Cumulative visual effects at viewpoint 13

3.359 The applicant and council agree that the effect of adding the proposed development to the notional scenario-2 and scenario-3 baseline would not be significant. We agree too.

Viewpoint 15 Càrn Daimh (Speyside Way)

Original proposal

3.360 There would be a contrast between the original proposal's turbines and those of the existing Rothes I and II windfarms at Càrn Daimh, which would be noticeable even at the distance of over 20 kilometres from the viewpoint. The viewpoint is of high sensitivity given its location on the Speyside Way and inside the CNP. The proposed development would be very noticeable intermittently from the Speyside Way for about a kilometre for walkers heading northwards from the summit of Càrn Daimh to Glenlivet, notwithstanding the existing screening provided by forestry on the hill. The existing turbines of Rothes I and II would be noticeable for rather more of the journey. The proposed turbines would be seen in the context of the existing turbines and there would be a notable contrast.

3.361 Nonetheless, we consider, given the distance and the different landscape in which the turbines would appear, that the effect would not be over the threshold of significance.

Alternative proposal

3.362 The reduced contrast in scale of the alternative proposal's turbines would reduce the effect further.

Cumulative visual effects at viewpoint 15

3.363 Although some consented turbines of Paul's Hill II and Meikle Hill in cumulative scenario 2 and Clash Gour in scenario 3 would increase the view of turbines in the Moray uplands, we do not consider that the degree of effect at this distance would be such as to be significant.

Viewpoint 18: Speyside Way Blacksboat Bridge

3.364 The difference between the applicant's evidence and that of the council relates primarily to the differing effects the council claims would arise for receptors of differing susceptibility.

3.365 The viewpoint itself is on an embanked road, slightly raised up above the floor of the river valley, leading to a bridge over the Spey. Views to both the original or alternative proposal would be obtained from the road across riverside fields. To the east, before the bridge, views would be screened by riverside vegetation, but then a view would be obtained from the bridge, before the road passes the vegetation on the east valley side and the proposed windfarm would again be screened from view. At our site inspection, we noted that the dense vegetation on either side of the incised valley focuses the view. Càrn na Cailliche is presently seen as a simple moorland skyline in this view.

Original proposal

3.366 We agree with the council that the view is of high value, given the viewpoint's location on the sensitive valley floor in the SLA and its relative rarity as a view out from the inner valley. The susceptibility of road users may be as high as medium in the council's terms, though vehicles would be unlikely to stop for long on the narrow bridge or embankment to appreciate the view. The main interest in the view is the river and its surroundings. Neither the council nor the applicant assesses the effect of the turbines on the skyline to have the highest magnitude of effect on their respective scales. Nonetheless, given the sensitivity of the view, we consider that the applicant's assessment of a moderate

significant effect at the viewpoint itself is somewhat understated. We consider that significance of the effect would be major/moderate, in the applicant's terms.

3.367 Along the Speyside Way, views to the original proposal would be largely screened. Views of the proposed turbines would also be limited at the river bank and from the river itself than at the viewpoint on account of the lower elevation and the screening provided by the riverside trees. For anglers and kayakers, views of the river and along the river would be of key importance. These factors would limit the magnitude of the effect. We consider that the greater impacts on them suggested in the council's evidence is an overstatement. The degree of significance of the impact on anglers and other recreational users of the river would be less than at the viewpoint itself.

Alternative proposal

3.368 As regards the alternative proposal, up to six partially screened turbines would be visible from the viewpoint. They would be around half a kilometre further away than those of the original proposal. The combination of fewer turbines and reduced turbine heights, although still visible, would result in the proposed turbines appearing as less of a feature in views along the river and valley. We consider that the effect of visibility of one or two blade tips crossing the skyline among a view of other turbines would not result in an effect of any great substance. We agree with the applicant's assessment of a moderate level of significant visual effect. We consider the council's assessment on its scale of range of effect from moderate to major somewhat overstates the upper end of the range.

Viewpoint 19: B9102 between Blacksboat Bridge and Cardhu

Sensitivity

3.369 We can appreciate that visitors may be using the road as an alternative to the A95 to visit distilleries and other sites of interest such as Knockando church. While the road is relatively quiet, it is the main route on the north side of the Spey linking settlements such as Knockando and Archiestown. The area does not have the high sensitivity or same sense of enclosure as the inner river valley. However, the view is across the landscape of the SLA to the enclosing hills (and Càrn na Cailliche in particular), and along the orientation of the road for those travelling north east. We agree with the council that the value of the view would be medium. While there may be some variation in the susceptibility of road users, given the open nature of the views, we do not consider that the upper level of sensitivity of the view would be much above medium, even for cyclists and tourists.

Original proposal

3.370 The proposed turbines in the original proposal would lie about 6.5 kilometres to the north of the viewpoint. The hubs and blades of at least 20 turbines would be very prominent in the landscape, dominating the undulating upland skyline on and around Càrn na Cailliche. There would be some overlapping of blades and uneven layout. The result would be a substantial visual change for road users travelling in a northerly direction along this part of the road. The partial screening by forestry would not be available throughout the area represented by the viewpoint, particularly along the road. There would be a high magnitude of effect. We consider that the applicant's finding of a moderate significant effect understates the degree of effect – in our view, the significance would be major/moderate, in the applicant's terms.

Alternative proposal

3.371 For the alternative proposal there would be parts of at least 10 turbines which would be visible from the viewpoint, though evidently set back further behind Càrn na Cailliche than the original proposal. The southern extent of the turbines on the horizon would be considerably less than with the original proposal. These factors would result in a lower magnitude of effect. Notwithstanding this, the turbines would still be prominent on the upland skyline around Càrn na Cailliche. Consequently, we agree with the applicant that there would be a visual effect of a moderate level of significance.

Cumulative visual effects at viewpoint 19

3.372 We agree with the council that the original proposal would be the largest element in any combined effect at the viewpoint in scenario 2 or 3. Paul's Hill II, now consented, is added to the scenario-2 cumulative baseline, though its turbine 1, the most prominent in the visualisation, is removed from the design. Notwithstanding this addition, and the resulting view of turbines in a new direction, we do not consider that the further effect of adding the proposed development to a scenario-2 baseline would be significant.

3.373 In scenario 3, there would be an oblique view to the Clash Gour turbines on the other side of Glen Arder from Paul's Hill II, with a similar degree of visual influence. At the viewpoint itself, we do not find the additional effect of the proposed development in scenario 3 to be significant. We note though that there would be significant cumulative visual effects on Yvonne Mandel's house, Glenarder, fairly nearby. There the immediate topography does not limit the influence of Paul's Hill II and Clash Gour to the same degree.

3.374 The addition of the alternative proposal to the scenario-2 and scenario-3 baselines would not have a significant cumulative effect at the viewpoint either.

<u>Visual effects on key routes</u>

A95

3.375 Moray Council and the applicant agree that the effects of the original proposal on the route would be significant between Cragganmore and Aberlour. We agree too.

3.376 We accept that tourists with an interest in the whisky industry will see the A95 in Moray as a key route between distilleries and that it passes through the designated SLA landscape. It is not a route with a tourism designation, though, and as the council acknowledges, vehicles travel at or close to the national speed limit over much of it. We doubt it would be extensively used by cyclists, particularly given that the quieter B9102 is available on the north side of the river. We consider the applicant's assessment of medium sensitivity is accurate.

3.377 Paul's Hill II now forms part of the scenario-2 baseline. Although it would be visible from the A95 (for much of the time with the existing turbines of Paul's Hill), its effects on the road were found to be relatively limited in the report to Ministers on the basis of which its consent was granted. The intermittent effect of the original and alternative proposals would make a greater contribution to the cumulative sequential effect on the road. Like the applicant, we do not find the cumulative sequential effect to be significant in scenario 2.

3.378 We consider that the proposed development would cause a significant sequential cumulative effect on the A95, if added to a scenario-3 baseline including Clash Gour. The original proposal would be of a larger scale and in closer proximity to road users than Clash Gour and would be the main element in the effect. We agree that the degree of cumulative

effect on the road would be somewhat less if the alternative proposal was added to the scenario-3 baseline, but that the effect would still be significant.

B9102

3.379 Moray Council and the applicant agree that the proposed development's effect on the route would be significant, though they disagree about the level of effect, primarily because they disagree about the sensitivity of the road's users. We can appreciate that visitors, particularly cyclists and tourists, may be using the road as an alternative to the A95. There appears to be little difference between the applicant and the council as to the resulting level of significant effects. We agree that the applicant's assessment of a major/moderate significant effect is appropriate.

3.380 For the alternative proposal, although there would be a reduction in the number and extent of turbines visible from the road, travelling north between Blacksboat and Upper Knockando we agree with the applicant that effects would be less, though remain appropriately assessed at a major/moderate level of significance. For the section of the road between Cardhu and Macallan, our comments on viewpoint 11 are relevant. Given that the proposed turbines would be largely screened by topography and the existing forestry on the skyline, we agree with the applicant that effects would not be significant. If all the forestry were to be removed (which appears to us unlikely), the applicant has acknowledged that there would be a significant effect on the road east of Upper Knockando, notwithstanding that there would not be a significant effect at viewpoint 11. We accept this.

3.381 Paul's Hill II windfarm would be visible on the open hillside to the west of the road (as demonstrated at viewpoint 11). We agree with the applicant's assessment that the increased presence of turbines to the west would not amount to change from the visual relationship of the existing turbines and the proposed development that would result in a significant effect. Neither the original proposal nor the alternative proposal would have a significant cumulative effect with the scenario-2 baseline.

3.382 As regards cumulative scenario 3, ZTVs in EIAR figure 8.13c and 2019 AI figure 8.13d demonstrate that there would be sequential visibility of Clash Gour, Paul's Hill II and the original proposal from around viewpoint 19 intermittently along the B9102 to beyond Archiestown. The actual visibility would be more intermittent, though there would be views in opposite directions of the original proposal on the one hand and Clash Gour and Paul's Hill II on the other. The sequential visibility of existing, consented and proposed development in the uplands would, in our view, be such as to have a significant cumulative effect from around viewpoint 19 to a point near the western end of Archiestown.

3.383 The lesser prominence of the alternative proposal would reduce the extent of sequential visibility and, in our view, reduce the level of cumulative sequential effect on the B9102 below the level of significance.

B9010

3.384 The EIAR found that the original proposal would have a significant visual effect on the B9010 between Elgin and Edinvale, though no significant cumulative effect. The council agreed with this assessment. Both Clash Gour and Rothes III would be seen from the road. However, in the section in which Clash Gour would be seen, particularly from the foot of the Hill of the Wangie, the original proposal would be seen as part of an already-developed horizon, beyond the existing Rothes I and II (and the consented Meikle Hill). We agree with the assessment that the further cumulative effect in scenarios 2 and 3 would not be significant.

3.385 The 2019 AI found that the alternative proposal's effect on the B9010 would not be significant, since the reduced height of the proposed turbines would mean the south-eastern part of the proposed development would be hidden by topography. The turbines in view would appear more consistent in size with Rothes I and II. We agree that the alternative proposal would not have a significant effect on the road individually or cumulatively.

Core Path SP20 Lower Mannoch Path

3.386 This rough track runs from the B9102 in a north-south direction up to the minor road to the south of Càrn na Cailliche. It can be used by recreational walkers. However it appears the track is mainly used by farm vehicles. Consequently we agree with the applicant's assessment of low sensitivity for the route. The proposed turbines would be at some remove from the route, at around 4 kilometres. Mostly blades but some hubs would show over the plantation on Sidhean na Mannoch. We agree with the applicant's assessment of a medium magnitude of change. The resulting visual effect would be of a moderate level of significance. There would not be a significant cumulative effect on the path.

3.387 We also agree with the applicant that the visibility of the alternative proposal for path users would be less and no significant effect would arise.

Right of Way GM7 Mannoch Road

3.388 This route passes through the proposed site, with turbines located at 150 metres from the route. There is no dispute between the applicant and the council that there would be major significant effects as a result of both the original and alternative proposals. We agree too. In the absence of the Hunt Hill windfarm, there would not be a significant cumulative effect on the path.

Core paths and promoted paths near Archiestown

3.389 We agree also the applicant and council that the effect on core path SP01 to Pikey Hill would not be significant.

3.390 There are walks near Archiestown from which there would be intermittent views of the proposed development. These include the SP21 circular walk near Archiestown, and the promoted path to the summit of Cairn Cattoch. These walks are largely through forestry plantations, and often on forestry roads. As a consequence, the sensitivity of receptors on the path to windfarm development is not high and the value of the paths is mainly local to Archiestown. Nonetheless, we consider that the effects of the proposed development would be significant. Without Hunt Hill, there would not be a significant cumulative effect.

3.391 Scotways raised the impact upon access along path GM137 during construction. We deal with this elsewhere. The visual effect on the path would be very limited.

<u>Visual effects on settlements</u>

3.392 Although the applicant's RVAA identifies significant effects on individual property groupings in Archiestown (which we address below), the applicant and council agree that there would not be a significant effect on any settlements. We agree too.

Visual effects of aviation lighting

3.393 No evidence was led that would rebut the applicant's detailed technical evidence on the visual effects of aviation lighting. We accept that the proposed development's lights would not be prominent at any of the 19 viewpoints. We do not consider that there would be significant effects from aviation lighting on any settlement or on any residential property.

3.394 There would be three lights on the Clash Gour scenario A turbines, subject to similar arrangements to dim the lights from 2000 candela to 200 candela when visibility is over 5 kilometres. We do not find any significant cumulative effect.

3.395 Speyside Community Council objected on the basis that the aviation lighting would appear to flicker as the blades passed the lights. Given the limited prominence of the lights, we do not consider that such a flickering would cause any substantive increase in the visual effect.

3.396 The CNPA's resolution to object to the original proposal referred to the proposed development having a particular effect on the dark-skies special landscape quality of the park. In view of the applicant's evidence that the effect at the park's edge would be minimal, we have found that there would not be an adverse effect on its dark-skies special landscape quality. We do not consider that the proposed development would contribute substantively to any cumulative effect in respect of aviation lighting.

Residential visual assessment

3.397 EIAR and AI figures 8.32 indicate that there would be theoretical visibility of turbines for both the original and alternative proposals from properties in and around the village of Archiestown. There are no formal objections from statutory consultees, including the council, in respect of any particular impact on any residential property.

3.398 We accept that the significant effects of the original proposal would be broadly as described in the RVAA, which forms EIAR appendix 8.5. We accept also that the significant effect of the alternative proposal would as described in the 2019 AI chapter 8.

Archiestown

3.399 There were several objections from Archiestown residents about the proximity of the proposed development to the settlement. Principal views from properties in Archiestown are generally facing south. Although some turbines would be visible in some places, the existing forestry to the north of the village in combination with garden trees, shrubs and outbuildings would provide partial screening of many of the turbines. We agree with the applicant that only one property at the east end of the main settlement would have its views significantly affected by the original proposal. We agree with the LVIA that the original proposal would have no significant effect on the main settlement of Archiestown overall.

3.400 East of the main settlement at Archiestown, the properties at Old Croft, east of Old Croft, and west of Newlands would however have more open views north. We agree with the applicant's RVAA that the original proposal would be a moderate to major significant visual effect for these properties.

3.401 We agree further that the alternative proposal would result in a lesser effect in the area of Archiestown, given the lesser height of its turbines and consequently greater screening by topography and forestry. The effect at the east end of Archiestown and for the group at Newlands would be reduced such that it was not significant.

Glenarder

3.402 We agree with the assessment by the applicant's witness of the proposed development's effect on Glenarder, both individually and cumulatively with Clash Gour and Paul's Hill II. Neither the original proposal nor the alternative proposal would be overwhelming or dominant. Given the orientation of the house and the wide views available from the garden, neither would have an effect individually on views that was above the threshold of significance.

3.403 There would be significant cumulative effects on views from the property with each and both of Paul's Hill II and Clash Gour (though not a significant effect if only Clash Gour scenario B formed part of the cumulative baseline). The proposed development would be seen prominently to the north east, while Clash Gour and Paul's Hill II would appear on either side of Glen Arder to the north west. We agree with the applicant's evidence that Paul's Hill II, given its proximity and position, would be the main element of the cumulative effect where it was part of the cumulative baseline. Its most prominent turbine in views from the property (turbine 1) has, though, been removed from the design in the consent, issued after the applicant's assessment. We agree with the applicant's evidence that the cumulative effect would not be overwhelming or overbearing.

Tapp Farm

3.404 Tapp Farm is presently screened by forestry and topography from the proposed development. The house is not oriented towards the proposed development and has trees surrounding it and within its own curtilage. We received correspondence from the owner of Coldwells farm that the trees beyond the curtilage of Tapp Farm belong to Coldwells and the long-term forest plan indicates that the trees to the east are to be felled in the next few years, as well as those to the west, north and north-west. The forest plan (CD14.40) indicates that land to the south and about 150 metres to the west is recently planted, while to the south west, the land is awaiting replanting, but there is no indication of when or whether the land to the east, looking towards the proposed development, would be replanted. If the trees on the east side of the property were to be removed, topography would still limit views to the proposed development to a degree. Views of the felled trees would be the main feature of the views east from the property's edge. As regards the access to the property, the topography would gradually reduce visibility of the proposed development so that visibility would be limited mainly to blade tips at the Dallas-Knockando road. We agree with the applicant's evidence that neither the original nor the alternative proposal would be likely to have a significant effect upon the visual amenity of the house. Even if we are not correct in this, the distance between the proposed development and Tapp Farm and intervening topography is such that the farm would not become an undesirable place to live as a consequence of the proposed development.

3.405 As regards the potential for cumulative effects on amenity with Clash Gour, we consider that the property's orientation together with the likely growth of the forest to the west as shown in the forest plan makes such an effect unlikely.

Conclusion on residential amenity

3.406 The original proposal would result in significant visual effects at seven residential properties. The alternative proposal would result in a significant effect at one property. A contribution to a significant cumulative effect at Glenarder is acknowledged. At none of these properties would the effect be overwhelming or overbearing to an extent that they could reasonably be considered an unattractive place to live.

The Moray Wind Energy Landscape Capacity Study (MWELCS)

3.407 The method of the landscape capacity study in identifying areas of potential for very large turbines involved considering the effect of notional repowering of existing windfarms in Moray, including Rothes I and II with turbines of 150 metres and 200 metres in place of the existing turbines in those windfarms. The study plainly could not, and was not, intended to replace the detailed landscape and visual assessment of a particular proposal's effects. We acknowledge that it does not take account of landscape value and is not predicated on any assessment of any specific need for new windfarm development. Nonetheless, it was a systematic effort commissioned by the council to provide objective recommendations to guide developers as to the sensitivity of landscape within Moray. We find it helpful in that respect. It was subsequently used as a source from which Moray's supplementary guidance drew. Its recommendations are a material consideration. We find it a useful framework in which to consider the degree of the proposed development's overall effects.

Original proposal: LCT 10 key cumulative issues, constraints and development guidance

3.408 The landscape capacity study identifies a number of constraints and key cumulative issues for turbine development in LCT 10 (main report, pages 71 to 72). Several of these were cited by the council's witness.

3.409 In respect of the key cumulative issues, we find that the original proposal would have a significant sequential cumulative effect on the A95 as it passes through LCT 7. It would also have some effect on the Dallas-Knockando road and on the skyline in the Dallas/Kellas area, but since in both cases it would be partially screened by topography and would be seen largely beyond the existing Rothes I and II turbines, we have not found these effects to be significant. The other key cumulative issues would be of minimal relevance.

3.410 In respect of the constraints, we find that the original proposal:

- would have significant visual effects at viewpoints 18 and 19 as a consequence of the visibility of its turbines across Càrn na Cailliche. It would therefore not be wholly contained by Càrn na Cailliche, and
- would also have significant visual effects in LCT 7 at viewpoints 5, 6, and 11 and would have a significant landscape effect on part of LCT 7.

The other constraints would have limited relevance to the original proposal.

3.411 As regards the development guidance, we find that the original proposal

- would be partly outside the area identified in LCT 10 as having potential for development of very large turbines (80 to 150 metres), though most of its turbines would be within that area.
- would not have a significant effect on LCT 5a or LCT 13, but would have a significant effect on part of LCT 7.
- would have four turbines (5, 9, 14 and 13) located on the north-west side of the landmark hill of Càrn na Cailliche outside the defined area of potential development.
- would have significant cumulative effects arising from its interaction with the smaller existing turbines of Rothes I and II and the consented turbines of Kellas and Meikle Hill, though generally only in higher, more distant views (such as from Ben Rinnes and Ben Aigan).

3.412 The LCT 10 guidance also recommends that development of very large turbines should be "set well back into the core of upland areas, avoiding ridges and hills which form

immediate skylines" to the adjacent smaller-scale landscape character types, including LCT 7. We deal with this point below, in relation to the recommended landscape strategy.

3.413 The original proposal would comply with guidance in other respects.

Alternative proposal: LCT 10 key cumulative issues, constraints and development guidance

3.414 As regards the key cumulative issues listed, the alternative proposal would have a significant cumulative sequential effect on the A95.

3.415 As regards the listed constraints, we find that the alternative proposal:

- would have significant visual effects at viewpoints 18 and 19 as a consequence of the visibility of its turbines across Càrn na Cailliche. It would therefore not be wholly contained by Càrn na Cailliche.
- would also have a significant visual effect in LCT 7 at viewpoint 6 and would have a significant landscape effect on part of LCT 7.

3.416 As regards the development guidance, we find that the alternative proposal:

- would be partly outside the area identified in LCT 10 as having potential for development of very large turbines (80 to 150 metres), though most of its turbines would be within that area.
- would not have a significant effect on LCT 5a or LCT 13, but would have a significant effect on part of LCT 7.
- would have four turbines (5, 9, 14 and 13) located on the side of the landmark hill of Càrn na Cailliche outside the defined area of potential.

Recommended landscape strategy

3.417 A recommended landscape strategy is set out in MWELCS section 21.9. As regards the strategy, we make the following findings.

3.418 *Protect the landmark hills and their setting:* Turbines 5, 9, 13 and 14, in the original proposal are situated on the northern and eastern slopes of Càrn na Cailliche outside the area identified as having potential for very large turbines. Turbine 9 would be sited at a level only just over 20 metres below the hill's summit. One of those turbines (5) in the original proposal would be up to 200 metres to blade tip in height. The sketches on the last page of MWELCS appendix F provide an indication of how turbine development might affect the setting and character of landmark hills. In general terms we consider the original proposal is somewhere between the first and second drawing.

3.419 The general guidance on landmark hills in MWELCS refers to them as well-defined and steep-sided, as forming prominent landmark features, and as easily recognisable landmarks, as well as forming visual buffers to less prominent upland areas. The guidance given in respect of LCT 10 in MWELCS acknowledges that Càrn na Cailliche is not as well-defined or prominent as Brown Muir or Mill Buie, but that it has an important role in containing windfarm development sited in the core of LCT 10 in views from the Spey Valley.

3.420 We do not find Càrn na Cailliche to be a particularly remarkable or otherwise characterful hill, when seen from the various LVIA viewpoints. Consequently, we do not consider that, as a feature in itself, the hill would draw particular attention or therefore require a high degree of protection from development that might detract from its form, in the way that – for instance – Ben Rinnes, Brown Muir or Mill Buie might. It has a degree of prominence in the locality around Upper Knockando given its position at the junction of the

transitional area of LCT 10 around the Knockando Burn and the valley of the Spey. As the LCT 10 guidance suggests, the main role that Càrn na Cailliche plays is as a visual buffer, restricting views from the valley of the Spey to the interior of LCT 10.

3.421 Càrn na Cailliche does partially restrict visibility to the original proposal in nearer views from LCT 7. In longer views from the west of LCT 7, represented by viewpoint 19, all the proposed turbines would be visible to some extent, though the hill would still partially screen them – some so that just blade tips were visible. Nonetheless, the effect at the viewpoint would be that the original proposal's turbines would dominate the skyline, even at 6.5 kilometres.

3.422 Càrn na Cailliche would limit theoretical visibility in the sensitive inner valley of LCT 7. At Blacksboat Bridge about a third of the original proposal's turbines would be entirely hidden by topography, while the remainder would be partially screened to varying degrees.

3.423 At viewpoint 6, the original proposal would be seen beside and on the slopes of Càrn na Cailliche (and also beside Hunt Hill, another landmark hill). We do not find the juxtaposition by itself to be problematic, given that the two hills are seen from the viewpoint as undulations in the upland, not strong features from which the proposed turbines would detract.

3.424 Overall, we find that though the original proposal would in some respects meet a strategy that treats Càrn na Cailliche as a visual buffer to views into the interior of LCT 10, its scale and location would mean that such an effect would be limited to relatively near views. The proposed development would have a substantial effect upon the hill and its setting insofar as it is to be treated as a feature in itself.

3.425 As regards the alternative proposal, there would still be significant effects at viewpoints 6, 18 and 19, though the effects at the latter two viewpoints, where the turbines are seen across Càrn na Cailliche, are considerably reduced. This is primarily as a result of the reduction in maximum turbine height, though also the removal from the design of five turbines located south of the area of potential for very large turbines. The removal of these turbines reduces the horizontal extent of the proposed development, so that it is better contained visually within the upland landscape. The effect at viewpoint 6, though, would be of a fairly similar degree to that of the original proposal, only somewhat less.

3.426 The turbines 5, 9, 13 and 14 in the alternative proposal, all with a maximum height of 149.9 metres, would be on the north-east slopes of Càrn na Cailliche, outside the area identified as having potential for very large turbines. These would (in our opinion) be among the most prominent turbines in the view at viewpoint 19. The applicant's witness acknowledged that if they had not formed part of the design, the effect would have been considerably reduced, though still significant. We agree, though we consider the effect would only have been on the threshold of significance. Similarly, as regards viewpoint 18, the evidence of the applicant's witness was that, if those four turbines had not formed part of the design, the effect at that viewpoint would be reduced so as not to be assessed as significant. Again, we agree. In our view, these limited effects demonstrate the reasoning for MWELCS setting the boundary of the area of potential where it did, and for its guidance on turbine height and on avoiding placing turbines on the hill. This is not to say that this is conclusive evidence those turbines should not have been included in the design. The applicant's evidence is that there is a design logic to the location of the turbines: because of their location on the hill, those would be the most productive turbines (see CD15.1.12, which indicates a disproportionate loss of estimated generation from loss of these turbines). This is an issue to be considered in the planning balance though.

3.427 As with the original proposal, Càrn na Cailliche does restrict visibility in shorter views to the alternative proposal. Topography would limit its effects beyond Càrn na Cailliche to the west and south-west, such that visibility would be contained within the upland landscape. The viewpoints in the smaller-scale LCT 7 where significant visual effects would occur are all beyond 5 kilometres from the proposed turbines.

3.428 Overall, we find that the alternative proposal meets this element of the strategy to a greater degree than the original proposal both insofar as Càrn na Cailliche performs the role of a visual buffer and as a feature in itself. It does not meet it fully though, in either aspect.

3.429 *Maintain the distinctive western threshold to Moray experienced from the A940/A939:* Neither the original nor the alternative proposal would affect either road. This element of the strategy is met.

3.430 *Maintain the rugged scenery and setting to more dramatic uplands in the Ben Rinnes area:* The original proposal and, to a somewhat lesser degree, the alternative proposal would have significant adverse effects on views from Ben Rinnes, both individually and cumulatively. The proposed turbines would not affect the appreciation of Ben Rinnes in views of the hill from the surrounding landscape, nor would they affect the perception of the ruggedness or drama of its landscape. This element of the strategy is met.

3.431 *Protect the special qualities of the coast and its associated historic settlements:* The proposed development would have minimal effect on the coast and its associated settlements. This element of the strategy is met.

3.432 *Ensure that any further development of larger typologies is clearly associated with less sensitive upland landscapes:* Both the original and alternative proposals would be associated with the upland landscape of LCT 10, where some limited capacity for larger-type turbines was identified in MWELCS. The study's recommendation is that impacts on smaller-scale landscape should be minimised by setting the turbines well back into the upland interior and also considering limitations on the height of the turbines.

3.433 As regards the height of turbines, the potential identified in MWELCS is for turbines of 80 to 150 metres. Paragraph 21.8 of the study states that turbines towards and over 200 metres to blade tip are too large to accommodate given the limited extent of the Moray uplands, and would have more widespread significant effects in the adjacent smaller-scale landscapes. Twenty-five turbines of the original proposal (leaving out T15) would be at or above this height. The taller turbines of the original proposal do have more widespread effects than the smaller turbines of the alternative proposal. The larger turbines have significant effects at viewpoints 5 and 11 in LCT 7, where the smaller turbines do not. They also have notably greater effects at viewpoints 18 and 19 in LCT 7. Only in the case of viewpoint 6 in LCT 7 is there not a substantial reduction in effects as a result of the use of smaller turbines.

3.434 The evidence of the applicant and the council was there is no specific distance that defines when a development is "set well back into the core" of the upland interior. Proposals need to be considered case by case.

3.435 The question of whether turbines are sufficiently well set back and of an appropriate height, of course, involves a value judgement about what an acceptable impact is. Such a value judgement itself involves a balance taking account of factors outside an assessment purely of landscape and visual effects – including factors that favour the development of turbines notwithstanding their adverse landscape and visual effects. There are a couple of points to note though:

- We understand that the purpose of setting development back into the core is to minimise impacts on adjacent, more detailed landscapes. The recommendation that development of larger typologies should be associated with the upland landscape of LCT 10, and the identification of "areas of potential for large and very large turbines (80 - 150 m)", must imply an acceptance of some significant landscape and visual effects from turbine development in the upland landscape.
- The recommendation is to minimise impacts on neighbouring landscapes, not to eliminate them entirely.

We therefore judge the proposed development's compliance with this recommendation primarily on the basis of the degree of effect on the more detailed landscapes surrounding the proposed development's upland location, while recognising that some adverse effects are acceptable.

3.436 As regards whether the original proposal's turbines would be set back into the uplands, we consider relevant points to consider include the following:

- As set out above, the proposal would meet three of the above points of the study's recommended strategy and partially meets the recommendation on landmark hills.
- Most of the proposed turbines would be within the area identified in the landscape capacity study as having "potential scope for large and very large turbines (80 to 150 metres)", though about ten would be outside it.
- The proposed development would not have a significant effect individually or cumulatively on either LCT 5a (Rolling Farmland and Forests with Valleys) or LCT 13 (Narrow Farmed Valleys), though it would have significant effects both individually and cumulatively on LCT 7 (Broad Farmed Valley).
- Given the size of the proposed development, the area within the smaller-scale landscape of LCT 7 in which there would be significant visual effects would be relatively limited, and significant effects would tend to be in somewhat longer views to the proposed development. Viewpoint 11 is relatively unusual in respect of there being significant effects as close as 3.7 kilometres. Some significant effects in LCT 7 appear to us to be inevitable for any windfarm development of very large turbines taking up the potential identified in MWELCS. Viewpoint 6 illustrates this. Taken together with other constraints identified by the applicant in EIAR figure 3.1, a constraint on windfarm design such that no significant effect should arise at viewpoint 6 would greatly limit any further development that could take place in this identified area of potential.
- However, if the proposed development had adhered to the MWELCS recommendation as regards maximum turbine height and avoiding location of turbines on Càrn na Cailliche, it would have been more successful in limiting adverse landscape and visual effects around Upper Knockando and further south at viewpoints 18 and 19.
- The proposed development would not have a significant effect on any settlement.
- Significant adverse effects have been identified at seven residential properties, and a significant cumulative effect at one more. Without wishing to diminish the effect on those properties where significant effects occur or on their inhabitants, for a development of the proposed scale, this is a relatively small number.
- The council's witness contrasts the siting of the proposed development with existing turbine developments in Moray, characterising the latter as being "set well back from settled areas". We do not find a great difference in the siting of the proposed development from that of Paul's Hill or Rothes I and II in terms of proximity to smaller-scale settled landscapes, roads or recreational routes. The proposed development would be more extensive, though, with much larger turbines.

3.437 As regards whether the alternative proposal's turbines would be well set back in the uplands, we make these findings:

- The alternative proposal would meet three points of the study's recommended strategy entirely. It would partially meet the recommendation on landmark hills, and would do so to a greater degree than the original proposal.
- Most of the proposed turbines would be within the area identified in the landscape capacity study as having "potential scope for large and very large turbines (80 to 150 metres)", though about four would be outside it (and we have found these four would be among the most prominent at viewpoints 18 and 19).
- The alternative proposal would not have a significant effect individually or cumulatively on either LCT 5a (Rolling Farmland and Forests with Valleys) or LCT 13 (Narrow Farmed Valleys), though it would have significant effects both individually and cumulatively on LCT 7 (Broad Farmed Valley).
- The area within the smaller-scale landscape of LCT 7 in which there would be significant visual effects would be limited. Significant effects would tend to be in somewhat longer views to the proposed development (viewpoint 6 – 7 kilometres, viewpoint 18 – 8.6 kilometres, viewpoint 19 – 6.8 kilometres).
- However, if the proposed development had adhered to the MWELCS recommendation as regards not locating turbines on Càrn na Cailliche, it would have been more successful in limiting adverse landscape and visual effects particularly south of Upper Knockando and at viewpoints 18 and 19.
- The proposed development would not have a significant effect on any settlement.
- We have found significant adverse effects at only one residential property, and a significant cumulative effect at one more, a small number for a development of such a scale.
- Again, we do not find a great difference in the siting of the alternative proposal from that of Paul's Hill or Rothes I and II, in terms of proximity to smaller-scale settled landscapes, roads or recreational routes. The difference lies in the scale of the proposed development (and larger turbines as compared with Rothes I and II).

3.438 In our view, both the original proposal and the alternative proposal partially comply with this recommendation, though the alternative proposal complies with it more fully. We consider that the key issues arising for the original proposal in respect of the recommendation relate to the height of its turbines and their location on Càrn na Cailliche and the acceptability of associated significant effects to the south, south west and south east. For the alternative proposal we find the key issue is the acceptability of the location of turbines on Càrn na Cailliche and associated effects to the south and south west.

3.439 *Ongoing review of cumulative landscape and visual effects of multiple wind-turbine developments:* We have found that both the original and alternative proposals would have significant combined effects on LCT 10, when considered with other consented and proposed development. The change in the landscape of LCT 10 to a landscape with large windfarm clusters is acknowledged by the applicant to be a significant combined effect. One source of the adverse combined effects of the original proposal on LCT 10 arises from the juxtaposition of its very tall turbines with the smaller existing turbines of Rothes I and II. In this way, it loses some, though not all the advantages of being perceived as an extension of that existing cluster. Such effects are primarily seen from upland viewpoints. This adverse synergy is much reduced with the alternative proposal.

3.440 We have also found a significant additional cumulative effect in adding the original proposal to the scenario-3 baseline. While both the original and alternative proposals reduce the area of LCT 10 that is not in a windfarm landscape, this appears to us an inevitable effect of locating a commercial-scale windfarm in LCT 10. It also appears to us

that some such effects must have been envisaged when the area of potential was identified in LCT 10 by MWELCS and confirmed by MOWE. It is acknowledged in that guidance to be one of the landscape character types in Moray with the characteristics best suited to receive such development. .

3.441 We have also found that the original proposal would have a significant additional effect in scenario 3, particularly with Clash Gour's eastern turbine group, on LCT 7 and the Spey Valley SLA. The original proposal would be the main element in these cumulative effects. There would still be significant cumulative effects with the alternative proposal on LCT 7 and the Spey Valley, but considerably less than those of the original proposal.

3.442 The original proposal would have significant cumulative visual effects added to a scenario-2 baseline at viewpoint 4. It would have further cumulative effects added to a scenario-3 baseline at viewpoints 6 and 7. The more pervasive views of turbines lead to significant cumulative sequential effects on routes through the area on the A95 and the B9102. It appears to us that some significant cumulative visual effects at viewpoint 4 would be an inevitable result of development within the identified area of potential. At other viewpoints, the cumulative effects would arise particularly from the relationship with Clash Gour's eastern turbine group.

3.443 The alternative proposal would have significant visual effects at the same viewpoints, though at viewpoint 4 and 7 of a reduced degree. It would have a significant cumulative sequential effect on the A95 of a similar extent, but an effect of a reduced extent on the B9102.

3.444 Although we acknowledge that the combined effect of the proposed development with other existing, consented and application-stage development involves a considerable degree of landscape change, particularly in LCT 10, we do not consider that a tipping point would be reached in the sense that windfarms would have a different order of adverse effect across Moray as a whole.

Siting and Design

Original proposal

3.445 Plainly, as discussed above, the height of the original proposal's turbines does cause it to be visible or increase its prominence in locations in which smaller turbines would either be hidden or less prominent.

3.446 The larger turbines also have an adverse effect arising from their combined effect with existing development. Their rotor speed and scale would contrast with the existing Rothes I and II turbines. The looser density of the original proposal would also contrast with the existing development. Although in some respects the proposed development would be seen as an extension of the existing group, the contrast with the existing turbines would detract from that impression, where it is seen.

3.447 The contrast would generally be seen in two contexts outside the immediate vicinity of the proposed development. The first would be elevated, more distant viewpoints such as Ben Rinnes, Ben Aigan, the Gordon Monument in Elgin and Càrn a' Ghille Cheàrr. The proposed development's impact is significant because those views are high value, but they are also relatively rare, and the windfarm would be seen in a wider panorama. The other context would be in locations where the proposed development is seen partially screened by topography behind the existing development such as at Dallas Castle, on the Hill of the Wangie or from the Dallas-Knockando road. The council's evidence did not suggest that the visual effect at these latter locations would be significant. While the contrast may be

perceived from parts of the application site and the wider area of the upland, the extent of the perception would be limited by the limited extent of available views within LCT 10 out of the forestry and across the site topography.

3.448 In its siting, the original proposal does take advantage of the screening hills, such that there would be limited visibility in the Glen of Rothes and in the detailed landscapes to the north of the upland (although there would be a significant effect on the B9010). It does also take advantage of the screening provided by Càrn na Cailliche to limit visibility at nearer locations in the lower-lying Spey Valley. The size of the turbines is such though that the screening provided is not sufficient to prevent the proposed turbines from dominating the skyline in views from the valley, both in some relatively close views (such as at viewpoint 11) and in more distant views (such as at viewpoint 19). The direct effect on landscape is, of course, reduced by the use of the access infrastructure of Rothes I and II.

3.449 The council raised the composition of the turbines of the original proposal in the view at a number of viewpoints. As regards viewpoints 9 and 10, although there would be an additional effect, the turbines would be seen in the context of and beyond the existing Rothes I and II turbines. The council has not suggested that the visual effect would be significant. We have commented on the disparity between the proposed and existing turbines at viewpoints 4 and 13. We do not agree that the turbines at viewpoint 4 would appear otherwise poorly designed in their composition – the visualisation of the windfarm shows they relate well to their landscape in the view, leaving aside the contrast with neighbouring turbines. We agree that at viewpoints 13 and 19, the stacking of skyline turbines and their uneven distribution would be a factor in the original proposal's adverse effect. This would also be a factor at viewpoint 8. Though a relatively small part of the windfarm would be actually visible at viewpoint 18, we agree again that stacking and uneven distribution would be a minor factor in their impact. Stacking is inevitable in some views of a development of the scale of the original proposal. As regards viewpoint 19, it represents views from the B9102 rather than a single high-value view where people will stop and look - the views of the windfarm would change when moving along the B9102, and so the perceived composition will change. At viewpoint 13, though, the composition of the windfarm in the view from a recognised outlook is a factor in the original proposal's effect being significant. Overall, though, we do not agree with any suggestion on the council's part that for a design comprising so many turbines, the original proposal would cause an unusual or disproportionate degree of such effects.

Alternative proposal

3.450 We agree that a reduction in the number and height of turbines in the alternative proposal limits the degree of landscape and visual effects from most viewpoints. We find the degree of effect would be substantially less than the original proposal, particularly at viewpoints 5, 11, 13, and 18, on the B9102 between Macallan and Cardhu, the B9010 by Dallas, and from Core Path SP20 at Lower Mannoch. There would also be reduced effect on certain residential properties in and around Archiestown, for instance at Blackhillock and Manscroft.

3.451 We agree with the council that four turbines of the alternative proposal would be located on the slopes of Càrn na Cailliche, outside the area of potential, and that these turbines would be prominent in certain views. The applicant has argued that the visual effects must be balanced against the contribution of those turbines to the productivity of the development. We have considered above factors indicating whether the alternative proposal is within the upland core. The visibility of those turbines outside LCT 10 is an element that suggests it does to a degree breach the visual containment of the core, though views to it from LCT 7 are not extensive and are very limited within 5 kilometres. In other

respects, the alternative proposal is well-sited to take advantage of the screening provided by the hills surrounding the upland.

3.452 As regards the composition of the alternative development in views, we find it to be improved. There would not be a significant effect at viewpoint 13. At viewpoints 18 and 19, although we acknowledge there is some stacking and, for viewpoint 19, some uneven density, we do not find this to play any great role in the adverse effect of the proposed development.

Other matters

Carol Anderson's advice to the council on landscape and visual effects of the proposed development

3.453 Carol Anderson is a member of the landscape institute and a recognised and experienced expert who has given evidence at previous inquiries. She was the author of MWELCS and is engaged by Moray Council as a landscape advisor. Consequently, her views on the original proposal and the alternative proposal are not without weight, even though she was not the council's witness for the proposed development at the inquiry. She gave advice to the council on the original proposal in May 2019 (CD15.2.30) and the alternative proposal in January 2020 (CD15.2.31).

3.454 The council stated at the pre-inquiry meeting in February 2020 that it considered it would need to appoint a second landscape witness, in addition to Carol Anderson, to cover the two developments considered at the inquiry. She was appointed to give evidence on Clash Gour and Mark Steele was appointed to give evidence on Rothes III.

3.455 As regards the original proposal, Carol Anderson's written advice to the council, subsequently provided to the inquiry, is evidently a draft. Among the conclusions of the draft is that the very large turbines of the original proposal are sited "too close" to the more sensitive fringes of LCT 7. A number of adverse consequences are said to flow from this. This use of words implies an opposition to, or at least a perception of an impediment to, the original proposal, whether or not the advice goes on to use the words "inappropriate" or "object" in respect of it.

3.456 As regards the alternative proposal, it is noticeable that Carol Anderson's written advice does not make any similar comment. It is evident from other work Carol Anderson did for the council that she would normally express a view, as she did for the original proposal, in respect of anything she regarded as problematic.

3.457 She acknowledged in evidence that the document represented her professional opinion. Nonetheless, she said in evidence that the fact it did not state that the development was unacceptable did not mean that was not her opinion; it was an error that such a comment was left out; she believed she had stated such an opinion to the council, just not in the report; she had subsequently discussed her advice with the planning officer, and they reached a view.

3.458 We see no basis on which we should not accept Carol Anderson's evidence that the failure to include a recommendation in the advice was simply an error or that the recommendation to object had been a matter dealt with in discussion with the planning officer. The advice was provided on a relatively short timescale (the applicant's 2019 AI having been submitted in December and the report being dated January). It was on a development to which the council had already objected. It is in any case evident from the written advice she gave that her opinion was less unfavourable to the alternative proposal than to the original proposal.

3.459 We have said that Carol Anderson's opinion is not a matter without weight. On the other hand, it is not a question fundamental to the determination of the case. Even if in fact she had supported rather than opposed the alternative proposal, her opinion would remain just an opinion, albeit an informed one. She was not the statutory consultee – the council was. At the inquiry, we received direct evidence on the landscape and visual effects from two professional landscape witnesses, one of whom was put forward by the council. We consider that that evidence is of much greater import for Ministers in determining the application than the question of what the precise advice was that Carol Anderson gave to the council.

Mark Steele's evidence to the inquiry

3.460 The applicant's submissions referred to the case of the Limekilns windfarm in which Mark Steele gave evidence. The reporter found an aspect of his evidence in that inquiry "overstated". Mark Steele is a member of the Landscape Institute and we are aware, having heard evidence from him in several inquiries, that he is expert and an experienced witness. It can happen that reporters disagree with witnesses, even expert professional witnesses. We consider that there is little to be drawn from such a finding in one other inquiry to apply to the evidence in another.

3.461 The applicant also criticises Mark Steele for producing a sketch the day before giving evidence indicating an area of LCT 10, within the area of potential for very large turbines identified in MWELCS. We did not accept the sketch. It is not in evidence before Ministers. We have not taken it into account in reaching our conclusions or recommendations.

SNH's role at the inquiry

3.462 Save Wild Moray argued that SNH, as the statutory advisor to Ministers, should have provided its assessment of the overall cumulative effects of Clash Gour and Rothes III. The supplementary information submitted for Clash Gour in 2019 and the Rothes III 2019 AI both considered cumulative effects arising from the other proposal forming part of the baseline. SNH provided consultation responses to both, commenting on cumulative effects. At the inquiry we had evidence from two landscape witnesses, and from Save Wild Moray itself, on both the combined cumulative effects of the two developments considered at the inquiry and the cumulative effects of each added to a baseline including the other. In the circumstances, we do not consider further evidence from SNH is required in order for us to reach recommendations for Ministers.

Summary findings on significant effects

Receptor	**Effect of original proposal**	**Effect of alternative proposal**
LCT 10	Scenario 1[3]: **Significant** Scenario 2[4]: Not significant Scenario 3[5]: **Significant**	1: **Significant** 2: Not significant 3: **Significant**
LCT 7	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: **Significant**	1: **Significant** 2: Not significant 3: **Significant**

[3] assessment of the effects of the proposed development on the existing baseline of development
[4] addition of the proposed development to a baseline including existing and consented development
[5] addition of the proposed development to a cumulative baseline including existing, consented and proposed (application stage) development

Cairngorms National Park special landscape qualities	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
Spey Valley SLA	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: **Significant**	1: **Significant** 2: Not significant 3: **Significant**
Viewpoint 4: Ben Aigan	Scenario 1: **Significant** Scenario 2: **Significant** Scenario 3: Not significant	1: **Significant** 2: **Significant** 3. Not significant
Viewpoint 5: A95, East of Craigellachie	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
Viewpoint 6: A95, South of Aberlour	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: **Significant**	1: **Significant** 2: Not significant 3: **Significant**
Viewpoint 7: Ben Rinnes	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: **Significant**	1: **Significant** 2: Not significant 3: **Significant**
Viewpoint 8: Càrn a' Ghille Cheàrr	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
Viewpoint 11: B9102, West of Archiestown	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
Viewpoint 13: Duke of Elgin Monument, Elgin	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
Viewpoint 18: Speyside Way Blacksboat Bridge -	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	1: **Significant** 2: Not significant 3: Not significant
Viewpoint 19: B9102 between Blacksboat Bridge and Cardhu	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	1: **Significant** 2: Not significant 3: Not significant
A95	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: **Significant**	1: **Significant** 2: Not significant 3: **Significant**
B9010	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
B9102	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: **Significant**	1: **Significant** 2: Not significant 3: Not significant
Core Path SP20 Lower Mannoch Road	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Not significant
Right of Way GM7	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant

Core paths and promoted paths near Archiestown	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant	Scenario 1: **Significant** Scenario 2: Not significant Scenario 3: Not significant
Residential visual assessment	Significant visual effects at the residential properties of Blackhillock and Lynes to the west of Archiestown; four properties at Newlands, Old Croft, east of Old Croft, west of Newlands, and one property at Manscroft on the northern edge of Archiestown (Archiestown E in the Residential Visual Amenity Assessment - RVAA).	Significant effect at Lynes
Glenarder	Significant cumulative effect with Paul's Hill II and Clash Gour	Significant cumulative effect with Paul's Hill II and Clash Gour

CHAPTER 4: ORNITHOLOGY

Key documents:-

- EIAR Chapter 7 Ornithology
- 2019 AI Written Statement Chapter 7
- 2019 AI Volume 4 Technical Appendix 7.1 Ornithology
- July 2020 Updated Outline Habitat Management Plan
- Applicant inquiry statement section 5
- Precognition (Dr Claudia Garratt)
- Supplementary precognition response to Andrew Chadderton (Dr Claudia Garratt)
- Inquiry Report (Dr Claudia Garratt)
- RSPB Scotland consultation response to EIAR
- RSPB Scotland consultation response to 2019 AI
- RSPB Scotland consultation response to March 2020 SI
- RSPB letter dated 21 July 2020
- SNH consultation response 31 May 2019 to EIAR
- SNH consultation response 24 January 2020 to 2019 AI
- SNH consultation response 25 March 2020 to 2019 AI
- SNH consultation response 22 April 2020 to March 2020 SI
- Andrew Chadderton objection
- Andrew Chadderton precognition
- Yvonne Mandel objection (p.417)
- James Craib objection (p235)

The environmental information

4.1 The effects of the original and alternative proposals on ornithology are assessed in chapter 7 of the EIAR, and chapter 7 and technical appendix 7.1 of the 2019 AI respectively. Table 7.6 in the 2019 AI summarises the predicted effects of both proposals. An updated Outline Habitat Management Plan (OHMP) setting out mitigation measures was provided as part of the March 2020 SI. A further update, superseding that provided in the March 2020 SI was submitted in evidence to the inquiry (CD15.5.50).

4.2 The methods used to establish the bird populations within the site and its surroundings, the results of the baseline surveys, and the process used to determine the effects of the bird populations are described. Effects of both the original and alternative proposal on geese, goosander, black grouse, capercaillie, goshawk, and golden plover are assessed. The assessment considers the ways in which birds might be affected (directly or indirectly) in terms of habitat loss, disturbance, displacement and collision risk, by the construction, operation and decommissioning of the original and alternative proposals. There is an assessment of cumulative effects of both proposals with other wind farms in the area, prior to, and after any mitigation measures are considered. No likely significant effect on any species except capercaillie was found for either proposal for the purposes of environmental impact assessment.

4.3 There are no statutory nature-conservation designations with an ornithological interest within 10 kilometres of the application site. Four designated sites lie within 25 kilometres of the proposed site:- the Darnaway and Lethen Forest Special Protection Area (SPA); Anagach Woods SPA; Loch Spynie SPA, Ramsar and SSSI; and Moray and Nairn Coast SPA and Ramsar site. Information to support appropriate assessment of the effects of both proposals on capercaillie as the qualifying interest of the

Darnaway and Lethen Forest SPA and Anagach Woods SPA is provided. SNH advised that there was no likelihood of a significant effect on the qualifying interests of the Moray and Nairn Coast SPA or the Loch Spynie SPA.

4.4 Consultees made a number of comments in response to the EIAR, to which the applicant responded in table 7.1 of the 2019 AI.

Main points for Moray Council

4.5 Moray Council did not object to the proposed development in respect of its ornithological effects. The council considers that there is a need for management plans. Detailed consideration of ornithology is best done by the RSPB and SNH.

Main points for RSPB Scotland

Original proposal

4.6 RSPB Scotland objects to the original proposal in respect of its potential for an adverse effect on capercaillie. RSPB does not consider that an adverse impact on the site integrity of the Darnaway and Lethen Forest and Anagach Woods SPAs can be ruled out in respect of capercaillie as the qualifying interest of those sites.

4.7 The capercaillie population in Scotland has been in steep decline from around 20,000 in the 1970s to 1,114 estimated in the last national survey. Over 80% of the population was found in Strathspey and Badenoch, with smaller, rapidly declining populations in Moray and Nairn. The capercaillie lek in Elchies forest is on the edge of capercaillie's north-east range. If birds from the site are lost , the range will retract by about 15 to 20 kilometres to the remaining sites at Darnaway and Grantown-upon-Spey. It is essential the remaining birds in Elchies should be protected. The proposed development is predicted to have a significant adverse effect in the short term, though habitat-enhancement measures are proposed that are claimed to bring benefits over the longer term. Impact should be avoided before mitigation is considered.

4.8 The principal capercaillie lek location in the application site is 150 metres from proposed infrastructure. New and upgraded windfarm tracks could lead to more recreational use of the forest, leading to increased disturbance, in particular by dog-walkers. Capercaillie are highly sensitive to disturbance, particularly in breeding season. This poses an unacceptable risk of disturbance. The four turbines which would have the greatest detrimental impact (turbines 17, 21, 24 and 27 and their associated tracks) should be removed.

4.9 There is no strong evidence to conclude that the lek is not currently viable (as claimed in EIAR paragraph 7.8.25) or functionally extinct (as claimed in EIAR paragraph 7.14.29). A lek can only be regarded as extinct if there have been no signs for 5 years. Although it is stated that the last male at the lek is dead, it is possible the site could have been recolonised. Capercaillie have been recorded to disperse over 30 kilometres. The development site is less than 30 kilometres from two special protection areas designated for capercaillie. There is the potential of movement of birds from the SPAs to the Elchies forest.

4.10 Mitigation and enhancement measures set out in EIAR section 7.7, including provision of an ecological clerk of works during construction and adherence to a construction environmental management plan and species protection plans should be secured by condition. More detail should be provided on proposed mitigation and enhancement measures in relation to capercaillie. This should cover mechanisms for

amendment of the habitat management plan (HMP) so that effectiveness is ensured in the longer term. There should be a number of specific adjustments to the existing OHMP including changes to objectives in respect of areas of open ground more suitable for black grouse than capercaillie, enhancement of bog habitats in pine forests, deer control, and promotion of tree and shrub vegetation associated with the creation of brash piles for brood cover. A number of other improvements are suggested to the OHMP.

4.11 Before mitigation, the conservation objectives of the Darnaway and Lethen Forest and Anagach Woods SPAs (both of which have capercaillie as a qualifying interest) would not be met. The adverse impact on capercaillie would be short term, while the benefits from habitat management would be long term. In the absence of more detail on the proposed mitigation and enhancement measures it is not possible to conclude with sufficient confidence that there would not be adverse effects on the integrity of both SPAs.

Alternative proposal

4.12 The alternative proposal does not include turbines 17, 21, 24 and 27 and the proposed mitigation in the OHMP (in the March 2020 SI) would be sufficient to address the impacts of the proposal on capercaillie. Subject to appropriate conditions RSPB Scotland did not object to the alternative proposal.

Main points for Scottish Natural Heritage (SNH)

Original proposal

4.13 SNH initially objected to the original proposal on account of the lack of detail on mitigation of the proposed development's effects. Following submission of the March 2020 SI, it withdrew its objection subject to the mitigation measures proposed being secured by condition or planning obligation. The measures would allow appropriate assessment under the Habitats Regulations to conclude that the original proposal would have no adverse effect on the integrity of the Anagach Woods SPA or Darnaway and Lethen Forest SPA. Further recommendations for adaptations and for further measures to be considered in the habitat management plan were also provided. SNH considers that Scottish Ministers now have the necessary information to make an appropriate assessment of both the original and alternative proposals. In a further letter of 22 April 2020, SNH set out a number of recommendations for improvement of the proposed OHMP.

Alternative proposal

4.14 The alternative proposal removes turbines from the area preferred by capercaillie. The combination of removing turbines from the preferred capercaillie area and the suite of mitigation in the alternative proposal means that the proposal would not adversely affect the integrity of the Darnaway and Lethen and Anagach Woods capercaillie SPAs, provided specific mitigation is implemented (as detailed in annex 1 of 24 January 2020 consultation response).

Main points for Andrew Chadderton

4.15 The proposal would add to the cumulative degradation of diverse natural habitat, to the detriment to rare upland raptors like merlin, osprey, goshawk and hen harrier. There has been a large drop in raptor numbers at other sites. There have been bird mortalities at Paul's Hill.

4.16 Development is incompatible with preserving or improving capercaillie numbers. Rothes III is reliant upon RSPB input as regards proposals for capercaillie conservation.

The RSPB Capercaillie Project at Abernethy has run for many years and the net result has been a catastrophic decline in numbers. Habitat development plans will not address any negative impact on this critically endangered species. Capercaillie conservation comes down to habitat, lack of disturbance and predator control and constructing a windfarm on existing terrain contributes to none of those elements. New habitat construction would take a minimum of 30- 50 years, beyond the life span of the development, to come to a state in which capercaillie may thrive.

4.17 The adjacent moor area to Rothes I and II has been fenced and planted at significant cost. The fence has been slatted which is a common practice to reduce bird/fence impacts, specifically low flying species such as grouse and capercaillie. If that cost has been incurred, it indicates capercaillie presence.

Main points for Yvonne Mandel

4.18 The proposal would disrupt hen harrier nesting sites. Turbines 500 feet tall would have an adverse effect on the flight paths of migrating wild geese and other birds.

Main points for James Craib

4.19 The proposal would create a barrier effect to migrating geese and other birds such as migratory thrushes. Although studies have shown that migrating geese have a high avoidance rate of obstacles in their flightpath a string of turbines along a six-kilometre front between the operational wind farms Rothes I and Rothes II and the proposed Rothes III (if given planning permission) is going to be difficult to avoid especially if the geese or other migratory birds are flying in darkness or in poor visibility.

Main points for SWM

4.20 The severe wildfires of spring 2019 reset the ecological and ornithological baseline of the areas affected and those adjoining. It changes the approach to the HMPs, particularly whether heather growth contributed to fire risk or spread. SNH should have addressed these matters and has not. This leaves an information gap. SNH also failed to comment fully on cumulative effects of the proposed development.

Other representations

4.21 Other objectors referred generally to the potential for adverse effects on a number of bird species, including capercaillie, hen harrier, goshawk, merlin and black grouse.

Main points for applicant

Capercaillie

4.22 In the absence of RSPB at the inquiry to respond to questions, no weight, or very limited weight should be attached to the RSPB objection to the original proposed development in respect of capercaillie.

4.23 The turbines are located to the north of the historic capercaillie lek location at Elchies. The historic lek is however no longer active and has not been for the last two years. Suitable habitat in the locale of the historic lek has been removed in the last five years for disease control, coinciding with a decline in numbers of birds recorded in the area. In the short to medium term, the historic lek is unlikely to persist in its historic location due to the extensive clear-felling.

4.24 Capercaillie are not tied to their historic lek location. They are able to move to more suitable areas in response to changes in habitat suitability. This is demonstrated by studies of leks at Carrbridge. It will also be the case in Elchies. In the absence of the proposed wind farm, there is a high likelihood that the lek (if it were to be viable) would move from its current location due to baseline conditions, unrelated to the Rothes III proposal. Such a move would make the proximity of the turbines in the original proposal to the historic lek location less relevant. There is a large extent of Elchies south of the original proposal (around 500 metres and 2 kilometres from the wind farm) which would be subject to enhancement measures undertaken to improve habitat resource for capercaillie both under the HMP for Rothes III and the landowner's Forest Design Plan.

4.25 There is no longer a breeding population in Elchies. Evidence from surveys indicates that there is not a sufficient number of birds in Elchies to make the historic lek viable long-term. Sufficient connectivity over unfragmented routes of suitable habitat is also required for viability so that birds are available to repopulate the lek. There is no such route from the nearest lek in Pluscarden known to have been active in the recent past. While female capercaillie might travel the necessary distance from the SPAs, male capercaillie do not disperse over such distances. The last known male at Elchies died several years ago.

4.26 The future viability of the capercaillie population in Moray will require a strategic approach. The potential regional benefits for capercaillie in Moray associated with responsible development in this location outweigh any potential adverse impacts (which are themselves unlikely to be realised). It is unlikely to be secured by other means, since the efforts of conservation bodies are focused on the main stronghold of capercaillie in Strathspey. This position is supported by SNH, the statutory consultee for these matters, who have removed their objection to both the original and alternative proposals, subject to the measures proposed in the OHMP being provided in the final plan.

4.27 The OHMP, to be secured by an appropriate planning condition, presents mitigation and enhancement measures aiming to reduce disturbance and mortality and to create and enhance habitats for capercaillie. The loss of a relatively small area of forestry in the historic lek location would be offset by improvements to habitat quality elsewhere in the forest. The OHMP objectives include:- creation and maintenance of preferred brood-rearing habitat for capercaillie; limiting collision and predation mortality of capercaillie; implementing measures to reduce potential disturbance to capercaillie in key areas; complementing and enhancing measures to develop connectivity corridors through the site and into neighbouring areas, such as through new planting on Knockando Estate, the habitat management area on Rothes II and two new woodland habitat planting proposals at Hunt Hill and Moss of Rothes; to explore opportunities for partnership working, to allow for more widespread benefits for capercaillie in the locality and Moray; and to restore an area of existing poor-quality commercial conifer plantation within the turbine area to more natural open ground and peat forming habitats.

4.28 Detailed management measures include:- develop a Moray-wide capercaillie conservation plan; blocking drains to create areas of forest bog; thinning and/or creation of clearings within the forestry to allow blaeberry to develop; deer control to reduce browsing, allow habitat for capercaillie to develop without the need for extensive fencing; planting of native tree species to provide further foraging opportunities and cover alongside commercial conifer crop, to facilitate movement of capercaillie around the proposed windfarm. Proposals for habitat creation, enhancement and management across the whole development area will be developed initially in collaboration with Forestry and Land Scotland and other landowners, with opportunities for input by stakeholders (including SNH and RSPB), to develop a strategic plan that delivers significant potential future benefits for capercaillie.

4.29 The OHMP is a live document, which may continue to evolve following discussion with stakeholders (including SNH and RSPB) and further ground conditions and capercaillie population demographics survey work. Implementation and maintenance of the habitat management measures would be overseen by a Habitat Management Steering Group.

4.30 In response to Mr Chadderton, the applicant considers that his response is based on the premise that breeding capercaillie and resources to support them are still present at the site. This is not supported by the evidence as set out above. The replanting that has been undertaken in Elchies will also take 30-50 years to come into a state where capercaillie may thrive. Capercaillie require mature forestry and habitat connectivity and so plans for habitat enhancements at the site for this species are long-term plans as mature forestry cannot be created instantly in extensive areas of clear-felled woodland. The OHMP commits not just to habitat creation and enhancement to provide future assistance to, and resources for a population which evidence suggests is no longer present, but also to facilitating a regional approach to capercaillie conservation that is currently lacking in Moray. Measures to manage disturbance, and predator control are also included in the OHMP.

Other bird species

4.31 It is acknowledged that on occasion individual birds are killed or displaced by turbines. The industry now has evidence from the last 15 to 20 years of monitoring at wind farm sites that onshore wind in the UK has had very little in the way of adverse impact on bird populations in general. Ecological assessment in the UK and Scotland is rigorous. Nothing meaningful can be drawn from evidence from other countries where controls may not be so rigorous.

4.32 As regards peatland habitat, the loss caused by the proposed development is negligible at a regional level, even if the worst case is realised. There would be a net gain of restored peatland as a consequence of the habitat-management proposals.

4.33 Subject to mitigation the EIAR and 2019 AI predict that no significant effects on any other bird species would arise as a result of the original or alternative proposal.

Habitat Regulations Appraisal (HRA) – Darnaway and Lethen Forest and Anagach Woods SPAs.

4.34 Due to the distances involved between the SPAs and the Rothes III proposals any adverse impacts to the SPA capercaillie populations would be indirect and act over the long, rather than short term. A programme of mitigation in the OHMP is proposed to reduce the risk of disturbance and collision impacts within the windfarm, and to enhance habitat connectivity for capercaillie. The applicant highlights that SNH are satisfied that the information and commitment of intent provided in the OHMP is such that there would be no adverse effects on site integrity for the Darnaway and Lethen Forest and Anagach Woods SPAs. That is the applicant's position also.

Reporters' reasoning

<u>Effects on capercaillie</u>

4.35 It is not disputed that capercaillie is a species of high conservation concern, that numbers have declined substantially in recent years, that they are susceptible to disturbance from human activity, and particularly sensitive to disturbance when breeding. Elchies forest, which includes the application site, is at the edge of the capercaillie range in Scotland.

Original proposal

4.36 There are records of a capercaillie lek in the forest within 150 metres of proposed infrastructure. The evidence indicates that the lek in Elchies was active around 10 years ago. Table 2.1 of the applicant's witness inquiry report provides a summary of surveys undertaken between 2008 and 2019 within a baseline buffer of 1.5 kilometres in accordance with recommended bird-survey methods. The evidence indicates capercaillie numbers in Elchies have declined over that period. The clear-felling of forestry for disease control since 2014 in the area around the lek is likely to have made it less suitable for capercaillie.

4.37 Even if the lek is still active, we accept that it would be likely to have moved from its current location as result of the clear-felling and habitat changes that have already occurred. Consequently we do not consider disturbance to capercaillie would occur simply because of the proximity of the original lek location to proposed infrastructure.

4.38 Nonetheless, if a precautionary assumption is made, as it is in the EIAR, that the capercaillie population at Elchies is viable in the longer term, there would be a significant impact from disturbance of capercaillie at the original lek at a local level.

4.39 The applicant has assessed the baseline capercaillie population. The only reported male died in 2018. There have been no records or evidence of any male capercaillie remaining in Elchies since then. The evidence indicates there is no undetected breeding population of capercaillie in the area. In response to our questioning, Dr Garrett, the applicant's witness, expressed a high degree of certainty that a breeding population of capercaillie would not have gone undetected. There are no other populations of capercaillie within 5 kilometres from which new males might be recruited. The other known historic lek within 10 kilometres, at Pluscarden, has had no record of capercaillie presence since 2013, and no males since 2011. The connectivity between Pluscarden and Elchies is such that it is unlikely male capercaillie might return to Elchies from there. We accept that these factors, taken together with the general pressure on capercaillie population from habitat loss and fragmentation and reduced breeding success due to climate change, make it likely that the remaining Elchies population of capercaillie would continue to decline in the absence of measures associated with the proposed development.

4.40 We accept further that, absent the proposed development, investment in capercaillie conservation is likely to be focused on the Strathspey stronghold of the species rather than a site at the edge of their range in Moray, such as the application site.

4.41 If the proposed development proceeds, the mitigation measures proposed would improve the quality of habitat available for capercaillie within the application site, would coordinate with measures carried out in accordance with the forest plan in the wider Elchies Forest area and with habitat-management measures at the Rothes I and Rothes II windfarms, and could improve connectivity of habitat in the wider area.

4.42 We take seriously RSPB's point that disturbance to capercaillie should be avoided rather than mitigated. However, given the existing condition of the capercaillie population and the evidence that there is no breeding population left, despite the precautionary assumption of disturbance to capercaillie in the EIAR, we find it very unlikely there would in fact be disturbance to breeding birds at the lek. We accept that the mitigation provided by the proposed development is a means by which the population may, over the long-term, be restored to viability. We consider that the precautionary finding of the EIAR and 2019 AI that there would be a significant adverse effect on capercaillie at a local level, though benefits regionally from the habitat-enhancement measures, is consistent with the evidence.

Alternative proposal

4.43 The alternative proposal would not have infrastructure within a distance of the lek site such that it would be likely to disturb or displace capercaillie should the lek remain active. We are satisfied that a plan broadly in the form of the OHMP could provide suitable measures within and adjacent to the proposed site to mitigate adverse effects on capercaillie and capercaillie habitat. We find that the effect on capercaillie would not be significant.

Cumulative effects on capercaillie

4.44 Although there are a number of windfarms within 10 kilometres of Rothes III, including Rothes I and II, Meikle Hill, Kellas, and Clash Gour, no capercaillie were recorded in baseline surveys for those applications. They are not sites of importance for capercaillie. We accept that the proposed development would have no significant cumulative effect on capercaillie.

Geese

4.45 The EIA assesses collision risk for geese using figures derived from flights observed at the site and an assumption that all geese flying at a height of over 18 metres above ground level would be at risk of colliding with the proposed turbines. The EIA report indicates that this is a precautionary assumption, because the high directional flights by flocks of migrating geese may have been above 225 metres (the tip height of the largest turbines in the original proposal). It appears likely to us that this is the case. Even applying the assumption, the number of geese passing through the assumed collision-risk height did not represent a significant proportion either of the national or regional population of geese. The estimate of goose collisions was made using the method recommended by SNH. The estimated collision rate was 3.83 greylag geese and 4.51 pink-footed geese annually. It has not been suggested that this number of collisions would cause a significant effect on populations of either species of goose either nationally or regionally.

4.46 Although the question of whether the windfarm would create a barrier effect for geese has not been specifically considered in the EIA report, the collision-risk assessment was carried out on the basis that the geese would not avoid the windfarm area generally or the collision-risk height, but would continue through it. The evidence we have is that most flights of geese (with far the greatest number of individual geese) observed were high directional migrating flights, many likely to be above the height of the proposed turbines. We have been provided with no evidence that would suggest goose behaviour might change so that flights of geese would divert to avoid the windfarm area or the assumed collision-risk height entirely. Consequently, there does not appear to us to be a basis in evidence to suggest that the proposed development might act as a barrier with the neighbouring windfarms.

4.47 During the scoping of the environmental impact assessment, neither SNH nor RSPB suggested that any barrier effect to geese of the proposed development along with the existing Rothes I and II windfarms required to be taken forward for detailed assessment. Neither suggested in response to the environmental impact assessment that any barrier effect of the proposed development should have been further assessed.

4.48 We do not, therefore, find a basis in the evidence that the proposed development might could cause a significant cumulative effect on geese as a result of its forming a barrier to geese.

Other species

4.49 Objectors have suggested that the proposed development might have adverse effects of goshawk, merlin and hen harrier by disturbance or collision. The concerns are expressed in generalised terms. These risks were assessed in the EIAR and AI. No significant effects were found. Neither SNH nor RSPB raised concerns about those species. There is not a basis in the evidence for a finding that there would be a significant effect on those species, and so we find there would not be.

Effects of fires

4.50 While there was a wildfire in 2019 affecting an area near the Berry Burn and Paul's Hill windfarms, there is not similar evidence of a wildfire in the area of the proposed development. We do not find evidence was required as regards the effect on ecology at the site of the 2019 wildfires.

Information to support appropriate assessment

Darnaway and Lethen Forest SPA and Anagach Woods SPA

4.51 The development site is less than 30 kilometres from the Darnaway and Lethen Forest and Anagach Woods SPAs, both of which are designated for capercaillie. There is potential for movement of female capercaillie between the SPAs and the development site. Birds in Elchies would be part of the metapopulation including birds at the Darnaway and Lethen SPA. Windfarm development has the potential to disturb capercaillie due to the greater human activity in the forest during construction and subsequently as a result of increased recreational use arising from use of any new tracks. SNH consequently advised that appropriate assessment of the proposed development was required. We agree and so recommend that Ministers carry out appropriate assessment. We set out here our views on the outcome of such an assessment.

Original proposal

4.52 SNH advised (letter dated 31 May 2019, in response to the EIAR):

> "The proposal to position 3 or more turbines so close to the traditional lek location and within the area where species records exist from recent years does carry a risk of a greater impact on the species, particularly if they still favour this area. Disturbance from the wind farm will likely increase displacement and whereas this removes birds from areas of increased collision risk with wind farm elements it may also force them into areas less able to support them. The wind farm itself impacts upon roughly a third of the Forestry and Land Scotland's Elchies forest block leaving areas adjacent to the traditionally used location unaffected by the wind farm. The portion of Elchies forest affected by the wind farm may be less likely to be recolonised by birds in the long term and if this were the only habitat locally it might hinder the species recovering favourable conservation status at Elchies. It might impact on the Moray and Nairn metapopulation by restricting the viable habitat on the north-eastern limit of their range and negate the hope that Elchies could act as a future stepping stone and link to the Strathspey stronghold if numbers recover. In summary, the wind farm could deter birds from using affected parts of the forest but managing the remaining habitats in favour of capercaillie could potentially mitigate to provide a future resource for residence and stepping stones for the wider metapopulation."

We adopt SNH's reasoning and findings in this respect. We have already noted that clear-felling for disease control has changed the habitat around the traditional lek and that this has been associated with a decline in the number of capercaillie observed there.

4.53 The OHMP in its latest version of July 2020 sets out in outline the mitigation measures the applicant proposes. The measures proposed in it are described above.

4.54 We are satisfied that the strategic approach of the OHMP, the proposed site-specific management measures and embedded mitigation which includes appointment of an Ecological Clerk of Works (ECoW) to oversee compliance with environmental management and mitigation plans during construction, pre-construction survey checks prior to tree-felling, vegetation-stripping or excavation works; exclusion zones; a Species Protection Plan (SPP), all, if adequately secured by conditions and/or legal agreement, would allow appropriate assessment under the Habitats Regulations to conclude that both the original and alternative proposals would have no adverse effect on the integrity of the Anagach Woods SPA or Darnaway and Lethen Forest SPA. We have also reached this conclusion having regard to the position of SNH, which is itself of the view (subject to the above measures) that the integrity of the SPAs would be unaffected.

Alternative proposal

4.55 The nearest turbines to the lek site in the alternative proposal would be more than 450 metres away. There would not be the same degree of risk of disturbance at the lek site. The same OHMP is proposed. Applying reasoning similar to that for the original proposal, we conclude that the integrity of the two SPAs would not be adversely affected.

Weight given to RSPB's written objection

4.56 Although RSPB objected in writing to the proposed development, it did not provide oral evidence. The applicant submits that Ministers should put no weight on the written evidence from RSPB because they did not submit themselves to cross-examination at the inquiry. We consider, though, that the weight to be put on it should be appropriate to what it is: written evidence upon which no witness was cross-examined. We have considered it on that basis. We have set out our reasons above for rejecting RSPB's view that there was not sufficient information to make a finding that the proposed development would have no adverse effect on the integrity of the Anagach Woods SPA and Darnaway and Lethen Forest SPA.

CHAPTER 5: SOCIO-ECONOMIC AND TOURISM EFFECTS

5.1 Key documents:

- Chapter 15 Socio-economic context
- 2019 AI Chapter 15
- Applicant inquiry statement section 4
- Precognition (Nick Skelton)
- Inquiry Report and appendix A and B (Nick Skelton)
- Save Wild Moray objection
- Save Wild Moray precognition (Ian Kelly)
- Save Wild Moray Inquiry Report
- Ministerial letter on Community Benefit Jan 2020
- Speyside Community Council objection to original proposal 27 March 2019
- Speyside Community Council objection to alternative proposal January 2020
- Speyside Community Council Inquiry report
- Yvonne Mandel Inquiry Statement
- Yvonne Mandel Hearing Statement
- VisitScotland representation

Evidence on socio-economic effects

5.2 The socio-economic effects of the original and alternative proposals are assessed in chapters 15 of the EIAR and 2019 AI. The assessments provide a review of policy documents, population and employment data. Further statistical data on energy generation and community benefits of the operational Rothes I and II windfarms are also included. The 2019 AI provides an updated assessment of the indirect benefits of employee spend and gross value added (GVA) to the Scottish and local economy and assesses the effects of the alternative proposal. It concludes that beneficial economic, employment, supply-chain and renewable-energy-generation impacts are likely to occur as a result of both the original and alternative proposals at a level which would be “potentially significant” within the context of the EIA Regulations.

5.3 The assessments also conclude that both the original and alternative proposals would not result in significant adverse impacts on tourism or recreation.

Main points for Moray Council

5.4 The council refers to the effects of both proposals on views from Ben Rinnes, Ben Aigan and the A95 south of Aberlour that would ‘excessively diminish the recreational and visitor experience where the countryside would be overly populated with windfarm developments’. The council made no objection directly on socio-economic grounds and presented no evidence at the inquiry in respect of effects on tourism. In its closing submissions, the council questioned the methodology of the Biggar report on Wind Farms and Tourist Trends in Scotland (2017) and made the point that there was no guarantee that developments of the proposed scale would have no adverse effect on the number of people who visited Moray. It argued that there is a romantic perception of connection between the Moray landscape and whisky production, which could be adversely affected.

Main points for Save Wild Moray

5.5 As a matter of policy, Ministers must take account of the proposed development’s net economic effect. It is a matter for the applicant to provide an assessment of net economic effect and it has not done so.

5.6 Local tourism operators have raised considerable concerns. It is a matter on which it is very difficult to provide evidence, since people diverted from an area by the presence of a windfarm are necessarily difficult to survey.

5.7 Consumers paid a total of £130 million to wind farms in Scotland to stop power generation. That is almost 1.9 million MWh of lost electricity production i.e. lost claimed benefit. In 2020, so far, well over £100 million has been paid out by consumers to Scottish wind farms not to generate, representing around 1.5 million MWh of lost claimed benefit. Wind farm proposals are likely to be assuming, in terms of the financial appraisals, that they will be receiving subsidy in the form of very significant constraints payments. These aspects are all material considerations that should be weighed in the balance especially when considering net economic impact in line with paragraph 169 of SPP2.

5.8 Save Wild Moray and other community councils are concerned that there are other parties seeking to influence the outcome of the case in order to secure financial benefit from the significant adverse harm that the schemes will inflict on those directly affected. This, in their view seems fundamentally morally wrong. The need for funds to flow to community projects in Moray is appreciated but this process of income transfer that does not account for the full costs and effects is not appropriate.

5.9 Scottish Ministers have firmly reconfirmed in a letter to the local MSP (CD18.2) that community-benefit and community-ownership proposals are not material considerations that will be taken into account when determining S36 wind farm applications.

Main points for Speyside Community Council

5.10 Many of the scenic/tourist routes in and out of Moray would experience a considerable change in its wild-land attraction. Turbines would be introduced into views where currently there are none and also add to the existing cumulative clutter of existing windfarms and transmission lines. The A95, B9010, A939, A940 and Knockando-to-Dallas road are scenic tourist routes that would be affected if the proposed development and Clash Gour were to be approved.

5.11 There are also likely to be visual and cumulative effects to both the Speyside Way and River Spey, both popular with either walkers or water-sports enthusiasts. Tourism is a very important part of the Moray economy and Moray is very proud of the vast number of world-class visitor experiences it has to offer.

5.12 It is acknowledged that tourism income in Scotland has not declined but there has been a displacement of that income. Visitors expecting to see a beautiful landscape and areas of wild land are disappointed when they see large structures, such as windfarms, that are at odds with expectations. Moray can ill-afford to have any of its tourist income displaced, particularly when recovering from the economic impact of Covid-19.

5.13 The community council also objected to community ownership and community benefit matters being included in the inquiry.

Main points for Yvonne Mandel

5.14 Yvonne Mandel is the owner of a property at Glenarder, used as a second home and as a holiday let. It has operated since 2015 as a successful holiday let, hosting over 200 guests from all over the world. Occupancy and rental income rates are good and the business employs a number of local people.

5.15 The unique selling points of the property are the views; remote location, natural wild beauty and stunning 360-degree views. Views of 77 turbines (which would include Paul's Hill II, Clash Gour and Rothes III) would prevent the property being marketed in the way it always has, losing its unique selling point. If that is lost the marketability of the property will be lost. The landscape asset was factored into the purchase price of the property when purchased in 2013 and therefore the landscape has an inherent financial value. Any negative change or loss of this asset will affect the property and tourist experience. Reduced revenues would not cover the costs of running the business.

5.16 Visitors to the cottage contribute to the wider Moray economy through their use of restaurants, shops, visitor attractions, taxis and car hire. It has been calculated that visitor and tourism business expenditure is worth £129 million to the Moray economy.

Main points for VisitScotland

5.17 Visit Scotland did not object to the proposal but commented that scenery and the natural environment have become the two most important factors for visitors in recent years when choosing a holiday location. Their importance to tourism in Scotland cannot be underestimated. The character and visual amenity value of Scotland's landscapes is a key driver of its tourism product.

5.18 Full consideration should be given to the Scottish Government's 2008 research on the impact of wind farms on tourism. Tourism impact statements should be part of the Environmental Impact Assessment. Any potential detrimental impact of proposed developments on tourism, whether visually, environmentally and economically should be identified and considered in full.

Other representations

5.19 Many other representations refer to the adverse landscape and visual effects and the related impact on tourism. The attractiveness of the Spey Valley for tourists with recreational activities including fishing, cycling and walking are all highlighted, as are the potential effects on views from Ben Rinnes and Ben Aigan, the Malt Whisky Trail and the Speyside Way long distance footpath.

Main points for the applicant

<u>Employment</u>

5.20 The approach adopted to quantify expenditure and associated employment impacts was refined between the EIAR and 2019 AI. Chapter 15 of the 2019 AI is based on predicted capital costs per MW and anticipated percentages of local and national project content. The use of different quantification methods means the figures in the EIAR and 2019 AI are not directly comparable. There would be slightly less beneficial employment and wider economic benefits from the alternative proposed development as a consequence of the reduction in installed generating capacity and overall infrastructure requirements. Cost estimates applied in the assessment are broadly consistent with capital costs for other wind farm developments.

5.21 The EIAR predicts that during construction, the original proposal would create approximately 315 to 470 job years during the 18 month programme. For the operational phase 18 - 27 full-time jobs would be created in Scotland, with 8 -12 of those in Moray.

5.22 The 2019 AI predicts that the alternative proposal would create approximately 620 person years of direct employment (about 413 full-time equivalent jobs) during the

construction programme. For the operational phase, it predicts approximately 37 full-time equivalent jobs in Scotland, of which approximately 26 would be in Moray.

5.23 The 2019 AI also predicts 787 full-time equivalent jobs indirectly created in Scotland during the construction programme and approximately 70 full-time equivalent jobs indirectly created in the operational phase.

Supply chain

5.24 Through ongoing liaison with relevant firms (post Rothes I and II), the applicant has secured local, regional and national supply-chain benefits in the construction phase. The same approach to securing local, regional and national supply-chain benefits would be adopted for the construction of Rothes III.

Community-benefit funding

5.25 Rothes III Wind Farm would provide community-benefit funding over its operational lifetime. This funding will be at the level recommended by the Scottish Government of £5,000 per MW. The applicant's intention is to build on the community benefits delivered by the Rothes I and II Wind Farm Fund, which has directly contributed over £500,000 to date. These funds have been used for local projects such as village-hall improvements and renovations, solar panels and activities. This approach aligns with Moray Council's Community Benefit Guidance (2014), and with the Scottish Government's Good Practice Principles for Shared Ownership of and Community Benefits from Onshore Renewable Energy Developments (May 2019)

5.26 The applicant has offered to sell up to the value of 49% of five turbines in the proposed development as part of a shared-ownership scheme.

5.27 The applicant's witness acknowledged that community benefit and community ownership are not themselves considerations attracting weight in the determination of a section 36 application. However, the step-change in community benefit means a strategic approach is required to ensure distribution of community benefit funds is co-ordinated and yields maximum local community benefits. The applicant is committed to the development of a Community Development Strategy. Energising Moray's approach (evidence of which was provided in respect of the Clash Gour proposal) is supported. The applicant is also committed to implementing a capercaillie education programme for local schools throughout the operational phase of the proposed development.

Impacts on tourism

5.28 Tourism was scoped out of the EIA report. Neither Moray Council nor any other consultee suggested at the time of scoping that the proposed development was likely to have a significant effect on tourism. Consequently there is no reliable evidence to indicate there would be such an effect.

5.29 Moray Council has not presented any evidence to substantiate the claims made that identified landscape and visual effects would themselves adversely affect the overall visitor experience available in Moray, much less that recreational and visitor experiences would be in any way "excessively diminished".

5.30 The original proposed development would only result in a limited number of significant adverse primary effects of relevance to tourism. The likely adverse effects of the alternative proposal are predicted to be less. There is a lack of reliable evidence to suggest

such primary effects would be likely to generate any significant adverse secondary effect on tourism or the visitor experience in Moray.

5.31 Research for the Scottish Tourism Economic Activity Monitor found that in 2011 tourism in Moray contributed £97 million, growing to £105.7 million by 2015 – an increase of over 10% in three years. It is estimated that 2,850 jobs, 10% of Moray employment, are dependent on tourism. In 2012, Moray had 643,700 tourist visitors, increasing to 806,100 visitors in 2017.

5.32 In 2012, visitor expenditure in Moray was approximately £68 million, growing to £90 million in 2017. Between 2011 and 2017, the number of day visitors to Moray rose by 29.3%, and the number of staying visitors increased by 27.3%. It is estimated that the economic effects of Moray tourism rose by 32% over the same period. At a time when substantial wind energy development has taken place, Moray's tourism sector outperformed regional and national averages.

5.33 Speyside is home to over 50% of Scotland's single malt whisky distilleries. It should be noted that no objections have been submitted by any distillery.

5.34 This recent strong performance of Moray's tourism sector coincided with a period of substantial wind energy development in the area, including the construction of Rothes I and II wind farms. There is no empirical evidence available to indicate that wind farm development (including extensions to existing sites) has adverse visitor number or expenditure impacts in Moray.

5.35 The EIAR assessed effects on tourism and recreational assets in Moray, including landscape character types, routes and viewpoints on them, cultural heritage assets and other attractions and visitor accommodation. Although there were some significant adverse primary effects on those assets (such as adverse landscape and visual effects or disruption to recreational access), the assessment did not find any likelihood of significant secondary effects on tourism.

Reporters' reasoning

Economic benefits to labour market and supply chain

5.36 The applicant's evidence on the direct and indirect economic benefits of the construction, operation and maintenance of the proposal, in terms of employment, creation of gross value added was not subject to detailed criticism by any party. We accept that employment and local expenditure, arising from each phase of the proposal is likely to have beneficial economic effects of the order the applicant estimated. As regards wider socio-economic effects, particular issues were raised, which we deal with below.

Community benefit and shared ownership

5.37 The Scottish Government's *Good Practice Principles for Community Benefits* states that community-benefit schemes are voluntary arrangements and are not a material planning consideration. There may be some cases in which development benefits a community in a way in which would be a material consideration, but financial payments from the operator of the development to a community body are not. We therefore do not consider the proposed financial payments by the applicant to a community body to be material in reaching our recommendations. Even the advantages arising from a more strategic approach in managing community benefit such as that advocated by Energising Moray appear to us to arise from the voluntary financial payments associated with the community-benefit scheme, rather than directly from the proposed development.

5.38 Conversely, the proposed education programme relating to capercaillie appears to us rooted in the mitigation of the proposed development's effects. Consequently we find it to be a consideration that weighs slightly in favour of the proposed development.

5.39 The Scottish Government's (separate) *Good Practice Principles for Shared Ownership* state that the financial benefits to owners from the ownership of a development are not a material consideration in determining the development's acceptability in planning terms. This does not mean that no considerations relating to shared ownership can ever be material. It is perhaps possible to imagine a shared-ownership scheme that involved a community body from an early stage and had direct outcomes arising from work on the development that are of benefit to the community, such as capacity-building in the creation of a technical understanding and skill in management of such projects. However, there are limited details on the proposed shared-ownership scheme associated with the proposed development, and there is no evidence it would have such benefits. Consequently we do not find the shared-ownership scheme to be a material consideration.

Tourism

5.40 The applicant's intention to scope tourism out of the environmental impact assessment was stated in the scoping report. The council made no suggestion in its response that such an approach was incorrect or that there was a likelihood of significant effects upon tourism.

5.41 A number of objections suggest the proposed development would have an adverse effect on tourism, on the premise that that would be a secondary effect of the proposed development's adverse landscape and visual effects and of other primary effects, such as disruption to recreational access or noise.

5.42 The applicant drew to our attention the reporter's reasoning in number of previous windfarm decisions. These include the 2018 decision on Limekilns windfarm (CD11.25) in which the reporter found that "the weight of evidence available shows no correlation between windfarm development and visitor numbers in an area". No evidence from any substantial study was submitted to the inquiry that was produced after that decision. We make a similar finding in respect of the present proposal. As the Culachy decision (CD11.49) states, the evidence does not entirely rule out that windfarm developments could cause a displacement effect at a local level, but no evidence of such an effect actually having occurred anywhere has been provided to us.

5.43 Any particular area may draw tourists for a range of reasons. Not all of these reasons are likely to be affected adversely by the primary adverse effects of a windfarm. If windfarms do have an adverse effect in terms of displacement of tourism, there is unlikely to be a direct or simple correlation between the degree of significant primary effect of the proposed development occurring and a significant adverse effect on tourism occurring. *Tourism In Moray*, a strategy produced by Highlands and Islands Enterprise, refers to a number of strategic priorities for growth of tourism markets, including experiences relating to food and drink, history, nature (particularly focused on the coast), events, conferences and education. This illustrates the range of factors that might draw a person to visit Moray, not all of which would be adversely affected by visibility of turbines (directly at least).

5.44 Any adverse effect on tourism is likely to be related to the particular type and degree of primary effect and the particular sensitivity of the receptor. Tourist facilities may be close in distance to the proposed development, but the primary effects there may be limited. For instance, in the present case, given the limited visual effects the proposed development would have on the Speyside Way (notwithstanding the significant effect of the original and alternative proposals at viewpoint 18, near – but not on – the Speyside Way), we find it

unlikely that there would be any tangible effect in terms of displacement of tourist users of the Speyside Way. Similarly, where the reason for visiting an attraction is unrelated to a primary effect of the proposed development, there is unlikely to be any substantial effect on tourism arising from the proposed development. We doubt that there would be a tangible effect on the number of visitors to distilleries simply because there was visibility of a windfarm on the way to the facility or at it. This appears to us to be confirmed by the lack of any objection from distilleries to the proposed development.

5.45 On this latter point, we acknowledge that landscape as well as the opportunity to visit distilleries may be among the range of considerations tourists might have in mind in choosing Moray as their destination. As regards whisky distilling, the council claims that there is a "romantic perception between Moray's landscape and whisky production". There is a similar assertion in the *Moray Local Landscape Review*. No other evidence has been produced of the nature of such an association (though we are aware of some whisky advertising referencing the Scottish landscape). We are in no doubt that visitors to distilleries (and related facilities such as the cooperage) expect to see industrial facilities, even though these are facilities with great tradition attached to them and often comprised in attractive buildings. We e acknowledge the role that the whisky industry has played in shaping the Speyside landscape. We have not found evidence that any specific receptor associated with the industry would be adversely affected by the proposed development. We acknowledge that there would be some significant visual effects on routes by which tourists would pass to visit whisky-industry facilities. Given the reason for travel, we doubt that such effects would put off a significant number of visitors and have been provided with no substantial evidence to suggest it would.

5.46 Some tourism receptors may be more sensitive than others to primary effects of the proposed development, and particularly landscape and visual effects. These may include accommodation, hospitality facilities, cultural-heritage assets, recreational facilities or outdoor activities of which enjoyment of the landscape is an aspect, such as walking, cycling or road trips. Even so, for there to be an adverse effect on tourism, the primary impacts of the proposed development would have to be sufficiently substantial to outweigh other aspects of the area's draw to tourists.

5.47 The applicant provided an assessment of tourism impacts in its evidence to the inquiry. It considered the possibility of secondary effects on tourism arising from primary effects on designated walking and recreational routes (such as the Speyside Way and GM7 public right of way), outdoor tourist destinations (such as Dallas Castle and the Duke of Gordon Monument), hospitality facilities, visitor accommodation, recreational activities in the open countryside, and tourists travelling by road. The assessment found no significant effect. Other parties did not make any detailed criticism of the assessment.

5.48 We do not in all cases agree with the detailed assessment of the degree of primary effects on which the assessment of tourism effects was based. We accept the assessment's conclusion, though, in respect of the individual effects of the proposed development. One weakness of the assessment is that it examined only the significant individual primary effects of the proposed development, not the cumulative effects with other windfarm development in the area. We have found significant adverse cumulative landscape effects on the Broad Farmed Valley (LCT7) and the Spey Valley SLA and significant adverse cumulative visual effects on the A95 running through the valley if the consented Paul's Hill II and proposed Clash Gour are added to the baseline. Similarly, we have found a significant cumulative visual effect on the summit of Ben Aigan if the proposed development is added to a baseline including Hill of Towie II. However, it does not appear to us that these primary cumulative effects extend over such a wide area or affect tourist

facilities to a degree that they could conceivably give rise to a significant secondary cumulative effect on tourism.

5.49 The objections from the public indicate a view that the visibility of new turbine development in the landscape has had an incremental adverse effect on tourism, to which the proposed development and other consented and proposed windfarm developments would add. The development of existing windfarms including Rothes I and II, Paul's Hill, Berry Burn and Hill of Towie has, however, as the applicant has pointed out, coincided with a strong performance for tourism in Moray. No evidence has been produced to us of an example of a particular adverse effect on any particular facility from visibility of a windfarm or of any tipping point at which the adverse effects of windfarm visibility in the landscape might more generally outweigh the draw for tourists. Given our assessment of the proposed development's primary effects, we do not consider any such tipping point would be reached as a result of the proposed development with other existing, consented or proposed windfarms.

5.50 Yvonne Mandel's property at Glenarder, a holiday-accommodation business, provides some illustration of these points. There are existing distant views to the Hill of Towie windfarm from the cottage and its large, open garden. We concluded in chapter 3 of this report that although the turbines in both the original and alternative proposal would be visible at a distance of around 6.5 kilometres on the upland skyline and there would be a significant change to views for residents, the visual effects of the proposed development would not be dominant or overwhelming, either individually or cumulatively with Paul's Hill II and Clash Gour. We acknowledge that the landscape setting and views from the property are likely to be part of its existing attraction. But we consider that it would remain an attractive place to stay with attractive views, notwithstanding the proposed development and notwithstanding the cumulative effect on it from views of windfarm development. It is also likely to have other draws, including its seclusion and its convenience as a base for a holiday given its proximity to the Moray coast, to the attractions of the Spey Valley (including the whisky trail), and to the national park. We find, even with the presence of either the original proposal or the alternative proposal in the view, and even with the cumulative effect of Paul's Hill II and Clash Gour, it would remain a place to stay with considerable attractions.

Constraint payments

5.51 Save Wild Moray regards the cost of constraint payments to be an aspect that should be weighed in the balance in assessing the socio-economic effects of any wind farm development. Constraint payments are an aspect of the means by which the National Grid (itself a private business) manages the transmission network. It is a necessary part of the transmission system that power generation should be managed. Constraint payments might be paid to any generator, not just a wind-power generator.

5.52 While Save Wild Moray argues that the constraint payments should be taken into account in the net economic impact assessment, it makes no express case as to whether the economic effect of such transfers between private businesses should weigh for or against the proposed development. It appears to us that constraint payments are part of a system, which also includes connection charges, transmission charges, and the wholesale cost of power generated (which in the case of wind power is relatively cheap – increasingly so, given the rise in the gas price). To understand the economic effect of constraint payments, it appears to us that account also needs to be taken of these other elements of the system.

5.53 The submission of figures for constraint payments or for power generation foregone tell very little by themselves. Although Save Wild Moray provides such figures for Scotland and for several existing windfarms in the vicinity of the proposed development, it provides no comparative figures for the total amount or value of power generated by those windfarms. No case is made that there is a particular problem of grid constraints in respect of the proposed development (beyond the unsubstantiated general assertion that there is overcapacity of wind power). There is no objection to the proposed development on that basis from any business that transmits power. There is no prediction of what constraints might occur in respect of the proposed development. The proposed development is predicted to have an output of over 11 million MWh over its lifetime. The figures SWM provided for generation foregone at Rothes I and II, for instance, is about 5,000 to 6,000 MWh per year. If any comparison can be made at all between the figures for Rothes I and II and the proposed development, it seems likely that the power generation foregone would represent a small fraction of power generated.

5.54 System costs associated with intermittency of weather-dependent solar and wind power were addressed in the Technical Annex to the CCC's Net-Zero Report of 2019 (CD6.17). Where there is increased penetration of intermittent renewables, there are four challenges that arise:

- There has to be sufficient baseload capacity to meet peak demand where there is a low contribution from intermittent sources
- There should be a means of using available generation where intermittent renewables exceed demand (otherwise the output would be wasted)
- There are challenges in balancing the system. This could require additional system flexibility, such as battery storage or part-loading of decarbonised gas plant to respond to rapid changes on the system
- Further investment would be needed in networks where the renewable generator is located far from areas of demand.

5.55 The annex therefore recognises that renewables are not guaranteed to meet peak demand and that there are times when the power generated may exceed demand. It recognises that intermittency places a limit on the penetration of renewables in the UK's generation mix, but finds that the limit is likely to be high (higher than the 57% annual penetration in its model for 2050), possibly over 80%. Decarbonisation relies on a portfolio of generation technologies, not just variable renewables. Means of increasing system flexibility include use of flexible gas plant, interconnection with other countries, managing demand to reduce peaks, energy storage such as pumped hydro and battery storage, and use of electrolysis to make hydrogen. The cost of intermittency of renewable generation (and in particular, building and running back-up reserve and providing a suitable transmission network) can be estimated. It is a small proportion of overall system costs (not more than 10%). Such costs are likely to be offset by the lower wholesale prices of low-carbon generation. The annex finds that the cost of integrating renewables does not detract from the conclusion that a near zero-carbon power system by 2050 is a cost-effective means of meeting the UK's emission-reduction target.

5.56 The report also notes that current technology trends, such as the fall in cost of batteries and other storage options, are likely to reduce costs of system flexibility in future. The cost of renewables is also falling (and so the cost of lost generation is likely to be less).

5.57 Consequently we find that little can be made of the evidence that constraint payments exist, have been paid to other developments, and will most likely continue to exist and be paid to the operators of the proposed development. We do not consider the

existence of constraint payments as part of the power-transmission system to be a factor that weighs significantly against the proposed development.

Conclusion

5.58 Overall, based on the submitted evidence, we agree with the applicant that the development would have a net benefit to the economy and employment during the various phases of development. Given the degree of benefit to employment and supply chain during construction, we consider that the short-term economic benefit in that period would be significant. Though the windfarm, once operating, would provide a number of full-time professional jobs and these would be of benefit in addressing challenges identified in the *Moray Economic Strategy,* we do not consider the degree of the net economic benefit would be significant.

CHAPTER 6: OTHER MATTERS

6.1 The following other potentially significant environmental effects are considered in this chapter along with other matters as raised in consultation or representation:

- Geology, hydrogeology and hydrology (including impacts on peat and downstream flood risk and carbon balance)
- Ecology
- Forestry
- Relative wildness
- Cultural heritage
- Traffic and transport
- Public access to land
- Aviation and communications
- Noise
- Safety

Geology, hydrogeology and hydrology

6.2 Key documents:-

- EIAR Chapter 10 Hydrology, Geology and Hydrogeology
- Applicant letter of 31 May 2019
- 2019 AI Chapter 10March 2020 SI Peat
- Peat - email 9 March 2020 SEPA to applicant (SI Peat 2)
- Peat - Micrositing Peat Depth analysis (SI Peat 1)
- SEPA letter dated 18 March 2019
- SEPA letter dated 2 July 2019
- SEPA letter dated 22 January 2020
- SEPA email dated 9 March 2020
- SEPA letter dated 25 March 2020
- Precognition (Gavin Germaine)
- Inquiry report (Gavin Germaine)

Environmental information

6.3 The EIAR assessed the proposed development's effects on existing drainage patterns, base flow, cumulative flooding, erosion and sedimentation, groundwater and surface-water quality, groundwater levels, water resources, impediments to flow, pollution risk and the hydrological integrity of peat bodies. Hydrological connectivity was identified with the Gull Nest Site of Special Scientific Interest (SSSI) and with the River Spey Special Area of Conservation (SAC). The EIAR found that it was essential that the proposed development's design should maintain or improve local hydrology, since poor design could lead to adverse effects on the hydrological environment with secondary effects on peat stability and ecology.

6.4 Mitigation measures embedded in the design are described at EIAR paragraphs 10.6.4 to 16. The design is said to include measures to avoid hydrological effects, including buffer distances around watercourses and from areas of groundwater-dependent terrestrial ecosystems (GWDTE) and to have minimised water crossings (with six crossings in total). A construction environment management plan, a draft of which is submitted, would be applied during construction to prevent adverse effects on hydrology. Subject to the successful implementation of these measures, the assessment found that the

proposed development's effects during construction and operation would be of minor significance individually or cumulatively.

6.5 A number of monitoring measures are proposed to ensure mitigation measures are effective, identify when further investigation and mitigation is required and understand the long-term effects of the proposed development. These measures are described at EIAR paragraphs 10.6.70 to 77. Subject to these measures, the EIAR found that there would be no significant effect on geology, hydrogeology or hydrology.

Consultation responses and representations

6.6 SEPA initially objected to the proposed development on a number of grounds relating to peat avoidance and its appropriate reuse and to the proposed design of crane hardstanding and cable trenches. In response to these objections, the applicant gave a number of undertakings assessed in the March 2020 SI. On this basis SEPA withdrew its objection, subject to conditions.

6.7 A number of individual objectors also stated concerns about the proposed development's adverse effect on peat and related matters including adverse effect on water quality, particularly from sedimentation, and adverse carbon balance. SWM suggested there was a possibility of increased flood risk from large-scale tree-clearing in the catchment of the Lossie.

Peat

6.8 The applicant's evidence (set out in the EIAR, letter of 31 May 2019, 2019 AI and March 2020 SI) on peat includes criteria for reduction of the proposed development's impact. These include a buffer of 50 metres from surface-water features, identification of areas of deep peat (over one metre) and minimisation of excavation volumes, examining peat-stability risk zones and avoiding medium- or high-risk zones, avoiding siting of infrastructure on adverse slopes to reduce potential for instability, and – where borrow-pit search areas are identified – identifying working areas to avoid or minimise environmental sensitivities. The applicant's evidence is that the achievement of these criteria must be balanced against achieving a viable wind-energy yield and so to achieve a better carbon-payback period. Further, it sought to mitigate peat impact in respect of the original proposal by considering micro-siting and by developing concepts for construction to reduce the volume of extracted peat.

6.9 In response to SEPA's objection to the original proposal, the applicant undertook to micrositе turbines, particularly turbines 9, 10, 11, 12, 14, 16 and 24 and substation S1 so that peat extraction would be minimised. SEPA had objected to the location of turbine 15 in the original proposal, given the amount of peat extraction that would be required for its construction, and advised that it should be moved to the location proposed in the alternative layout or a justification provided. The applicant has proposed instead that turbine 15 should simply be removed from the design in the original proposal (though turbine 15 is retained in the alternative proposal at a different location).

6.10 For the alternative proposal, to address SEPA's objection, the applicant proposed micrositing of turbines 9, 14 and 16 to minimise impact on peat.

6.11 For both the original and alternative proposal, the applicant gave a commitment to the use of floating track where ground conditions were suitable, thus minimising the impact on peat.

6.12 The applicant has provided plans for micrositing of turbines for both the original proposal (CD15.4.6) and the alternative proposal (CD15.4.7), taking into account the requirements of micrositing both for the optimum position of aviation lighting and for avoiding deep peat.

6.13 In view of these commitments SEPA, in its formal response to the March 2020 SI on 25 March 2020, withdrew its objections to both the original and alternative proposal. The withdrawal was subject to conditions requiring micrositing to reduce impact on peat, the provision of a peat-management plan, construction-environment-management plan and habitat-management plan incorporating the commitments the applicant had made in respect of reuse of peat, construction of floating access tracks and for restoration of borrow pits.

6.14 In view of the applicant's commitments and subject to the proposed conditions, we accept that neither the original proposal nor the alternative proposal would have a significant effect on peat.

Carbon balance

6.15 The applicant provided estimates of the proposed development's carbon balance both in technical appendix 10.5 of the EIAR for the original proposal and in technical appendix 10.5 of the 2019 AI for the alternative proposal.

6.16 The original proposal was estimated to pay back carbon emissions, including those related to excavated peat, within 1.2 years as compared with coal-fired electricity generation, 2.3 years as compared with a fossil-fuel mix of generation, and 3.8 years compared with a grid mix of generation. The alternative proposal was estimated to have a payback time of 1.3 years as compared with coal-fired electricity generation, 2.6 years as compared with a fossil-fuel mix of generation, and 4.7 years as compared with a grid mix of generation.

6.17 As we understand it, the longer payback periods for the alternative proposal reflect its lower generating capacity as compared with the amount of peat requiring to be excavated (since dimensions of infrastructure including turbine foundations and their associated drainage areas are assumed to be the same as for the original proposal).

6.18 In these calculations of the carbon balance, a number of worst-case assumptions are made. These include for instance that all carbon stored in excavated peat would be lost and not reinstated on site, that no micrositing is made to reduce impacts on peat, and that tracks are excavated and not floated. Furthermore, the estimate for the original proposal includes turbine 15 and its associated infrastructure. More than a seventh of the peat excavation for the proposed turbines was associated with turbine 15.

6.19 In view of the assumptions made, we do not consider that the carbon payback periods are far from the norm for such development.

Flooding

6.20 The scoping report indicated that the removal of existing forestry and the presence of additional areas of impervious hardstanding related to the proposed development is likely to have only a small effect where the individual impact of the proposed development was considered. It found that there was the potential of a significant effect on downstream fluvial flooding from increased run-off when combined with other infrastructure. The EIAR considered flood risk of the proposed development in combination with the existing Rothes I and II windfarms. This found that with an appropriate drainage design that would mimic natural flow volumes and patterns as far as possible and with appropriately sized and

designed water crossings, the residual cumulative flood risk would represent a negligible/minor effect and would not be significant.

6.21 Although Paul's Hill II is considered in the applicant's assessment of the effects on downstream flooding, the proposed Clash Gour windfarm is not. Like the proposed development, the proposed Clash Gour windfarm would be partly in the Lossie catchment. Similar measures in terms of design of drainage and water crossings are proposed for Clash Gour, with the aim of keeping post-development runoff to pre-development levels. Subject to the implementation of such measures at Clash Gour, we do not consider that the addition of Clash Gour to the baseline for assessment of the proposed development would result in a significant cumulative effect on downstream flooding.

Ecology

6.22 Key documents:-

- EIAR Chapter 6 Ecology
- 2019 AI Chapter 6 Ecology
- July 2020 Updated Outline Habitat Management Plan
- SNH consultation response to EIAR 31 May 2019
- SNH consultation response 24 January 2020 to 2019 AI
- SNH consultation response 25 March 2020 to 2019 AI
- SNH consultation response 22 April 2020 to March 2020 SI
- Andrew Chadderton objection
- Andrew Chadderton precognition

The environmental information

6.23 The proposed development's ornithological effects have been addressed in chapter 4 of this report. The effects of the original and alternative proposals on other ecology are assessed in chapter 6 of the EIAR, chapter 6 of the 2019 AI and technical appendices 6.1 and 6.2 respectively.

6.24 The EIAR sets out mitigation measures incorporated in the design of the proposed development, including use of existing access tracks to minimise land-take, 50-metre buffers between infrastructure and water courses, avoidance of sensitive habitats and deep peat in layout of infrastructure, maintenance of hydrological connectivity where infrastructure is designed close to ground-water-dependent terrestrial ecosystems (GWDTE), and installation of cables by tracks to minimise habitat loss. The EIAR assesses effects on receptors including habitats at the application site, ground-water- and surface-water-dependent terrestrial ecosystems (GWDTEs and SWDTEs), a number of nearby sites of special scientific interest (SSSI), and protected species including bats, pine martin and red squirrel. The assessment found no significant effects. A number of further mitigation measures are set out in EIAR table 6.12.

6.25 The possibility of cumulative effects on bats and red squirrels was assessed, but no significant effects were found.

6.26 Impacts on qualifying species of the River Spey Special Area of Conservation (SAC) (Atlantic salmon, sea lamprey, freshwater pearl mussel and otter) were also assessed to inform appropriate assessment under the Habitat Regulations. This is dealt with below.

Representations and consultation responses

6.27 SEPA initially objected in respect of effects on GWDTE. Following further correspondence, SEPA withdrew its objection on the basis of undertakings from the applicant including that it should be consulted on mitigation where micrositing cannot avoid sensitive habitats or features such as GWDTE or blanket bog and that the construction-environment-management plan would outline specific requirements to protect hydraulic connectivity in the course of infrastructure construction.

6.28 Moray Council did not object to the proposed development on grounds of its ecological effects. SNH did not object subject to the implementation of mitigation measures detailed its consultation responses of 31 May 2019, 24 January 2020, 25 March 2020 and 22 April 2020 (the latter three primarily relating to habitat management for capercaillie).

6.29 Andrew Chadderton and other objectors referred to concerns about effects on salmon, wildcat, otter, pine marten, red squirrel and bat populations and on their habitats.

Reporters' reasoning

6.30 The EIAR reports that the bat surveys carried out showed a low level of bat activity in the survey area. Six bat species were recorded. No bat roosts were found. Given the low level of activity, the site is only of local conservation importance. The EIAR identifies the means by which bats might be affected to include collision with turbine blades or barotrauma and loss of habitat. As regards the former, lighting can attract insects and consequently foraging bats.

6.31 Given the low level of bat activity in the survey area, the EIAR assesses the effect of habitat loss not to be significant. It states that the recommended buffer of 50 metres would be established between turbine blade tips and the tops of trees to limit bat encounters with turbine blades. As regards the aviation lighting, insects are not as attracted to red light as to other colours. The reduced intensity of 200 candela rather than 2000 would also limit attraction of insects. The EIAR cites a study from the USA that found aviation lighting had no evidence of an effect on attraction of bats to turbines. The EIAR's assessment found no significant effects on bats, even for the pipistrelle species of high sensitivity to collision and barotrauma, given their low level of activity.

6.32 A low level of bat activity was also found at the neighbouring windfarm sites of Rothes I and II, Kellas and Meikle Hill. Consequently, the EIAR found that the cumulative effects would not be significant.

6.33 To mitigate effects on bats, the EIAR proposes pre-construction survey for bat roosts within 30 metres of works. A licence would be required to disturb a bat roost found. It is proposed there should be no lighting for construction work during the hours of darkness within an hour before and after dawn and dusk and no lighting within 20 metres of any edge feature.

6.34 The assessment for the scoping report found no salmon in the burns within the application site. There were salmon downstream of the Linn of Rothes in the Burn of Rothes, which flows into the Spey. An assessment of the effects on salmon was therefore made as a qualifying feature of the River Spey Special Area of Conservation (SAC) and effects on them within the site were scoped out of the assessment.

6.35 The proposed development's effect on red squirrel is also assessed in chapter 6 of the EIAR. The assessment indicates that the plantation woodland is likely to have low carrying capacity for red squirrel. It found that this may be reduced if further felling for

needle blight is required. The broad-scale walkover survey found 17 records of squirrel feeding activity, almost certainly relating to red squirrel. There is extensive alternative habitat for red squirrel nearby. Potential effects such as loss of habitat and disturbance were considered. Given the few signs of squirrel activity and the low-carrying capacity of the habitat, such effects were not found to be significant. The sites of other windfarms in the area (Rothes I and II, Kellas and Meikle Hill) were also reported to have low carrying capacity for red squirrel. For this reason, together with the extent of suitable habitat in the wider area, the EIAR found that there would not be a significant cumulative effect on red squirrel.

6.36 Frequent signs of pine marten were recorded in the survey area according to the EIAR. Nonetheless, given their large home ranges and the limited suitable habitat, the area was assessed as not supporting a particularly high density of pine marten compared to other forestry in the area. The site was assessed as having only local conservation importance for pine marten. Possible effects included disturbance, loss of habitat or accidental injury. Given that pine marten are bold and adaptive and prefer a forest-edge habitat of the type created by access tracks, the adverse effect of the proposed development was not found to be significant.

6.37 The EIAR reports that, when the site was surveyed, little evidence of otter was found. High-quality otter habitat is found by the Spey. It was consequently scoped out of the assessment, except as a qualifying interest of the River Spey SAC.

6.38 The EIAR also reports that no evidence of wildcat was found during site surveys. The habitat of the application site is not suitable for wildcat prey species. Although there may be transient cats, it is unlikely that they would be disturbed by the proposed development. Wildcat was scoped out of the assessment.

6.39 SNH and the council did not disagree with these assessments. No other party has advanced evidence sufficient to cast doubt on the assessments. We therefore accept the findings. Pre-construction surveys for mammals are proposed under the supervision of an ecological clerk of works. This is good practice to ensure any impact from construction is minimised. Subject to the imposition of such conditions as set out in appendices 3 (for the original proposal) and 4 (for the alternative proposal), we are satisfied that significant effects upon ecological interests, including the nearby designations, would not occur.

6.40 In other respects, while generalised comment has been made on the proposed development's potential to have adverse effects on habitats or protected species, none are sufficiently specific or supported by relevant evidence of a quality that would cast doubt upon the findings of the applicant's assessment.

Information to support appropriate assessment of the effect on the River Spey SAC

6.41 The qualifying features of the River Spey SAC include Atlantic salmon, sea lamprey, freshwater pearl mussel and otter. These species depend directly or indirectly on water quality. The potential for pollution during construction could adversely affect their habitat. The EIAR reports that the distance of the SAC from the proposed development makes it unlikely that its waters would be polluted during construction, though it cannot be ruled out. Disruption to the integrity of wetlands could cause adverse effects on water-flow regimes and water quality downstream. There is a risk of potential accidental harm during construction to otter from the SAC travelling to the site.

6.42 Mitigation measures to reduce the risk to the SAC are proposed at EIAR paragraphs 6.11.24 to 6.11.35 including:

- A 15 mile-per-hour speed limit for site traffic to reduce the risk of collision
- Excavations to be fitted with an escape route to allow protected species who enter them to escape
- Open pipe ends to be covered when not being worked on to prevent protected species becoming trapped
- A monitoring programme for trout populations in site watercourses, which would be a surrogate measure of the quality and health of the watercourses during construction.
- Implementation of measures to prevent peat slide
- Watercourse protection to prevent siltation and sedimentation. Chemicals to be stored and refuelling to take place in designated areas away from watercourses
- A pollution incident response plan including measures for notification of a pollution incident and provision of spill-containing emergency equipment
- A peat-management plan to minimise excavation and ensure re-use of peat
- Appointment of an ecological clerk of works to oversee management plans, ensure environmental legislation is adhered to and advise on construction and installation of works in the water environment.

6.43 SNH advised that if these mitigation measures were successfully implemented, the risk to the SAC's qualifying interests would be avoided or minimised. We find no evidence that would cast doubt on this conclusion. Consequently we find that there would not be an adverse effect on the integrity of the SAC.

Forestry

6.44 Key documents:-

- EIAR Chapter 11 Forestry
- 2019 AI Chapter 11 Forestry
- Scottish Forestry consultation response to application
- Scottish Forestry Inquiry Statement
- Applicant letter of 31 May 2019

The environmental information

6.45 Chapter 11 of the EIAR describes the proposals for felling, restocking and forest management for the windfarm compared to existing plans. Chapter 11 of the 2019 AI makes a similar assessment of the effect of the alternative proposal and updates the assessment in the EIAR.

6.46 The original proposal would result in felling of 65.75 hectares of forest. The alternative proposal would result in felling of 63.17 hectares. Compensatory planting would ensure that there was no net loss of woodland. The planting would be of native woodland, which would aid conservation of black grouse and capercaillie, and an area of commercial woodland. There would be an increase in native woodland as compared with the baseline forest restock plan. The assessment found no significant effect on forestry.

Consultation responses and representations

6.47 Scottish Forestry did not suggest the assessment was incorrect. It did not object subject to the re-stocking being secured by condition.

6.48 SEPA initially objected in respect of the reuse of forestry material on site. The applicant provided a report in the letter of 31 May 2019 on forestry removal and reduction

and reuse of forest waste, on the basis that the measures would be incorporated in the applicant's construction method.

6.49 Moray Council suggested that 252.8 hectares of forestry would be removed for the original proposal, with only 106.45 hectares replanted and 66.75 hectares of compensatory planting. It suggested that 246.95 hectares of woodland would be removed for the alternative proposal and only 103.18 hectares replanted together with 63.17 hectares of compensatory planting.

6.50 The valid comparison is between the baseline plan for felling and restocking and the windfarm plan. While the forest plan associated with the windfarm would involve not re-stocking certain tree crops after their felling, and instead restoration of peat or other open-ground habitats, that is also the case with the baseline forest plan. Scottish Forestry, the regulator for forestry, was content that the restocking figures for both the original proposal and alternative proposal were sufficient to replace the forestry removed for the purpose of the windfarm. We find no reason to take a different view. We find that neither the original proposal nor the alternative proposal would have a significant adverse effect in respect of forestry.

Relative wildness

6.51 A number of objectors referred to the adverse effect of the proposed development and Clash Gour on the relative wildness of the area. Yvonne Mandel described wildness as a feature of Glenarder. Speyside Community Council and Save Wild Moray referred to the proposed development's adverse effect on wild landscapes and relative wildness respectively, though they did not give specifics about the particular landscapes in question.

6.52 Neither the council nor SNH objected in respect of adverse effects on relative wildness, though SNH gave the view that there would be a significant adverse effect on certain special landscape qualities of the Cairngorms National Park, including its quality of wildness.

6.53 We have set out our views above in respect of the proposed development's effect on the wildness special landscape quality of the national park. We did not find the adverse effect would be significant.

6.54 We acknowledge that the application site itself has some aspects of relative wildness. There is no human habitation within it and little habitation near it. Though there are tracks through it, much of it is currently only accessible in a vehicle designed for rugged terrain. However, much of the site is covered with commercial forestry and accessed by tracks made up for forestry vehicles. Much of it therefore does not have a high degree of perceived naturalness, though there are areas at the margins of the commercial crops and on the open moorland on Carn na Cailliche where there is a somewhat greater degree of perceived naturalness. The paths through the site are only rarely challenging, usually because of conditions underfoot and their distance from human habitation than any ruggedness of the terrain. There are modern artefacts evident through most of the area, including tracks, several huts and the nearby presence of the Rothes I and II turbines.

6.55 Overall, we consider that the application site is relatively wild compared to the neighbouring, more settled landscapes, and that the proposed development would reduce that wildness. We do not consider the degree of wildness of the application site is such that this would be a significant effect.

6.56 Glenarder is located at the edge of a relatively wild area, though within sight of the public road up the glen. The proposed development would be seen to the north east across

an agricultural field in a context where the settled valley of the Spey is seen to the east. We do not consider that there would be a significant adverse effect in terms of reduction of relative wildness.

Cultural heritage

6.57 Key documents:

- EIAR Chapter 9 Cultural Heritage
- 2019 AI Chapter 9

6.58 The assessment in the EIAR found there were two surviving boundary stones shown on the Ordnance Survey maps of 1874 and 1905, which were of local heritage importance. One was next to a track that required upgrading and the other within the proposed crane pad for turbine 7. The remains of an enclosure, also of local heritage importance, is within the search area for borrow pit D. These assets would require to be marked out or fenced off on site to prevent damage by construction vehicles. No significant effects, direct or indirect, were found in respect of any other historic features.

6.59 The assessment found low to moderate potential for buried remains of archaeological interest in areas of unmodified moorland with the site. The applicant proposed a watching brief for such areas to be agreed in a written scheme of investigation before commencement of development. Written guidelines would be provided to contractors to avoid unnecessary damage to known sites and to call upon professional support if remains are found.

6.60 Subject to this proposed mitigation, we find that the proposed development would not have a significant effect on cultural heritage assets.

Traffic and transport

6.61 Key documents:

- EIAR Chapter 12
- 2019 AI Chapter 12
- April 2020 SI – Supplementary Transport Information including Route Survey Report

6.62 Construction traffic is proposed to access the site from the existing access for the Rothes I and II windfarms on the A941. The EIAR examined the effects of construction traffic and also of abnormal loads associated with the original proposal. It found no significant effect from the increased traffic on traffic flows on the A95 and A941.
The 2019 AI found that the effects associated with the alternative proposal were less. The April 2020 SI found that the amount of construction traffic for both the original proposal and the alternative proposal was overstated in the assessment, since the assessment assumed that half of the required stone would be imported, though there was likely to be sufficient stone in the site borrow pits to supply all the needs of the construction. The April 2020 SI also provided an assessment of the importation of turbine parts in abnormal loads from the port of Inverness.

6.63 The council initially objected on the basis that the information submitted on transportation of turbine components, the consequent impact on the public-road network and the mitigation or modification measures required was inadequate to meet the requirements of LDP policies. It also objected on the basis that additional information was required on the volume of construction stone required to be delivered. It subsequently

accepted that there was sufficient information, taking into account the April 2020 SI, and did not object on grounds of transport effects, subject to the imposition of conditions.

6.64 Transport Scotland advised that transportation of the 74.3 metre turbine blades for the original proposal would result in considerable physical change to the trunk-road network and unfamiliar means of operating, such as the use of blade-lift technology to over-sail property outside the road boundary in Nairn. Such changes would require separate approval. However, Transport Scotland was not opposed in principle to the proposed development subject to the imposition of conditions that would require prior approval for the proposed route of abnormal loads, any accommodation works, and any temporary signage or other traffic-control measures on the trunk-road network.

Public access to land

6.65 Key documents:

- EIAR Chapter 16
- 2019 AI Chapter 16
- Applicant Inquiry Report (Nick Skelton)

6.66 The proposed development's effects on public access to land were assessed in EIAR chapter 16 and 2019 AI chapter 16. The applicant's socio-economics witness also gave evidence on this topic. The applicant's evidence is that, without mitigation, there would be significant effects during construction on a core path (SP01) and two public rights of way (GM7 – the Mannoch Road, and GM137). The applicant proposes that public access should be managed on these routes by providing temporary diversion during peak periods of construction activity and delivery of abnormal loads, continuous management of access throughout construction, and diversion and safety signs erected at appropriate locations on each section impacted. It finds that these effects would reduce the impact on access such that it would not be significant.

6.67 Regarding access alone, and leaving aside the effects on the visual amenity of these routes (which we deal with elsewhere), we agree with the applicant's assessment. We also note the possible improvements to access the applicant proposes, and consider that these could be incorporated in the access plan along with proposals for management of access during the proposed development's construction and operation.

Effects on other infrastructure: aviation and communications

6.68 Key documents:-

- EIAR Chapter 14 Aviation and Existing Infrastructure
- 2019 AI Chapter 14
- Ministry of Defence objection withdrawal letter of 10 January 2020
- Highland Gliding Club objection withdrawal letter of 27 February 2020

6.69 Chapter 14 of the EIAR and chapter 14 of the 2019 AI assess the potential impacts of the original and alternative proposals on civil aviation and Ministry of Defence interests, communication operations and existing site infrastructure respectively.

6.70 The Ministry of Defence initially objected to the proposed development on the basis of the proposed development's effect on primary-surveillance air-traffic-control radar at RAF Lossiemouth. It also stated that the development would affect low-flying training activities.

It withdrew its objection on the basis that conditions are imposed requiring aviation lighting on the turbines and a technical solution to be provided to mitigate the effect on radar.

6.71 The applicant's reduced scheme for aviation lighting on perimeter turbines is approved by the Ministry of Defence, Coast-Guard Search and Rescue Helicopter Services, Helicopter Emergency Medical Services and Highlands and Islands Airports Limited as well as the Civil Aviation Authority.

6.72 The Highland Gliding Club also initially objected but subsequently withdrew its objection to the proposed development without qualification.

6.73 No other aviation operator objected. There was no objection from any telecommunications operator.

Noise

6.74 Key documents:

- EIAR Chapter 13
- 2019 AI Chapter 13
- Inquiry Report (Andrew Chadderton)
- Applicant precognition (Robert Shepherd)

6.75 The EIAR assessed the effects of the original proposal. It assessed nearby properties to determine whether for any immissions would be greater than 28 dB $L_{A90,}$ a level 10 dB below the noise limit for existing turbines at the existing Rothes II windfarm. It found that at eight of the nearest properties, the predicted noise immissions would exceed 28 dB L_{A90}. However, the cumulative effect, assessed with existing and consented windfarms, was not predicted to exceed the limit of 38 dB L_{A90} at any property. Consequently the effects were not found to be significant.

6.76 The 2019 AI carried out a similar assessment for the alternative proposal with similar results.

6.77 The council's environmental health officer advised that noise from both the original proposal and the alternative proposal could be managed by appropriately worded conditions. The council and applicant disagreed on the regulation of excess amplitude modulation.

6.78 Andrew Chadderton raised a number of issues relating to noise, including the distinctive quality of turbine noise, the cumulative effect of noise from the existing and proposed windfarms, the effect of infrasound from turbines and the effect of amplitude modulation.

6.79 Wind-turbine noise undoubtedly does have a different quality from other types of noise. The audibility of such noise would to a degree detract from amenity, particularly in an area where generally only natural sounds are heard. The standards recommended for control of noise in the ETSU-R-97 study were intended "to minimise the adverse impact of noise without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens of business". One aspect of this aim is to set noise limits at a level that was unlikely to become a nuisance (since the statutory controls on nuisance noise remain in place, notwithstanding any standards set in a condition). The standards recommended in ETSU-R-97 do not aim to ensure turbine noise would be inaudible at the nearest properties.

6.80 Andrew Chadderton already sometimes hears turbine noise at his home at present from Rothes I and II. The evidence indicates that noise from the original proposal for Rothes III at Tapp Farm would be considerably less than 28 dB L_{A90} at a standardised 10-metre-height windspeed of 10 metres per second. Consequently it would be further than 10 dB below the limit on noise immissions for Rothes II. The increase in turbine noise as a result of the proposed development at Tapp Farm would be negligible.

6.81 The effect of infrasound was scoped out of the EIA, on the basis that the common cause of complaints associated with noise arose from the audible modulation of aerodynamic noise, not from the low frequency noise. The effect of infrasound has been the subject of a number of scientific papers, referred to in the applicant witness's evidence. We accept that there is no possibility the low level of sound energy, including infrasound and audible sound, associated with wind turbines would result in a direct effect on human body tissue. We do not accept that infrasound arising from the turbines of the proposed development is likely to result in any adverse effect on human health.

6.82 As regards the phenomenon sometimes known as "excess amplitude modulation" (though referred to in the applicant's evidence simply as "amplitude modulation"), the evidence before us was that this is a rare phenomenon that appears to arise where there is a high windshear together with the turbine being at an angle of pitch that causes it to stall at the top of its sweep. It is not possible in the current state of knowledge to predict whether it might arise in respect of a particular development. If it does arise, the circumstances under which it arises can be investigated and the conditions in which it arises can be predicted.

6.83 The council and the applicant agreed that the phenomenon could be addressed by condition, should it arise, though they disagreed on the form of the condition. We deal with the question of the condition's form in the conditions chapter.

Safety

6.84 SWM questioned the safety of wind turbines, referring to (though not providing to us) press articles reporting turbines failing or catching fire. While we have no doubt that such events do sometimes occur, there is no suggestion in the evidence that they are common. We understand that turbines are built to standards set both internationally and in the UK. The operation of commercial-scale turbines is subject to monitoring to help identify maintenance requirements. It is not in the interests of operators that machines should fall into disrepair. Furthermore, safe operation is regulated by the UK's health and safety regime. Given the location of turbines, remote from settlements or houses, we do not consider that the proposed development would present a significant risk of injury to humans.

CHAPTER 7: PLANNING CONDITIONS (AND MONITORING)

7.1 Key documents:

- Agreed draft conditions for the original proposal (CD15.8.1A)
- Agreed draft conditions for the alternative proposal (CD15.8.2A)
- Technical paper on noise (prepared by Rob Shepherd for the applicant)

7.2 For each of the original and alternative proposals, the council and the applicant provided agreed statements on the conditions that ought to be imposed on the proposed development should Ministers decide that consent should be granted. The form of most conditions was agreed.

Condition 7 - Control of turbine power rating and noise emissions

7.3 The council proposed that details of the power rating, sound power levels, tonality and a noise-limit assessment should be approved along with other turbine details.

7.4 As regards the power rating of the turbines, in our view, the public interest and the interest of the operator are aligned. The turbines should have the highest possible power rating while meeting the limits on noise immissions. We therefore do not consider it requires to be further controlled.

7.5 As regards the sound-power levels and tonality, we consider that it is appropriate the planning authority should be informed of these and give its formal approval of them. This would provide information for the council to predict performance against immissions limits. However, immission limits already define what is acceptable in terms of noise. We do not consider that a requirement in a condition to obtain the council's approval of sound-power levels and tonality would give the council discretion to restrict the choice of turbine with the purpose of ensuring immissions lower than the limits, which have been found to be acceptable.

7.6 We understand the noise-limit assessment to be related to condition 23 in the parties' joint list of conditions. We will deal with it in respect of that condition.

Control of excess amplitude modulation (EAM)

7.7 Condition 22 in the parties' joint list of conditions deals with limits on noise immissions at dwellings. Although the applicant and council agreed on most aspects of the management of noise from the proposed development, they had a substantive disagreement over the form of condition for managing the phenomenon of excess amplitude modulation (EAM).

7.8 The council proposed a condition and associated guidance note in a form that was in 2017 recommended by the Institute of Acoustics and subsequently published in expert journals. It has the effect of applying an amplitude-modulation penalty ("AM penalty") in addition to any tonal penalty if the noise contains or is likely to contain EAM (except where the two penalties relate to the same noise characteristic, such as amplitude-modulated tones). The applicant argued that it would be preferable for a condition to require a scheme to be provided if there was a complaint about noise at a property that appeared to the council to involve excess amplitude modulation (and this requirement to provide a scheme was set out in the applicant's preferred version of guidance note 4, accompanying the condition).

7.9 The council's condition would provide certainty. However, the applicant made two points against it. First, it pointed out that neither the Institute of Acoustics nor anyone else had provided a method that defined when EAM occurred (the condition dealt only with how it should be treated if it did arise). Second, it argued that knowledge of EAM has moved on since the proposed condition was published by the Institute of Acoustics. It is now known that the level of EAM is not necessarily worst in downwind conditions for which the noise-immission limits are set. It can often occur in conditions when downwind measured noise levels are not at their highest. The applicant argued that, if EAM should appear to be occurring, it is better to investigate the specific occurrences and provide a solution. The council's proposed condition simply provides for a penalty and not for an investigation. Furthermore, the council's condition would apply the penalty not only if the noise is known to include EAM, but also if the noise "is likely to contain" EAM, therefore potentially in a case where the existence of EAM has not been confirmed, even though the condition requires no investigation. The council did not reject these criticisms of the condition, but emphasised that the condition represented the published best practice.

7.10 Excess amplitude modulation is a sufficiently rare phenomenon that its occurrence at any particular windfarm is no more than a possibility. There is no present means of predicting whether it would occur at the proposed development, but given its rarity, it is more likely not to occur than otherwise. There is a statutory regime for the control of nuisance, including noise nuisance. This places the duty on the local authority to take such steps as are reasonably practicable to investigate a complaint of a nuisance and to serve an abatement notice if it is satisfied a nuisance exists. The statutory regime would not be excluded if a condition is imposed on permission. This, together with the limited likelihood of EAM occurring, raises the question for us of whether a scheme condition would have any value.

7.11 The council argued that amplitude modulation would not necessarily amount to a nuisance under the statutory regime. We doubt that a condition would be necessary to address a noise effect of the proposed development that did not amount to a nuisance. Nonetheless, we consider it is possible that amplitude modulation, if it should occur, would amount to a nuisance. In view of that, we consider that a condition that provides some certainty as to the regime to address such a nuisance, and particularly the role of the windfarm operator in doing so, could properly be applied.

7.12 We accept the criticisms of the council's proposed condition. We do not consider it would appropriately address EAM, should it arise, and we consider it would potentially unfairly penalise the operator of a windfarm if a penalty is applied when EAM is not occurring. We consider that the applicant's proposed condition has the advantage that it places the burden of providing for investigation of a complaint on the windfarm operator rather than on the council. For this reason, we consider it is appropriate to apply such a condition. We note that in their decision on the Paul's Hill II windfarm, Ministers imposed a condition in similar terms. A condition in such a form would not detract from the council's statutory powers in respect of nuisance.

Verification of noise performance

7.13 The council proposed a condition (condition 23 in the parties' joint list of conditions) that would require the applicant to employ an independent noise consultant to check the performance of the proposed development, once installed, against the noise-immission limits set in condition 22. It may be that such a condition will often be necessary for commercial windfarms. However, in this case, the predicted noise levels for the candidate turbine at neighbouring properties are low – lower than the limits set in the condition, which are themselves set with a view to controlling cumulative noise at a level lower than the

upper level recommended in ETSU-R-97. Condition 22 already provides a reactive system whereby complaints in respect of noise are to be investigated. In these particular circumstances, we do not consider that a verification test is required.

Shadow flicker

7.14 The council sought a condition (condition 24 in the parties' joint list of conditions) requiring the approval before commencement of development of a scheme for avoidance of shadow flicker caused by the proposed development. Shadow flicker is a phenomenon that occurs within houses caused by the shadow of a blade passing across a window. The Scottish Government's guidance indicates that shadow flicker would not normally be expected to be a problem more than ten rotor diameters from the proposed development. In this case, the maximum rotor diameter would be 150 metres. The material before us does not indicate there are any houses within 1.5 kilometres of any proposed turbine. The nearest houses are to the south, south east and east about two and a half to three kilometres away. Therefore shadow flicker would not normally be expected to have an adverse effect on amenity.

7.15 The council suggested that where turbines are placed on higher ground, there could be an effect arising from shadow flicker, notwithstanding the greater distance. It suggested that a problem might arise at properties to the east of the proposed development. The applicant pointed out that shadow flicker had been scoped out of the EIA, that the council had not objected to its being scoped out, and only raised the point in respect of conditions.

7.16 It seems unlikely to us that shadow flicker would be a problem in properties some distance south or south-east of the proposed development, since long shadows are unlikely to be cast in those compass directions. There is one property shown in the residential visual amenity survey to the east of the proposed development – property 10 Allachrow. The residential amenity assessment states that four turbine blades of the original proposal would theoretically be visible from the property but views to the west from the property are screened by the presence of the outbuildings and mature trees around the perimeter of the property, such that they would not be visible. There would be no visibility at all from Allachrow of the alternative proposal's turbines. We do not consider problematic shadow flicker is likely to arise in such circumstances. Consequently, we find a condition in the form sought by the council would not be necessary.

Control of borrow pits

7.17 The council provided a set of bespoke conditions for control of borrow pits and particularly for control of blasting, drilling and effects of such activities including noise and vibration. The applicant argued that bespoke conditions were unnecessary, since measures for control of borrow pits were to be approved as part of the construction environment-management plan (CEMP). The council argued specific conditions were more certain. The applicant argued that some borrow pits at the site were already operating for other purposes and had received no complaints and so did not need specific treatment.

7.18 The CEMP, provision for which is made in condition 13, covers a great range of topics. Many of these are very important for protection of the environment or of amenity. This includes not only the matters set out in the council's proposed borrow-pit conditions, but also matters such as post-construction restoration of borrow pits. We do not consider that because the details of control are left to be determined in the CEMP, they would be of any lesser status or any less enforceable. We do not consider it is necessary to introduce specific conditions to cover matters that can be dealt with in the CEMP.

7.19 One matter in the council's conditions that may not be covered in the requirements for the CEMP is monitoring of blasting. We have slightly amended the relevant requirement for the CEMP to take account of that.

Other matters

7.20 In condition 13, we added two matters to be addressed in the CEMP. These are requirements for water-quality monitoring and for protection of parish-boundary stones identified in the EIAR's cultural-heritage chapter. These were both measures identified in the EIAR's schedule of mitigation, which did not appear to us to be covered in the conditions or likely to be covered in other consents.

7.21 We have made some minor adjustments and corrections to some other conditions. These include:

- condition 12, where we considered there was no good reason for inconsistency with the equivalent condition proposed for the proposed Clash Gour windfarm in terms of the time within which a scheme for removal of a failed turbine was to be submitted. We therefore required the scheme to be submitted within 28 days of the end of a 12-month period of failure.
- condition 16, the form of which we have revised to make more readable, though we have not removed any of the substantive requirements.

Conditions for the alternative proposal

7.22 There are some minor differences in the proposed conditions for the alternative proposal from those for the original proposal. Condition 7 is in a different form, to limit the grant of permission to the development as described in the 2019 AI. Lower noise-immission limits are set in condition 22. Otherwise our recommended conditions are in the same form as those for the original proposal.

Conclusion

7.23 We are satisfied that the conditions set in Appendix 3 of this report for the original proposal and Appendix 4 for the alternative proposal are necessary and reasonable and should be imposed on any consent granted.

7.24 There are definitions at the end of the conditions. We note that the definition of "the Development" would require to be adjusted depending on the form of any consent.

CHAPTER 8: OVERALL CONCLUSIONS AND RECOMMENDATION

Whether the alternative proposal is in substance different from the original proposal

8.1 In chapter 1 of this report, we set out the issues relating to our acceptance of evidence in respect of the alternative proposal. We considered that the question of whether the Scottish Ministers could grant consent for the alternative proposal as described in the 2019 AI (rather than just considering the original proposal) depends on whether the alternative proposal is in substance different from the original proposal. We considered we ought to hear evidence at the inquiry before giving a final view on this question.

8.2 In the course of the evidence, we heard nothing that suggested to us that the alternative proposal would raise substantial new planning issues or open substantial new grounds of planning objection not available in respect of the original proposal. None of the parties sought to argue otherwise in their evidence or submissions to the inquiry. Consequently we find that the alternative proposal is not in substance different from the original proposal. We therefore find that it would be open to Ministers to grant permission for the alternative proposal instead of the original proposal.

8.3 We understand that this can be done by imposing a condition on the grant of permission that restricts development to that constituting the alternative proposal. Condition 7 in our draft conditions for the alternative proposal in this report's appendix 4 is intended to have this function.

8.4 The applicant supplied us with altered descriptions for the alternative proposal both for consent under section 36 of the Electricity Act and for deemed planning permission. We have supplied those descriptions in this report's appendix 2. We do not know whether the proper approach would be to alter the description from that in the application or whether consent should be granted for the development as originally described (in appendix 1) but subject to condition 7, which restricts what may be developed such that only the alternative proposal could be built out. We understood the view of the applicant to be that the latter approach was correct. If Ministers are minded to grant consent for the alternative proposal, this is a matter on which they may wish to seek legal advice.

Scottish Natural Heritage

8.5 Scottish Natural Heritage did not object to the proposed development. It provided written submissions on its landscape and visual and ecological effects. We considered we had adequate information at the inquiry on these matters and did not find it necessary to require it to attend the inquiry.

Policy assessment of the proposed development

National planning policy

8.6 We have found that renewable-energy development draws support in principle from national planning policy for the purpose of achieving the Scottish Government's statutory emission targets and its renewable-energy targets.

8.7 We have found that the proposed development would not have a significant adverse effect on peat (neither the original proposal nor the alternative proposal). Consequently, although part of it would be within an area excluded from group 3 in the spatial framework because it is mapped for deep peat, we find that the whole development may be treated as being in a group-3 area. Consequently, according to SPP table 1, it is likely to be acceptable subject to detailed consideration against policy criteria.

8.8 As regards the criteria set out in SPP paragraph 169:

- The proposed development (both the original and alternative proposal) would have a significant net economic benefit over the short term in consequence of value added to the local economy and creation of employment. It would have a non-significant benefit over the longer term.
- Both the original proposal and the alternative proposal with installed capacity of up to 137.4 MW and 116.8 MW respectively would make a significant contribution to meeting renewable-energy targets.
- The additional capacity for renewable-energy generation of either the original proposal or the alternative proposal would represent tangible progress to providing the additional onshore-wind capacity that the CCC has found would be necessary to meet the UK and Scottish emissions-reduction targets.
- The original proposal would have some significant adverse effects on the views from individual houses, but the number of houses affected is relatively small for a project of such a scale. The alternative proposal would have a significant adverse effect on one house. Both the original and alternative proposals would have a significant cumulative effect on views from the house at Glenarder with Paul's Hill II and Clash Gour. Neither the original nor the alternative proposal would have so overwhelming an adverse effect on residential amenity as to cause any dwelling to become an undesirable place to live.
- Taking a precautionary view, we have found the original proposal would have a significant adverse effect locally on capercaillie. Subject to the implementation of mitigation measures, the proposed development would not have any other significant adverse effect on natural heritage, including capercaillie and other bird species. In our view, the habitat-management plan is likely to have an overall positive effect regionally on capercaillie and black grouse.
- Subject to conditions requiring micrositing in consultation with SEPA, the proposed development would not have a significant adverse effect on peat. Even on realistic worst-case assumptions, it would payback the greenhouse-gas emissions involved in its construction within an acceptable period. Subject to such micrositing conditions and to good construction practice which can also be secured by condition, there would not be a significant adverse effect on the site's hydrology, the water environment or flood risk. There would also be peat restoration associated with the proposed development's habitat-management proposals, account of which is not taken in the carbon balance.
- Subject to conditions, neither the original nor the alternative proposal would have a significant adverse effect on public access on core paths. There would be some significant adverse visual effects for walkers on some core paths and promoted routes, but the effect on the Speyside Way would be very limited.
- Subject to conditions, there would be no significant effect on the historic environment.
- While we acknowledge the concerns of objectors, including of owners of holiday lettings such as Glenarder, we have not found evidence to indicate that there would be a significant adverse effect on tourism or recreation.
- Subject to conditions, there would not be a significant adverse effect on aviation or defence interests, road traffic or adjacent trunk roads.
- We have taken into account the need for the development's decommissioning and for site restoration. We consider that the necessary measures can be secured by condition.

8.9 The remaining issue to be dealt with in terms of national policy is the landscape and visual effects of the proposed development. In accordance with SPP paragraphs 202 and 203, which provide that:

- the proposed development should take account of potential effects on landscapes, including cumulative effects,
- adverse effects should be minimised through careful planning and design, and
- consent should be refused where the nature and scale of the proposed development have an unacceptable impact on the natural environment.

8.10 We also require to consider relevant policy in respect of the effect on the national park, and particularly SPP paragraph 212.

8.11 We have also found that considerations related to sustainability in SPP paragraph 29 of the proposed development are relevant to determination of the application. These considerations inform an assessment of whether, overall, the proposed development is, in terms of paragraph 28, the right development in the right place.

Development plan and other local policy and guidance

8.12 We found that policy DP9 on renewable energy was the lead policy for assessing the proposed development. In terms of this policy, the proposed development is (because issues in respect of deep peat have been resolved) not to be treated as within an area of significant protection and should be treated as an area where proposals are likely to be acceptable, subject to detailed consideration.

8.13 We do not consider that either the original or alternative proposal would have an unacceptable effect on the amenity of any community as a result of noise, shadow flicker or (even though there would be some significant effects on views from certain houses) visual dominance. There would not be a permanent loss or damage to prime agricultural land. Neither the original nor alternative proposal would have unacceptable effects on aviation or defence. They adequately resolve impacts on the natural and historic environment, cultural heritage, biodiversity, forest and woodlands, and (leaving aside the question of the acceptability of landscape and visual effects) recreational paths and tourist facilities. Subject to conditions, the proposed development addresses physical site constraints and makes appropriate provision for decommissioning and restoration. The proposed development would use existing access infrastructure of the Rothes I and II windfarms and so does, to a degree, limit the need for additional footprint. We have not found any adverse effect that would result in either proposal not complying with policy on safeguarding the built environment.

8.14 We consider that the key remaining issues under the policy are:

- the acceptability of landscape and visual effects (including whether cumulative landscape and visual effects would be acceptable)
- whether the proposed development is appropriate to the scale and character of its setting, respects the main features of the site and the wider environment and addresses the potential for mitigation, and
- whether the proposed development complies with policy EP3 on special landscape areas and landscape character, the relevant policy on protection of the natural environment.

In making an assessment of these points, we consider it is appropriate to take account of the non-statutory guidance in MOWE and recommendations in MWELCS.

8.15 We do not consider that policy DP1 raises any additional issues to those raised by policy DP9.

8.16 If we are wrong that policy DP5 is irrelevant to the proposed development, we find that there is a need for the proposed development to be in a rural location and there are no issues in relation to the standard of design and consequent effects that are not otherwise raised by policy DP9.

8.17 We have found the first part of policy EP3 (which deals with development within a special landscape area) does not apply to the proposed development. The second part of the policy, which requires design to reflect landscape characteristics identified in the landscape character assessment for the area of the application site, does apply to the proposed development. The effect of the proposed development on the character of the designated landscape of the valley of the Spey is a relevant consideration in this regard.

Acceptability of landscape and visual effects

8.18 The question of whether landscape and visual effects of a windfarm development are acceptable is, in our view, to be determined having regard to the benefits of the proposed development in terms of its contribution to meeting targets for renewable-energy generation and for emissions reduction and, thereby, to address the global climate emergency. This is also so as regards the related questions of the degree to which effects have been minimised and potential for mitigation secured, and the appropriateness of the proposed development to the scale and character of its setting. We start from a position that commercial-scale windfarm development of the type supported by policy both nationally and in the Moray LDP will have adverse landscape and visual effects and that, as SNH confirmed (CD7.13) in respect of the emissions-reduction targets set in 2009, government policy involves a future level of landscape change for most planning authorities. Furthermore, it seems to us that the necessity, identified in evidence to the inquiry, for further onshore windfarm development in order to meet Scotland's emissions-reduction target, must inevitably lead to greater effects, arising because of the necessity of larger turbines in order to make efficient use of the wind resource and of the expansion of development.

The alternative proposal

8.19 There are plainly advantages in landscape and visual terms to locating the proposed development next to the existing Rothes I and II. The direct effect on landscape is minimised by use of existing infrastructure. The adverse landscape and visual effects of the development, particularly from higher viewpoints, are limited by concentrating it in the upland landscape character type which is more able than more detailed lower-lying landscapes to absorb the landscape and visual effects of the proposed development. While we acknowledge that there would be some disparity in turbine size and layout between the existing turbines and the turbines of the alternative proposal, it would not be such as to be a substantial element in adverse effects.

8.20 We have found that certain significant adverse effects would be almost inevitable if the area in LCT 10 identified in MOWE and MWELCS is to be developed for a commercial-scale windfarm. These include, in particular, the combined effect with existing turbines on the upland landscape, and the landscape and visual effects to the south of the Spey around viewpoint 6 and effects at higher viewpoints such as Ben Rinnes and Ben Aigan, which look down into the core of the upland. Although not all the proposed turbines are within the mapped boundary of the area of greatest potential for very large turbines identified in MWELCS, we consider that the alternative proposal for the most part satisfies its recommendations for a landscape strategy. This is reflected in its very limited effects on

lower-lying adjacent landscapes and visual receptors to the west, north, east and south east.

8.21 There is one particular respect in which we consider the MWELCS recommendations are not met: the alternative proposal's design locates turbines on the eastern slopes of Càrn na Cailliche, contrary to the guidance in MOWE and the recommendations in MWELCS. The degree of effects the proposed development would have in the lower-lying landscape to the south and south west of the proposed development around Upper Knockando, viewpoint 18 and viewpoint 19 is related to this design decision. Nonetheless, the applicant's evidence is that the turbines located on Càrn na Cailliche would be among the most productive in the proposed development. Their removal from the design would have resulted in the loss of almost a fifth of the power the windfarm would generate. There is consequently a design logic to their location. The turbines' height and their location on the eastern side of the hill means that the hill still acts as an effective buffer in closer views to visibility of the turbine development in the upland's core.

8.22 While there would be significant adverse effects on the Spey Valley SLA, we do not find these to be extensive when considering the proposed size of the development and its proximity to the SLA. As we have found, these effects would very largely be excluded from the most sensitive part of the designation and would arise over relatively small areas. They would not substantially diminish the integrity of the designation.

8.23 Overall, we consider that the proposed development's design has taken account of its potential individual effects on landscape.

8.24 We have found the alternative proposal would have very limited cumulative effects with consented development, the only significant effect we have found being its effect on the summit of Ben Aigan with Hill of Towie II. As regards cumulative effects with proposed development, we have found that there would be some significant effects arising from the interaction with the eastern group of Clash Gour, particularly landscape and visual effects on the upper valley side south of the Spey around viewpoint 6, the effect on the view from Ben Rinnes, and the sequential effect on the A95.

8.25 In the context of a proposal for a windfarm with a 116 MW capacity, we consider that the landscape and visual effects of the alternative proposal, including its cumulative effects, are limited. Given the amount of new development required to achieve government targets for renewable energy and emissions reduction, and particularly the challenging Scottish emissions-reduction target, we consider that the alternative proposal's landscape and visual effects are well within the level of effect that will have to be accepted.

The original proposal

8.26 As regards the location of the original proposal next to the existing Rothes I and II, some of the same advantages apply as for the alternative proposal. As with the alternative proposal, the direct effect on landscape is minimised. There would be adverse combined effects though. We have found that the contrast in turbine height and layout and rotation speed would be a substantive element in significant effects at the elevated viewpoints of Ben Rinnes, Ben Aigan, the Gordon Monument in Elgin and Càrn a' Ghille Cheàrr. The OWPS 2017 envisaged that new and larger turbines would be used in the extension of existing sites. In the context of evidence about the extent of new onshore-wind development required, we consider that some adverse effects arising from a contrast of neighbouring turbine sizes will have to be accepted. In the case of the original proposal, we have found that the areas in which the contrasting effect would be seen is relatively limited to views from more elevated locations, though we acknowledge the significant effects we have identified are at locations of high sensitivity.

8.27 We have found that the original proposal's significant effects on the valley side south of the Spey around viewpoint 6, where there would be views of all the turbines, are only somewhat greater than those of the alternative proposal, notwithstanding the greater height and number of the proposed turbines.

8.28 However, the greater height of the proposed turbines and the extension of the proposed development to the south would result in greater effects than the alternative proposal within the SLA particularly in the transitional area of LCT 10 and to the south west around and south of Upper Knockando. Càrn na Cailliche's role as a buffer would be considerably diminished (though it would still perform that role in most shorter views). The proposed turbines would dominate its skyline in locations to the west and south west where the turbines would be seen from the valley sides above the hill. The same factors also intensify the significant visual effects in the inner valley of the Spey at viewpoint 18 and cause a significant effect at viewpoint 5 east of Craigellachie, though both these effects are relatively limited in their extent. They would also cause the significant visual effect on the B9010. These effects could have been avoided if the advice in MWELCS as regards turbine height had been followed and turbines had been kept within the mapped boundary of the area of greatest potential, but the result would have been a design for a much smaller windfarm. The original proposal is more than 18% larger in terms of installed capacity than the alternative proposal. It is likely that a development that complied fully with the MWELCS recommendations in these respects would have had a capacity considerably smaller than the alternative proposal.

8.29 Notwithstanding the greater intensity of effects and the greater range of areas affected within the SLA, its most sensitive part, the inner valley, with the exception of the adverse visual effect at Blacksboat Bridge, would not be affected. We do not consider, even given the more intense effects in the western part of the SLA, that its overall integrity would be compromised by the effects of the proposed development alone. The apparent effectiveness of the protection accorded by the SLA in the transitional area of LCT10 and the area of LCT 7 around Upper Knockando would be diminished though.

8.30 Although there would be adverse effects in the national park at the summit of Càrn a' Ghille Cheàrr and, over a limited area, on certain of its special landscape qualities, we do not consider the park's objectives or overall integrity would be compromised.

8.31 Like the alternative proposal, the original proposal would have limited cumulative effects with consented development, the only significant cumulative effect that we have identified being the visual effect at Ben Aigan.

8.32 We have found that the original proposal's significant cumulative effects with other proposed development would primarily relate to its effects with the eastern group of Clash Gour (though there would be a significant cumulative visual effect with Hill of Towie II at the summit of Ben Aigan). The most concerning effects would occur particularly in the transitional area of LCT 10, on the view into the Moray uplands from Ben Rinnes, in the area of Upper Knockando, and on the upper southern side of the valley of the Spey and as sequential effects on the B9102 and A95. There would consequently also be a significant cumulative effect on the SLA. We have also found a significant cumulative effect on views from the holiday house at Glenarder with Clash Gour and the consented Paul's Hill II, though the primary effect there is that of Paul's Hill II. The extent and degree of intensity of these cumulative effects is such that we have considered whether it would be appropriate to recommend refusal either of the original proposal or of Clash Gour.

8.33 However, we do not consider that that would be appropriate. We have accepted evidence that considerable new onshore-wind development is required and Clash Gour and Rothes III would make a substantial contribution to meeting that requirement. We consider

in this case that the clustering of turbines in this upland landscape is best able to absorb their effects and is the most effective way of building sufficient new capacity while limiting significant landscape and visual effects so far as possible. We accept that new development is likely to involve larger turbines. Without diminishing the degree of the cumulative effects, we find that they are still relatively limited in proportion to the very large scale of the two developments.

8.34 In view of this, taking account of the scale of the original proposal, we consider that opportunities to minimise adverse effects were taken in the design of the proposed development. Overall, we find that the landscape and visual effects of the original proposal are acceptable.

Policy conclusions on landscape and visual effects

8.35 In view of this conclusion, we consider that the effects of both the original proposal and the alternative proposal would be acceptable in terms of both SPP paragraph 203 and with Moray LDP policy DP9. Notwithstanding the location of turbines on Carn na Cailliche, we find that the proposed development is designed sufficiently to reflect the relevant landscape character assessment, and so to accord with Moray LDP policy EP3. Consequently it would accord with the development plan overall. As regards the proposed development's effect on the Cairngorms National Park, since there would not be an adverse effect on the designation's integrity, we find neither the original proposal nor the alternative proposal would be contrary to SPP paragraph 212. Further, the adverse effects on the park's special landscape qualities would be outweighed by the environmental benefits arising from the proposed development's contribution to meeting the emissions-reduction targets and socio-economic benefits including the investment and job creation for its construction and operation.

Sustainability

8.36 As regards the considerations in SPP paragraphs 28 and 29, insofar as relevant:

- We have found that the proposed development would have a significant net economic benefit in the short term. There would also be a net economic benefit in the longer term.
- The proposed development would align with CCC recommendations for achieving the Sixth Carbon Budget, with the UK Government's *Net Zero Strategy* and with the Scottish Government's *Programme for Government 2021*. We do not consider that the proposed development would cut across the *Moray Economic Strategy*. In terms of creation of professional jobs locally, it would go some way to address the challenges it identifies. It would also provide opportunities for Moray's established engineering capacity in renewable industries.
- We have found that the design of the original proposal results in a development whose significant adverse landscape and visual effects are in proportion to the amount of installed capacity it would provide. We consider that the design of the alternative proposal would result in relatively limited landscape and visual effects for a development of such a size. We have acknowledged that landscape and visual effects could have been reduced, but only at the cost of considerably reducing installed capacity.
- Since the proposed development uses infrastructure of Rothes I and II and existing forestry tracks, we consider it makes efficient use of the existing capacities of the site.
- The proposed development would delivery necessary energy infrastructure and would support climate-change mitigation.

- We do not consider that the proposed development would be contrary to the Scottish Land Use Strategy.
- Given the proposals for management of public access during construction and for provision of a new promoted path, we find the proposed development would offer opportunities for physical activity and would promote access to natural heritage.
- Insofar as cultural heritage is impacted by the development, it can be suitably protected by condition.
- Although the original proposal is very large, with very large turbines, and a number of related significant adverse landscape and visual effects, we have not found it to be over-development, since we consider its adverse effects to be in proportion with the amount of installed generating capacity that it would provide. The alternative proposal would also not be over-development, notwithstanding its significant effects. We consider the cumulative effect of the original proposal with Clash Gour in particular raises the question of whether such an increase of turbines in the upland Moray landscape charater types of LCT 10 and 11 would amount to over-development. We have found that although the cumulative landscape effect would extend into the more-sensitive lower lying valley of the Spey, the area of combined visibility of the two developments would not be extensive. Bearing in mind the need for renewable-energy development and the very large contribution that the two developments would make, we do not consider that the result would be over-development. The cumulative effect of the alternative proposal with Clash Gour would be very much less.

8.37 Overall, we consider that, notwithstanding its adverse effects, the original proposal would be sustainable. We find, consequently, that the original proposal would be the right development in the right place. We consider that consenting the proposed development would be consistent with Ministers' sustainability duty under the Climate Change (Scotland) Act 2009.

Reporters' overall conclusions

8.38 We reach the following conclusions as regards matters set out in schedule 9 of the Electricity Act 1989, to which Ministers are required to have regard:- We have not found any basis in respect of the proposed development's effects on flora, geological or physiographical features of special interest, or sites of architectural, historic or archaeological interest for refusal of consent for it. We have not found any likelihood of injury to fisheries or to stocks of fish in any waters. We have found that the original proposal would have a locally significant adverse effect on capercaillie, though we consider that finding precautionary, and have also found that there would be a benefit to capercaillie regionally from the habitat-management plan associated with the proposed development. We have not found any other significant adverse effect on fauna. We have found that both the original proposal and the alternative proposal would have significant adverse landscape and visual effects, and some significant adverse effects on views from houses. In this respect the proposed development would have adverse effects on natural beauty. However, we have found that these effects are acceptable in terms of Ministers' policy and in terms of the development plan, given the degree of benefits arising from both the original proposal and the alternative proposal.

8.39 We consider that consenting the original proposal would be for Ministers the action most sustainable and best calculated to achieve the statutory emissions-reduction targets, and therefore the action indicated by their duties under section 44(1) of the Climate Change (Scotland) Act 2009.

8.40 Having found that the original proposal's landscape and visual effects are acceptable and taking that together with the benefits of the proposed development, including its significant short-term economic benefits and substantial contribution to achieving targets for emissions reduction and renewable-energy generation, we consider that the balance lies in favour of granting consent for the original proposal. Consequently, we recommend that the original proposal should be approved, subject to the conditions set out in the first part of appendix 3 of this report and that deemed planning permission should be granted subject to the conditions in the second part of appendix 3.

8.41 We acknowledge that our recommendation arises from a relatively fine balance of the proposal's adverse effects with its benefits. If Ministers should disagree with our recommendation, we would still recommend that consent and deemed planning permission is granted for the alternative proposal and that the consent and deemed permission should be subject to the relevant conditions in appendix 4 of this report.

8.42 It may be that Ministers will find the cumulative landscape and visual effects of the original proposal with the proposed Clash Gour windfarm would be unacceptable. We have found that those cumulative effects, at least in respect of the area around Upper Knockando, would be reduced by consenting the alternative proposal. If Ministers were still to find the cumulative effects of the two windfarms unacceptable, we recommend they refuse the proposed development rather than Clash Gour, given the greater contribution of Clash Gour to achieving the statutory targets.

Environmental impact assessment

8.43 Chapter 1 of this report sets out the arrangements for the public to participate in the inquiry process that we held. There is nothing in the submitted information that indicates to us any insufficiency in the arrangements for the public to participate in the process before the case was passed to us for the purpose of the inquiry.

8.44 By virtue of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, Scottish Ministers' decision notices are required to provide, if consent is granted, a reasoned conclusion on the significant effects of the development on the environment. Our report found that the proposed development would have significant adverse landscape and visual effects. These are summarised in the table at the end of this report's chapter 3, and our reasoning is set out in that chapter. We have also found that the original proposal would have a locally significant adverse effect on capercaillie (as set out in this report's chapter 4) and a significant short-term socio-economic benefit (as set out in this report's chapter 5). Subject to the conditions we have proposed, we have not found that the proposed development would have any other significant environmental effects. Our conclusions on the significant effects are, in our view, up to date at the time of submission of this report. Our proposed conditions include provision for an ecological clerk of works to be appointed during the construction and decommissioning of the proposed development to monitor compliance with proposed mitigation secured by condition.

Appropriate assessment

8.45 We consider that, if Ministers are minded to grant consent, they are required to carry out appropriate assessment in respect of the proposed development's effects on the Darnaway and Lethen Forest SPA, Anagach Woods SPA and River Spey SAC. We have set out our conclusions and recommendations in respect of the appropriate assessment of the two SPAs in chapter 4 of this report and our conclusions and recommendations in respect of appropriate assessment of the River Spey SAC in chapter 6 of this report. We do not consider that, subject to conditions, there would be an adverse effect on the integrity of any European site.

Robert Seaton
Karen Black
Reporters

APPENDIX 1 Description of the original proposal

s36 Electricity Act 1989 Consent

Consent is granted for a development of the description in Part 1 of the description below subject to the exclusions described in Part 2:

Part 1 - Description of Development

The construction and operation of a wind powered generating station with an installed capacity of over 50 MW known as Rothes III Wind Farm situated at Carn na Cailliche, approximately 4km west of Rothes and 7 km north east of Upper Knockando in the administrative area of Moray Council. The Ordnance Survey grid reference for the Site is 320933E, 848356N. The location of the Development is shown on Figure 1.1 within the Environmental Impact Assessment Report submitted in February 2019.

The Development includes:

- Up to 29 three-bladed horizontal axis wind turbines;
- External transformer housing;
- Site tracks;
- Crane pads;
- Turbine foundations
- Two substations;
- Underground electricity cables;
- Temporary construction and storage compounds;
- Up to six temporary borrow pits; and
- Associated works/infrastructure;

Part 2- Excluded Development

This following exclusions are made from this consent:

- 1 turbine – numbered T15 (identified on EIAR Fig 1.2);
- Any associated access tracks,
- Any associated crane hard standing areas.

Description of development – deemed planning permission under s57(2) of the Town and Country Planning (Scotland) Act 1997

The erection and operation of a wind farm of up to 29 wind turbines and associated development on land situated at Carn na Cailliche, approximately 4km west of Rothes and 7 km north east of Upper Knockando within the planning jurisdiction of Moray Council. This site of the wind farm and the location of the proposed development within the site is shown edged red on the attached plan (being EIAR Figure 1.2).

APPENDIX 2 Description of the alternative proposal

Description of development – s36 Electricity Act 1989 consent

Notwithstanding the description of the development in the application, consent is granted only for a development of the following description:

The construction and operation of a wind-powered generating station with an installed capacity of over 50 MW known as Rothes III Wind Farm situated at Carn na Cailliche, approximately 4km west of Rothes and 7 km north east of Upper Knockando in the administrative area of Moray Council. The Ordnance Survey grid reference for the Site is 320933E, 848356N. The location of the development is shown on figure 1.1 within the Additional Information submitted in December 2019 ("the 2019 AI").

The development includes:

- Up to 23 three-bladed horizontal axis wind turbines;
- External transformer housings;
- Site tracks;
- Crane pads;
- Turbine foundations;
- Two substations;
- Underground electricity cables;
- Anemometry masts;
- Temporary construction and storage compounds;
- Up to six temporary borrow pits; and
- Associated works/infrastructure;

Description of Development – Deemed Planning Permission under s57(2) of the Town and Country Planning (Scotland) Act 1997

The erection and operation of a wind farm of up to 23 wind turbines and associated development on land situated at Carn na Cailliche, approximately 4km west of Rothes and 7 km north east of Upper Knockando within the planning jurisdiction of Moray Council. The site of the wind farm and the location of the proposed development within the site is shown edged red on the attached plan (being figure 1.2 in the 2019 AI).

APPENDIX 3 Recommended conditions for the original proposal

Recommended conditions of section 36 consent	
1.	**Duration of the consent** (a) The consent is for a period of 35 years from the date of Final Commissioning. Written confirmation of the date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date. (b) Written confirmation of the date of First Commissioning shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month after that date. Reason: To define the duration of the consent
2.	**Commencement of development** (a) The Commencement of the Development shall be no later than five years from the date of this consent, or in substitution, such other period as the Scottish Ministers may hereafter direct in writing. (b) Written confirmation of the intended date of commencement of Development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date. Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period and to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.
3.	**Non-assignation** (a) This consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignation of the consent (with or without conditions) or refuse assignation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. (b) The company shall notify the Planning Authority in writing of the name of the assignee and principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of their consent to the assignation. Reason: To safeguard the obligations of the consent if transferred to another company.
4.	**Serious incident reporting** In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the Scottish

	Ministers, and confirmation of remedial measures taken and/or to be taken to rectify the breach, within 24 hours of the incident occurring. Reason: In the public interest, to keep the Scottish Ministers informed of any such incidents.
5.	**Radar Mitigation** (a) No wind turbine shall be erected unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of wind turbines upon air safety has been submitted to and approved in writing by the Scottish Ministers in conjunction with the Ministry of Defence (MOD). The Air Traffic Control Radar Mitigation Scheme (ATCRMS) is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth ("the Radar") and the air traffic control operations of the MOD which are reliant upon the Radar. The ATCRMS shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the lifetime of the development provided the Radar remains in operation. (b) No wind turbine erected as part of this development shall be permitted to rotate its rotor blades about its horizontal axis, other than for the purpose of testing radar mitigation for this development for specific periods as defined in the approved Air Traffic Control Radar Mitigation Scheme (ATCRMS) or otherwise arranged in accordance with provisions contained the in approved ATCRMS, until: i. those mitigation measures required to be implemented prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis as set out in the approved ATCRMS have been implemented; and ii. any performance criteria specified in the approved ATCRMS and which the approved ATCRMS requires to have been satisfied prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis have been satisfied and Scottish Ministers, in conjunction with the Ministry of Defence, have confirmed this in writing. Thereafter the development shall be operated strictly in accordance with the details set out in the approved ATCRMS for the lifetime of the development, provided the Radar remains in operation. Reason: In the interests of aviation safety
6.	**Aviation Lighting** Prior to commencing construction of any wind turbine generators, anemometry masts, or deploying any construction equipment or temporal structure(s) 50 metres or more in height (above ground level) the company must submit an aviation-lighting scheme for the approval of Scottish Ministers in conjunction with the Civil Aviation Authority and the Ministry of Defence defining how the development will be lit throughout its life to maintain civil and military aviation safety requirements as required under the Air Navigation order 2016 and, or, as

	determined necessary for aviation safety by the Ministry of Defence and, or, as directed by the Civil Aviation Authority. This should set out: i. Details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with. ii. The locations and heights of all wind turbine generators in the development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used. Thereafter, the Company must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the life time of the development. Reason: In the interest of aviation safety.
Recommended conditions of deemed planning permission	
7.	**Details of the turbines** a) No development shall commence until the external finish and colour of the turbines and any anemometry masts have been submitted to and approved in writing by the Planning Authority. No development shall commence until the Planning Authority has approved in writing the sound power and tonality of the turbine model selected. Thereafter, the turbines/anemometry masts shall be installed in accordance with the approved details. b) The height of the Turbines 9, 13 and 14 shall not exceed 149.9 metres to blade tip. c) The height of Turbines 1 to 7 (inclusive) and 29 shall not exceed 200 metres to blade tip. d) The height of Turbines 8, 10, 11, 12 and 16 to 28 (inclusive) shall not exceed 225 metres to blade tip. e) Turbine 15 and associated access track and any crane hardstanding areas as shown in EIAR Fig 1.2 shall not be constructed. f) All wind turbine blades shall rotate in the same direction. g) No wind turbine or anemometry mast shall have any text, sign or logo displayed on any external surface of the wind turbines/Anemometry mast unless approved in advance in writing by the Planning Authority or if required by law. Reason: To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbines assessed

	in the Environmental Impact Assessment Report and in the interests of the visual amenity of the area.
8.	**Details of other infrastructure** No development of the substation building, associated compounds, foul drainage provision, water supply, or any construction-compound boundary fencing, external lighting and parking areas shall commence until details of their external appearance, dimensions, and surface materials have been submitted to and approved in writing by the Planning Authority. The development shall not proceed other than in accordance with the approved details. Reason: To ensure that the environmental impacts of the substation, control building, associated compounds and associated development forming part of the Development conform to the impacts assessed in the Environmental Impact Assessment Report and in the interests of the visual amenity of the area.
9.	**Micrositing** The turbines shall be erected and the site tracks and other infrastructure constructed in the positions indicated in Figure 1.2 of the EIAR save that the location of any turbine, track or associated infrastructure may be varied from the indicated position without further recourse to the planning authority by up to 50 metres, subject to the following conditions: • No development shall take place until a finalised post-consent layout is approved in writing by the planning authority in consultation with SEPA, having regard to minimising the proposed development's impact on peat. The approved layout may be varied with the consent of the planning authority in consultation with SEPA. • No development shall take place within 50 metres of any water course with the exception of any watercourse crossings. • The advice of the Ecological Clerk of Works has been sought before any such variation is made. Furthermore, the position of Substation 2 may be varied to the position shown on AI Figure 1.2 or within 50 m of that position. Reason: to control environmental impacts while taking account of local ground conditions and to ensure the impact on peat is minimised such that the release of its embodied carbon is kept to a minimum.
10.	**Ecological Clerk of Works** a) No development shall commence unless and until an Ecological Clerk of Works (ECoW) approved by the Planning Authority has been appointed by the Company. The terms of the appointment shall:- i. Impose a duty to monitor compliance with the ecological and hydrological commitments required in terms of conditions 9, 11 and 13 ("the EcoW Works") and with legislation on the protection of the environment; ii. Require the EcoW to report to the Company's nominated construction project manager and Planning Authority any incidences of non-

	compliance with the commitments monitored as part of the EcoW Works or with legislation for the protection of the environment at the earliest practical opportunity; iii. Require the EcoW to submit a monthly report to the Planning Authority summarising works undertaken on site and incidents of micrositing in accordance with condition 9. b) The EcoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity, and for the duration of any period of post-construction restoration works approved as part of the Construction Environment Management Plan under condition 13. c) 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, restoration and aftercare phases of the Development to the Planning Authority for approval. The EcoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development. Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development
11.	**Habitat Management Plan** a) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the Planning Authority in consultation with SNH, SEPA and RSPB. b) The HMP shall set out proposals for the management of the habitat of the windfarm site for enhancement of habitat for capercaillie and woodland grouse during the periods of construction, operation and decommissioning of the Development and during the restoration of the site after the Development has been removed. Unless otherwise approved in advance in writing with the Planning Authority, the approved HMP shall be implemented in full. Reason: In the interests of the protection of the habitats of those species identified in the EIAR.
12.	**Redundant turbines** If one or more turbines fails to generate electricity for a continuous period of 12 months excluding any periods of constraint imposed by the National Grid during which turbines are not operating, then within 28 days of the end of the 12 month period, unless otherwise agreed in writing by the Planning Authority, the Company shall submit a scheme to the Planning Authority for their approval, setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored. The approved scheme shall be implemented.

	Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection.
13.	**Construction and Environmental Management Plan including Construction Method Statement** No Development shall commence until a Construction and Environmental Management Plan (which shall include a Construction Method Statement ("CMS")) ("CEMP") has been submitted to and approved in writing by the Planning Authority in consultation with SNH, RSPB and SEPA. The CEMP shall include:- a) a site waste-management plan (dealing with all aspects of waste including forestry removal and forest waste other than peat produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment; b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks (including details of whether tracks are to be cut or floating), car parking, material stockpiles, oil storage, lighting columns, and any construction-compound boundary fencing; c) details of borrow-pit excavation, including excavation times, any noise monitoring required, and proposals to address complaints relating to blasting noise and vibration; d) a dust-management plan; e) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel-cleaning and lorry-sheeting facilities, and measures to clean the site entrances and the adjacent local road network; f) a pollution-prevention-and-control method statement, including arrangements for the storage of oil and fuel on the site; g) soil storage and management; h) a peat-management plan including peat site investigation to identify areas where floating access track is to be constructed; i) a drainage-management strategy, demonstrating how all surface water and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources including assessment of risk to the private water supply to the dwelling called "Treetops"; j) sewage treatment and disposal; k) temporary site illumination; l) the upgrading of the access into the site and the creation and maintenance of associated visibility splays; m) the method of construction of access tracks including floating track design, and construction; n) the method of construction of the crane pads; o) the method of construction of the turbine foundations; p) the method of working cable trenches; q) the method of construction and erection of the wind turbines, anemometry and meteorological masts; r) details of watercourse crossings; s) post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound and other construction areas; t) a wetland-ecosystems (Ground Water Dependent Terrestrial Systems) survey and mitigation plan;

	u) a species-protection plan for goshawk, merlin, capercaillie, black grouse and Scottish crossbill; v) an ornithological-monitoring plan; w) a pre-construction and construction fish-monitoring programme; x) a water-quality monitoring plan; y) measures to protect the boundary stones marked on EIAR figure 9.1 as 16a-c and 20a-b during construction; z) details of all construction works on the site and the timing of these works. The CEMP shall be implemented as approved. 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 Impact Assessment Report accompanying the application, or as otherwise agreed, are fully implemented.
14.	**Programme of archaeological works** Prior to commencement of development an archaeological written scheme of investigation (WSI) shall be submitted to and approved in writing by the planning authority. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the WSI will be provided and agreed throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post-excavation analysis, a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition shall be submitted to the planning authority for its written approval. The WSI and any PERD shall be implemented as approved. Reason: To safeguard and record the archaeological potential of the area.
15.	**Construction-traffic management** No development shall commence until a construction-traffic-management plan ("CTMP") has been submitted to, and approved in writing by, the planning authority in consultation with Transport Scotland. The CTMP shall include the following:- (a) Information on materials, plant, equipment, components and labour required during construction as well as details of escorts for abnormal loads, access and egress arrangements for abnormal loads, concrete wagons and heavy goods vehicles (including potential out of hours deliveries) and a local signage scheme and the scheduling and timing of abnormal load movements. A communications protocol with stakeholders including the public will also be detailed; (b) A scheme for reviewing the condition of the section of road between the A96 / Reiket Lane Roundabout and the site access junction. This shall include requirements for before- and after-construction-traffic reviews of the road and verge infrastructure and shall outline how damage resulting

	from construction traffic shall be repaired and a programme for making good any damage. The works shall thereafter be carried out in accordance with the approved CTMP. Reason: To ensure that construction activities will not have a detrimental effect on the road network or the safety of all road users.
16.	**Abnormal Load Access** No abnormal-load deliveries shall be made to site until the following have been provided to the planning authority and the planning authority in consultation with Transport Scotland has given its approval in writing to: (a) an updated survey of the proposed route for abnormal loads on the trunk- and local-road network and any accommodation measures required including, but not limited to, the removal of street furniture, junction widening and traffic management; (b) a structural survey of the section of the abnormal-load delivery route from the A96 / Reiket Lane Roundabout through to the site access junction; (c) the documented results of a test run undertaken from the Port of Inverness through to the site access; and (d) details of the additional signing or temporary traffic-control measures necessary due to the size or length of any loads being delivered or removed during the delivery period of the wind-turbine construction materials. The works shall thereafter be carried out as approved. Where intervention works are required to improve the structural capacity of infrastructure on the section of road referred to in letter (b) of this condition, these shall be delivered by the Company to the standard and specification approved by the planning authority (and the council in its role as roads authority). The Roads Authority and Transport Scotland shall be invited to attend the test run referred to in letter (c) of this condition. The details supplied in letter (d) of this condition must be provided by a traffic-management consultant whose appointment is approved by the planning authority in consultation with Transport Scotland. The Company shall consult all affected road and structure authorities through the abnormal-load permitting process via the ESDAL portal. No abnormal load delivery shall be made to the site until the planning authority in consultation with Transport Scotland has confirmed that the consultation has been carried out to the appropriate standard. Reason: To ensure that abnormal loads can be transported in safety and to minimise the disruption to other road users, residents and businesses in the area.
17.	**Construction Hours**

	a) Construction work shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays or bank holidays (see definitions) other than concrete pouring if started within those hours, turbine erection and emergency works. The Company shall notify the Planning Authority of such works if carried out outside the permitted hours within two working days of their occurrence. b) Heavy Goods Vehicles (HGV) movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays or bank holidays unless otherwise agreed in writing by the Planning Authority. c) Turbine delivery may be made out with these construction hours, where necessary, and as agreed in writing in advance with the Planning Authority. Reason: In the interests of local amenity.
18.	**Compensatory Planting** No development shall commence unless and until a woodland compensatory planting plan (CPP) in accordance with the Scottish Government Control of Woodland Removal Policy (or such replacement as may be in place at the time that the CPP is submitted for approval) has been submitted to and approved in writing by the Planning Authority in consultation with Forestry Scotland (FS). The CPP shall provide details of the planting of woodland within the Site. The CPP shall include:- a) The location and details of the proposed planting, timescales for implementation and its maintenance for the operational period of the Development; b) A silvicultural proposal for compensatory planting and a protection plan for the life of the development. Reason: to enable appropriate woodland removal to take place in accordance with the current Scottish Government Control of Woodland Removal Policy
19.	**Decommissioning** a) Upon the expiration of a period of 35 years from Final Commissioning, the wind turbines shall be decommissioned and removed from the site. b) No development shall commence unless and until a Provisional Decommissioning Method Statement (PDMS) has been submitted for the written approval of the Planning Authority. The PDMS shall set out proposals for the removal of all surface elements of the Development except for the access tracks and the turbine foundations more than 1 metre below ground level. The PDMS shall provide for the restoration of the site following the removal of the Development and for the timing of all operations. c) Not later than 24 months before the expiry of this permission a Decommissioning Method Statement in accordance with the principles of the

	Provisional Decommissioning Method Statement shall be submitted for the written approval of the Planning Authority. The Decommissioning Method Statement shall be implemented as approved. Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.
20.	**Bond or other form of financial guarantee** a) No Development shall commence unless and until the Company has delivered to the Planning Authority, a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the anticipated cost of performance of the obligations contained in the Provisional Decommissioning Method Statement submitted in accordance with Condition 19. The bond or other form of financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations. b) The value of the bond or other form of financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs, taking into account any salvage value of the development infrastructure, of all decommissioning and restoration and aftercare obligations contained in the PDMS. c) The value of the bond or other form of financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review. Reason: To secure the performance of the obligations of the Company as to decommissioning and removal of the Development as well as for any aftercare and restoration of the Development by ensuring that suitable financial provision has been made for the performance of those obligations in the event of the Company's default.
21.	**Aviation Safety** Prior to the commencement of development the Company shall provide the Planning Authority and Ministry of Defence, Defence Geographic Centre with the following information: a) the date of the expected commencement of the erection of the wind turbine generators; b) the date of the expected commencement of operation of any wind turbine generators; c) the maximum height of any construction equipment to be used in the erection of the wind turbines generators; and d) the position of the turbines and any masts in latitude and longitude

	The Company shall notify Ministry of Defence in writing of any changes to the information supplied in accordance with these requirements and of the completion of the construction of the development. Reason: in the interests of aviation safety.
22.	**Noise (including Excess Amplitude Modulation)** The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Table 1 attached to these conditions and: A) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the Company shall, at its expense, employ an independent consultant and provide a written protocol to be approved by the Planning Authority. The protocol shall describe the procedure to assess the level and character of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out as far as possible the time or meteorological conditions to which the complaint relates and time or conditions relating to tonal noise or excess amplitude modulation if applicable. Measurements to assess compliance with the noise limits shall be undertaken in accordance with the assessment protocol which shall be approved in writing by the Planning Authority. B) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the protocol within two months of the date of the approval of the protocol by the Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements and analysis, such data to be provided in a format to be agreed with the Planning Authority. Certificates of calibration of the equipment shall be submitted to the Planning Authority with the report. C) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 5 of the attached Guidance Notes, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's initial assessment unless otherwise agreed by the Planning Authority**.** **Table 1: At all times – Noise limits expressed in dB LA90,10 minute and apply for standardised 10 m height wind speeds up to 12 m/s as determined within the site averaged over 10 minute periods**

LOCATION	Noise Limit (dB L_{A90})
Burn of Rothes	31
Heatherlea	34
Lynes	34

	Knocknagore | 33 Lyne of Knockando | 32 Aldivonie | 32 **Table 2: Coordinate locations of the dwelling listed in Table 1** LOCATION | Easting | Northing Burn of Rothes | 325273 | 847814 Heatherlea | 322947 | 844545 Lynes | 321693 | 844349 Knocknagore | 318143 | 845004 Lyne of Knockando | 317602 | 845267 Aldivonie | 317063 | 845397 Note to Table 2: The geographical coordinate references are provided for the purpose of identifying the general location of dwelling to which the noise limits apply**.**
23.	**Access Plan** No development shall commence until an Access Plan has been submitted to and approved in writing by the Planning Authority. The Access Plan will include the consideration of the upgrade of the existing tracks, the formation of new tracks and other improvements to provide enhanced access opportunities and improvements to track surfaces across the proposed development area. Reason: to improve public access to the site.

Guidance notes to condition 22

These notes are to be read with and form part of the planning condition on noise. The measured data is to be split into bins as described below. The rating level for each bin is the arithmetic sum of the wind farm noise level plus any tonal penalty applied in accordance with Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI). IOAGPG is “A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise” or any update of that report current at the time of measurement

Note 1 – Data Collection

a. Values of the LA90,10-minute noise index should be measured in accordance with the IOAGPG. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and to capture data suitable for analysis of excess amplitude modulation for selected periods where a tonal or excess-amplitude-modulation assessment is required.
b. To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second (m/s) and arithmetic mean wind direction in degrees from north in each successive 10-minutes period in a manner to be agreed in writing with the Planning Authority. The wind speed at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which are correlated with the noise measurements

determined as valid. The Company shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle, arithmetic mean rotor revolutions per minute and whether each wind turbine is running normally during each successive 10-minutes period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Universal Time (UT).

Note 2 – Data Analysis

a. The independent consultant shall identify a sub-set of data having had regard to:-

- the conditions (including time of day and corresponding wind directions and speeds) at times in which complaints were recorded;
- the nature/description recorded in the complaints if available;
- information contained in the written request from the local planning authority;
- likely propagation effects (downwind conditions or otherwise);
- the results of the tonality/excess-amplitude-modulation analysis where relevant.

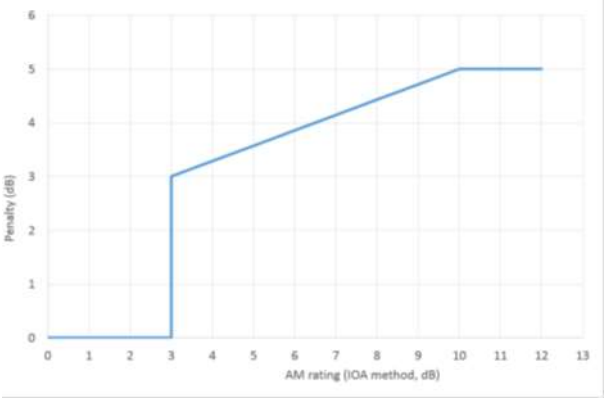
In cases where it is possible to identify patterns of clearly different conditions in which complaints have arisen additional sub-sets may be considered provided this does not introduce unreasonable complexity in the analysis and can be justified by the independent consultant.
b. Within each of the sub-set(s) of data identified, data shall be placed into separate 1 m/s wide wind speed bins.

Note 3 – Tonal Penalty

a. Where, in accordance with the protocol, the noise contains or is likely to contain a tonal component, a tonal audibility shall be calculated for each ten-minute period using the following procedure.
b. For each 10-minute period for which a tonal assessment is required this shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure").
c. For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted. Where data for a ten-minute period are corrupted, that period shall be removed from the tonal analysis.
d. The tone level above audibility for each ten-minute period shall be placed in the appropriate data sub-set and wind speed bin.

Note 4 – Amplitude Modulation

Within 21 days of a written request by the Local Planning Authority, following a complaint to it from a resident alleging noise disturbance at the dwelling at which they reside and where Excess Amplitude Modulation is considered by the Local Planning Authority to be present in the noise immissions at the complainant’s property, the Company shall submit a scheme, for the approval of the local planning authority, providing for the further investigation and, as necessary, control of Excess Amplitude Modulation. The scheme shall be based on best available techniques and shall be implemented as approved.



Note 5 – Calculation of Rating Level

a. The LA90 sound pressure level for each data sub-set and wind speed bin is the arithmetic mean of all the 10 minute sound pressure levels within that data sub-set and wind speed bin except where data has been excluded for reasons which should be clearly identified by the independent consultant. The tonal penalty for each bin is the arithmetic mean of the separate 10-minute tonal audibility levels in the bin converted to a penalty in accordance with Fig 17 on page 104 of ETSU-R-97. The assessment level in each bin is normally the arithmetic sum of the bin LA90 and the bin tonal penalty.
b. If the assessment level in every bin lies at or below the values set out in the Table(s) attached to the conditions then no further action is necessary. In the event that the assessment level is above the limit(s) set out in the Tables attached to the noise conditions in any bin, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only. Correction for background noise need only be undertaken for those wind speed bins where the assessment level is above the limit.
c. The Company shall ensure that all the wind turbines in the development are turned off for such periods as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:-
i. Repeating the steps in Note 1, with the wind farm switched off, and determining the background noise (L_3) in each bin as required in the protocol. At the discretion of the consultant and provided there is no reason to believe background noise would vary with wind direction, background noise in bins where there is insufficient data can be assumed to be the same as that in other bins at the same wind speed.
ii. The wind farm noise (L_1) in each bin shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10log\left[10^{L_2/10} - 10^{L_3/10}\right]$$

iii. The rating level shall be calculated by adding the tonal penalties to the derived wind farm noise L_1 in that bin.
iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalties in every bin lies at or below the values set out in the Tables attached to the condition at all wind speeds then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Table(s) attached to the condition then the development fails to comply with the planning condition in the circumstances represented by that bin.

Definition of terms in conditions and related guidance notes

"The Application" means the application submitted by the Company on 1 February 2019;

"Bank Holiday" means:

- New Year's Day, unless it is a Sunday, in which case, 3rd January;
- 2nd January, unless it is a Sunday, in which case 3rd January;
- Good Friday;
- The first Monday in May;
- The first Monday in August;
- 30th November, Sunday or, if it is a Saturday or Sunday, the first Monday following that day;
- Christmas Day, if it is not a Sunday, or if it is a Sunday, 27th December; and
- Boxing Day, unless it is a Sunday, in which case 27th December.

"Commencement of Development" means the date on which Development shall be taken as having begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997.

"the Company" means Rothes III Limited, company registration number SC307540 and registered address C/o Harper Macleod LLP, The Ca'd'oro, Glasgow, G1 3PE or such other person for the time being entitled to the benefit of the consent under section 36 of the Electricity Act 1989.

"The Development" means the development described in [*Appendix 1 to this report*];

"dwelling" means a building within Use Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 which lawfully exists or had planning permission at the date of this consent and deemed planning permission;

"Excess Amplitude Modulation" means the modulation of aerodynamic noise produced at the frequency at which a blade passes a fixed point and occurring in ways not anticipated by ETSU-R-97, *The Assessment and Rating of Noise from Wind Farms*, at page 68.

"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;

"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; and

"National Public Holiday" means Easter Monday and the third Monday in September.

"Planning Authority" means Moray Council or any successor as planning authority.

APPENDIX 4 Recommended conditions for the alternative proposal

Recommended conditions of section 36 consent	
1.	**Duration of the consent** (a) The consent is for a period of 35 years from the date of Final Commissioning. Written confirmation of the date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date. (b) Written confirmation of the date of First Commissioning shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month after that date. Reason: To define the duration of the consent
2.	**Commencement of development** (a) The Commencement of the Development shall be no later than five years from the date of this consent, or in substitution, such other period as the Scottish Ministers may hereafter direct in writing. (b) Written confirmation of the intended date of commencement of Development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date. Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period and to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.
3.	**Non-assignation** (a) This consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignation of the consent (with or without conditions) or refuse assignation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. (b) The company shall notify the Planning Authority in writing of the name of the assignee and principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of their consent to the assignation. Reason: To safeguard the obligations of the consent if transferred to another company.
4.	**Serious incident reporting** In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the Scottish

	Ministers, and confirmation of remedial measures taken and/or to be taken to rectify the breach, within 24 hours of the incident occurring. Reason: In the public interest, to keep the Scottish Ministers informed of any such incidents.
5.	**Radar Mitigation** (a) No wind turbine shall be erected unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of wind turbines upon air safety has been submitted to and approved in writing by the Scottish Ministers in conjunction with the Ministry of Defence (MOD). The Air Traffic Control Radar Mitigation Scheme (ATCRMS) is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth ("the Radar") and the air traffic control operations of the MOD which are reliant upon the Radar. The ATCRMS shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the lifetime of the development provided the Radar remains in operation. (b) No wind turbine erected as part of this development shall be permitted to rotate its rotor blades about its horizontal axis, other than for the purpose of testing radar mitigation for this development for specific periods as defined in the approved Air Traffic Control Radar Mitigation Scheme (ATCRMS) or otherwise arranged in accordance with provisions contained the in approved ATCRMS, until: iii. those mitigation measures required to be implemented prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis as set out in the approved ATCRMS have been implemented; and iv. any performance criteria specified in the approved ATCRMS and which the approved ATCRMS requires to have been satisfied prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis have been satisfied and Scottish Ministers, in conjunction with the Ministry of Defence, have confirmed this in writing. Thereafter the development shall be operated strictly in accordance with the details set out in the approved ATCRMS for the lifetime of the development, provided the Radar remains in operation. Reason: In the interests of aviation safety
6.	**Aviation Lighting** Prior to commencing construction of any wind turbine generators, anemometry masts, or deploying any construction equipment or temporal structure(s) 50 metres or more in height (above ground level) the company must submit an aviation-lighting scheme for the approval of Scottish Ministers in conjunction with the Civil Aviation Authority and the Ministry of Defence defining how the development will be lit throughout its life to maintain civil and military aviation safety requirements as required under the Air Navigation order 2016 and, or, as determined necessary for aviation safety by the Ministry of Defence and, or, as directed by the Civil Aviation Authority.

	This should set out: iii. Details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with. iv. The locations and heights of all wind turbine generators in the development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used. Thereafter, the Company must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the life time of the development. Reason: In the interest of aviation safety.
Recommended conditions of deemed planning permission	
7.	**Approved form of the development** a) Notwithstanding the description of the proposed development in the application, permission is granted only for the erection and operation of a windfarm of up to 23 turbines and associated development on land situation at Càrn na Cailliche, approximately 4 kilometres west of Rothes and 7 kilometres north east of Upper Knockando within the planning jurisdiction of Moray Council. The site of the windfarm is shown edged red on the attached plan [*figure 1.2 of the 2019 AI*], which also shows the location and approved layout of the proposed development within the site. b) No development shall commence until the external finish and colour of the turbines and any anemometry masts have been submitted to and approved in writing by the Planning Authority. No development shall commence until the Planning Authority has approved in writing the sound power and tonality of the turbine model selected. Thereafter, the turbines/anemometry masts shall be installed in accordance with the approved details. c) The height of Turbines 1 to 9 (inclusive), 13, 14, 18, 22, 25 and 26 shall not exceed 149.9m to blade tip; d) The height of Turbines 10 to 12 (inclusive), 15, 16, 19, 20 and 23 shall not exceed 175m to blade tip; e) Permission is not granted for turbines 17, 21, 24, 27, 28 or 29 referred to in the application. They shall not be erected. f) All wind turbine blades shall rotate in the same direction. g) No wind turbine or anemometry mast shall have any text, sign or logo displayed on any external surface of the wind turbines/Anemometry mast unless approved in advance in writing by the Planning Authority or if required by law.

	Reason: To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbines assessed in the Environmental Impact Assessment Report and in the interests of protecting the landscape character and visual amenity of the area.
8.	**Details of other infrastructure** No development of the substation building, associated compounds, foul drainage provision, water supply, or any construction-compound boundary fencing, external lighting and parking areas shall commence until details of their external appearance, dimensions, and surface materials have been submitted to and approved in writing by the Planning Authority. The development shall not proceed other than in accordance with the approved details. Reason: To ensure that the environmental impacts of the substation, control building, associated compounds and associated development forming part of the Development conform to the impacts assessed in the Environmental Impact Assessment Report and in the interests of the visual amenity of the area.
9.	**Micrositing** The turbines shall be erected and the site tracks and other infrastructure constructed in the positions indicated in Figure 1.2 of the 2019 AI, save that the location of any turbine, track or associated infrastructure may be varied from the indicated position without further recourse to the planning authority by up to 50 metres, subject to the following conditions: • No development shall take place until a finalised post-consent layout is approved in writing by the planning authority in consultation with SEPA, having regard to minimising the proposed development's impact on peat. The approved layout may be varied with the consent of the planning authority in consultation with SEPA. • No development shall take place within 50 metres of any water course with the exception of any watercourse crossings. • The advice of the Ecological Clerk of Works has been sought before any such variation is made. Furthermore, the position of Substation 2 may be varied to the position shown on Figure 1.2 of the 2019 AI or within 50 m of that position. Reason: to control environmental impacts while taking account of local ground conditions and to ensure the impact on peat is minimised such that the release of its embodied carbon is kept to a minimum.
10.	**Ecological Clerk of Works** a) No development shall commence unless and until an Ecological Clerk of Works (ECoW) approved by the Planning Authority has been appointed by the Company. The terms of the appointment shall:-

	i. Impose a duty to monitor compliance with the ecological and hydrological commitments required in terms of conditions 9, 11 and 13 ("the EcoW Works") and with legislation on the protection of the environment; ii. Require the EcoW to report to the Company's nominated construction project manager and Planning Authority any incidences of non-compliance with the commitments monitored as part of the EcoW Works or with legislation for the protection of the environment at the earliest practical opportunity; iii. Require the EcoW to submit a monthly report to the Planning Authority summarising works undertaken on site and incidents of micrositing in accordance with condition 9. b) The EcoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity, and for the duration of any period of post-construction restoration works approved as part of the Construction Environment Management Plan under condition 13. c) 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, restoration and aftercare phases of the Development to the Planning Authority for approval. The EcoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development. Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development
11.	**Habitat Management Plan** a) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the Planning Authority in consultation with SNH, SEPA and RSPB. b) The HMP shall set out proposals for the management of the habitat of the windfarm site for enhancement of habitat for capercaillie and woodland grouse during the periods of construction, operation and decommissioning of the Development and during the restoration of the site after the Development has been removed. Unless otherwise approved in advance in writing with the Planning Authority, the approved HMP shall be implemented in full. Reason: In the interests of the protection of the habitats of those species identified in the EIAR.

12.	**Redundant turbines** If one or more turbines fails to generate electricity for a continuous period of 12 months excluding any periods of constraint imposed by the National Grid during which turbines are not operating, then within 28 days of the end of the 12 month period, unless otherwise agreed in writing by the Planning Authority, the Company shall submit a scheme to the Planning Authority for their approval, setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored. The approved scheme shall be implemented. Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection.
13.	**Construction and Environmental Management Plan including Construction Method Statement** No Development shall commence until a Construction and Environmental Management Plan (which shall include a Construction Method Statement ("CMS")) ("CEMP") has been submitted to and approved in writing by the Planning Authority in consultation with SNH, RSPB and SEPA. The CEMP shall include:- a) a site waste-management plan (dealing with all aspects of waste including forestry removal and forest waste other than peat produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment; b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks (including details of whether tracks are to be cut or floating), car parking, material stockpiles, oil storage, lighting columns, and any construction-compound boundary fencing; c) details of borrow-pit excavation, including excavation times, any noise monitoring required, and proposals to address complaints relating to blasting noise and vibration; d) a dust-management plan; e) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel-cleaning and lorry-sheeting facilities, and measures to clean the site entrances and the adjacent local road network; f) a pollution-prevention-and-control method statement, including arrangements for the storage of oil and fuel on the site; g) soil storage and management; h) a peat-management plan including peat site investigation to identify areas where floating access track is to be constructed; i) a drainage-management strategy, demonstrating how all surface water and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources including assessment of risk to the private water supply to the dwelling called "Treetops"; j) sewage treatment and disposal; k) temporary site illumination; l) the upgrading of the access into the site and the creation and maintenance of associated visibility splays; m) the method of construction of access tracks including floating track design, and construction; n) the method of construction of the crane pads;

	o) the method of construction of the turbine foundations; p) the method of working cable trenches; q) the method of construction and erection of the wind turbines, anemometry and meteorological masts; r) details of watercourse crossings; s) post-construction restoration/reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound and other construction areas; t) a wetland-ecosystems (Ground Water Dependent Terrestrial Systems) survey and mitigation plan; u) a species-protection plan for goshawk, merlin, capercaillie, black grouse and Scottish crossbill; v) an ornithological-monitoring plan; w) a pre-construction and construction fish-monitoring programme; x) a water-quality monitoring plan; y) measures to protect the boundary stones marked on EIAR figure 9.1 as 16a-c and 20a-b during construction; z) details of all construction works on the site and the timing of these works. The CEMP shall be implemented as approved. 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 Impact Assessment Report accompanying the application, or as otherwise agreed, are fully implemented.
14.	**Programme of archaeological works** Prior to commencement of development an archaeological written scheme of investigation (WSI) shall be submitted to and approved in writing by the planning authority. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the WSI will be provided and agreed throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post-excavation analysis, a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition shall be submitted to the planning authority for its written approval. The WSI and any PERD shall be implemented as approved. Reason: To safeguard and record the archaeological potential of the area.
15.	**Construction-traffic management** No development shall commence until a construction-traffic-management plan (“CTMP”) has been submitted to, and approved in writing by, the planning authority in consultation with Transport Scotland. The CTMP shall include the following:- (a) Information on materials, plant, equipment, components and labour required during construction as well as details of escorts for abnormal

	loads, access and egress arrangements for abnormal loads, concrete wagons and heavy goods vehicles (including potential out of hours deliveries) and a local signage scheme and the scheduling and timing of abnormal load movements. A communications protocol with stakeholders including the public will also be detailed; (b) A scheme for reviewing the condition of the section of road between the A96 / Reiket Lane Roundabout and the site access junction. This shall include requirements for before- and after-construction-traffic reviews of the road and verge infrastructure and shall outline how damage resulting from construction traffic shall be repaired and a programme for making good any damage. The works shall thereafter be carried out in accordance with the approved CTMP. Reason: To ensure that construction activities will not have a detrimental effect on the road network or the safety of all road users.
16.	**Abnormal Load Access** No abnormal-load deliveries shall be made to site until the following have been provided to the planning authority and the planning authority in consultation with Transport Scotland has given its approval in writing to: (a) an updated survey of the proposed route for abnormal loads on the trunk- and local-road network and any accommodation measures required including, but not limited to, the removal of street furniture, junction widening and traffic management; (b) a structural survey of the section of the abnormal-load delivery route from the A96 / Reiket Lane Roundabout through to the site access junction; (c) the documented results of a test run undertaken from the Port of Inverness through to the site access; and (d) details of the additional signing or temporary traffic-control measures necessary due to the size or length of any loads being delivered or removed during the delivery period of the wind-turbine construction materials. The works shall thereafter be carried out as approved. Where intervention works are required to improve the structural capacity of infrastructure on the section of road referred to in letter (b) of this condition, these shall be delivered by the Company to the standard and specification approved by the planning authority (and the council in its role as roads authority). The Roads Authority and Transport Scotland shall be invited to attend the test run referred to in letter (c) of this condition. The details supplied in letter (d) of this condition must be provided by a traffic-management consultant whose appointment is approved by the planning authority in consultation with Transport Scotland. The Company shall consult all affected road and structure authorities through the abnormal-load permitting process via the ESDAL portal. No abnormal load delivery shall be made to the site until the planning authority in consultation with Transport Scotland has confirmed that the consultation has been carried out to the appropriate standard.

	Reason: To ensure that abnormal loads can be transported in safety and to minimise the disruption to other road users, residents and businesses in the area.
17.	**Construction Hours** a) Construction work shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays or bank holidays (see definitions) other than concrete pouring if started within those hours, turbine erection and emergency works. The Company shall notify the Planning Authority of such works if carried out outside the permitted hours within two working days of their occurrence. b) Heavy Goods Vehicles (HGV) movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays or bank holidays unless otherwise agreed in writing by the Planning Authority. c) Turbine delivery may be made out with these construction hours, where necessary, and as agreed in writing in advance with the Planning Authority. Reason: In the interests of local amenity.
18.	**Compensatory Planting** No development shall commence unless and until a woodland compensatory planting plan (CPP) in accordance with the Scottish Government Control of Woodland Removal Policy (or such replacement as may be in place at the time that the CPP is submitted for approval) has been submitted to and approved in writing by the Planning Authority in consultation with Forestry Scotland (FS). The CPP shall provide details of the planting of woodland within the Site. The CPP shall include:- a) The location and details of the proposed planting, timescales for implementation and its maintenance for the operational period of the Development; b) A silvicultural proposal for compensatory planting and a protection plan for the life of the development. Reason: to enable appropriate woodland removal to take place in accordance with the current Scottish Government Control of Woodland Removal Policy
19.	**Decommissioning** a. Upon the expiration of a period of 35 years from Final Commissioning, the wind turbines shall be decommissioned and removed from the site. b. No development shall commence unless and until a Provisional Decommissioning Method Statement (PDMS) has been submitted for the written approval of the Planning Authority. The PDMS shall set out proposals for the removal of all surface elements of the Development except for the access tracks and the turbine foundations more than 1 metre below ground

	level. The PDMS shall provide for the restoration of the site following the removal of the Development and for the timing of all operations. c. Not later than 24 months before the expiry of this permission a Decommissioning Method Statement in accordance with the principles of the Provisional Decommissioning Method Statement shall be submitted for the written approval of the Planning Authority. The Decommissioning Method Statement shall be implemented as approved. Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.
20.	**Bond or other form of financial guarantee** a) No Development shall commence unless and until the Company has delivered to the Planning Authority, a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the anticipated cost of performance of the obligations contained in the Provisional Decommissioning Method Statement submitted in accordance with Condition 19. The bond or other form of financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations. b) The value of the bond or other form of financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs, taking into account any salvage value of the development infrastructure, of all decommissioning and restoration and aftercare obligations contained in the PDMS. c) The value of the bond or other form of financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review. Reason: To secure the performance of the obligations of the Company as to decommissioning and removal of the Development as well as for any aftercare and restoration of the Development by ensuring that suitable financial provision has been made for the performance of those obligations in the event of the Company's default.
21.	**Aviation Safety** Prior to the commencement of development the Company shall provide the Planning Authority and Ministry of Defence, Defence Geographic Centre with the following information: a) the date of the expected commencement of the erection of the wind turbine generators;

	b) the date of the expected commencement of operation of any wind turbine generators; c) the maximum height of any construction equipment to be used in the erection of the wind turbines generators; and d) the position of the turbines and any masts in latitude and longitude The Company shall notify Ministry of Defence in writing of any changes to the information supplied inaccordance with these requirements and of the completion of the construction of the development. Reason: in the interests of aviation safety.
22.	**Noise (including Excess Amplitude Modulation)** The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Table 1 attached to these conditions and: A) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the Company shall, at its expense, employ an independent consultant and provide a written protocol to be approved by the Planning Authority. The protocol shall describe the procedure to assess the level and character of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out as far as possible the time or meteorological conditions to which the complaint relates and time or conditions relating to tonal noise or excess amplitude modulation if applicable. Measurements to assess compliance with the noise limits shall be undertaken in accordance with the assessment protocol which shall be approved in writing by the Planning Authority. B) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the protocol within two months of the date of the approval of the protocol by the Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements and analysis, such data to be provided in a format to be agreed with the Planning Authority. Certificates of calibration of the equipment shall be submitted to the Planning Authority with the report. C) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 5 of the attached Guidance Notes, the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's initial assessment unless otherwise agreed by the Planning Authority**.**

Table 1: At all times – Noise limits expressed in dB LA90,10 minute and apply for standardised 10 m height wind speeds up to 12 m/s as determined within the site averaged over 10 minute periods

LOCATION	Noise Limit (dB $L_{A90)}$
Burn of Rothes	31
Heatherlea	32
Lynes	33
Knocknagore	32
Lyne of Knockando	32
Aldivonie	31

Table 2: Coordinate locations of the dwelling listed in Table 1

LOCATION	Easting	Northing
Burn of Rothes	325273	847814
Heatherlea	322947	844545
Lynes	321693	844349
Knocknagore	318143	845004
Lyne of Knockando	317602	845267
Aldivonie	317063	845397

Note to Table 2: The geographical coordinate references are provided for the purpose of identifying the general location of dwelling to which the noise limits apply**.**

23. **Access Plan**

No development shall commence until an Access Plan has been submitted to and approved in writing by the Planning Authority. The Access Plan will include the consideration of the upgrade of the existing tracks, the formation of new tracks and other improvements to provide enhanced access opportunities and improvements to track surfaces across the proposed development area.

Reason: to improve public access to the site.

Guidance notes to condition 22

These notes are to be read with and form part of the planning condition on noise. The measured data is to be split into bins as described below. The rating level for each bin is the arithmetic sum of the wind farm noise level plus any tonal penalty applied in accordance with Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI). IOAGPG is “A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise” or any update of that report current at the time of measurement

Note 1 – Data Collection

a. Values of the LA90,10-minute noise index should be measured in accordance with the IOAGPG. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and to capture data suitable for analysis of excess amplitude modulation for selected periods where a tonal or excess-amplitude-modulation assessment is required.
b. To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second (m/s) and arithmetic mean wind direction in degrees from north in each successive 10-minutes period in a manner to be agreed in writing with the Planning Authority. The wind speed at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which are correlated with the noise measurements determined as valid. The Company shall continuously log arithmetic mean nacelle anemometer wind speed, arithmetic mean nacelle orientation, arithmetic mean wind direction as measured at the nacelle, arithmetic mean rotor revolutions per minute and whether each wind turbine is running normally during each successive 10-minutes period for each wind turbine on the wind farm. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Universal Time (UT).

Note 2 – Data Analysis

a. The independent consultant shall identify a sub-set of data having had regard to:-

- the conditions (including time of day and corresponding wind directions and speeds) at times in which complaints were recorded;
- the nature/description recorded in the complaints if available;
- information contained in the written request from the local planning authority;
- likely propagation effects (downwind conditions or otherwise);
- the results of the tonality/excess-amplitude-modulation analysis where relevant.

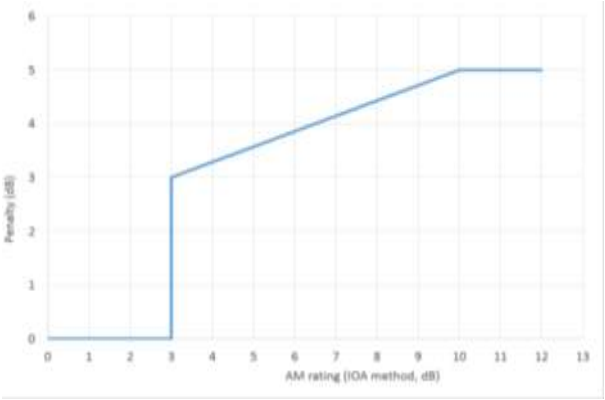
In cases where it is possible to identify patterns of clearly different conditions in which complaints have arisen additional sub-sets may be considered provided this does not introduce unreasonable complexity in the analysis and can be justified by the independent consultant.
b. Within each of the sub-set(s) of data identified, data shall be placed into separate 1 m/s wide wind speed bins.

Note 3 – Tonal Penalty

a. Where, in accordance with the protocol, the noise contains or is likely to contain a tonal component, a tonal audibility shall be calculated for each ten-minute period using the following procedure.
b. For each 10-minute period for which a tonal assessment is required this shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure").
c. For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted. Where data for a ten-minute period are corrupted, that period shall be removed from the tonal analysis.
d. The tone level above audibility for each ten-minute period shall be placed in the appropriate data sub-set and wind speed bin.

Note 4 – Amplitude Modulation

Within 21 days of a written request by the Local Planning Authority, following a complaint to it from a resident alleging noise disturbance at the dwelling at which they reside and where Excess Amplitude Modulation is considered by the Local Planning Authority to be present in the noise immissions at the complainant's property, the Company shall submit a scheme, for the approval of the local planning authority, providing for the further investigation and, as necessary, control of Excess Amplitude Modulation. The scheme shall be based on best available techniques and shall be implemented as approved.



Note 5 – Calculation of Rating Level

a. The LA90 sound pressure level for each data sub-set and wind speed bin is the arithmetic mean of all the 10 minute sound pressure levels within that data sub-set and wind speed bin except where data has been excluded for reasons which should be clearly identified by the independent consultant. The tonal penalty for each bin is the arithmetic mean of the separate 10-minute tonal audibility levels in the bin converted to a penalty in accordance with Fig 17 on page 104 of ETSU-R-97. The assessment level in each bin is normally the arithmetic sum of the bin LA90 and the bin tonal penalty.
b. If the assessment level in every bin lies at or below the values set out in the Table(s) attached to the conditions then no further action is necessary. In the event that the assessment level is above the limit(s) set out in the Tables attached to the noise conditions in any bin, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only. Correction for background noise need only be undertaken for those wind speed bins where the assessment level is above the limit.
c. The Company shall ensure that all the wind turbines in the development are turned off for such periods as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:-
i. Repeating the steps in Note 1, with the wind farm switched off, and determining the background noise (L_3) in each bin as required in the protocol. At the discretion of the consultant and provided there is no reason to believe background noise would vary with wind direction, background noise in bins where there is insufficient data can be assumed to be the same as that in other bins at the same wind speed.
ii. The wind farm noise (L_1) in each bin shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10log\left[10^{L_2/10} - 10^{L_3/10}\right]$$

iii. The rating level shall be calculated by adding the tonal penalties to the derived wind farm noise L_1 in that bin.
iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalties in every bin lies at or below the values set out in the Tables attached to the condition at all wind speeds then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Table(s) attached to the condition then the development fails to comply with the planning condition in the circumstances represented by that bin.

Definition of terms in conditions and related guidance notes

"2019 AI" means the additional information submitted in respect of the environmental-impact assessment of the Development in December 2019.

"The Application" means the application submitted by the Company on 1 February 2019.

"Bank Holiday" means:

- New Year's Day, unless it is a Sunday, in which case, 3rd January;
- 2nd January, unless it is a Sunday, in which case 3rd January;
- Good Friday;
- The first Monday in May;
- The first Monday in August;
- 30th November, Sunday or, if it is a Saturday or Sunday, the first Monday following that day;
- Christmas Day, if it is not a Sunday, or if it is a Sunday, 27th December; and
- Boxing Day, unless it is a Sunday, in which case 27th December.

"Commencement of Development" means the date on which Development shall be taken as having begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997.

"the Company" means Rothes III Limited, company registration number SC307540 and registered address C/o Harper Macleod LLP, The Ca'd'oro, Glasgow, G1 3PE or such other person for the time being entitled to the benefit of the consent under section 36 of the Electricity Act 1989.

"The Development" means the development described in [*Appendix 2 to this report*];

"dwelling" means a building within Use Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 which lawfully exists or had planning permission at the date of this consent and deemed planning permission;

"EIAR" means the environmental-impact-assessment report submitted for the Development.

"Excess Amplitude Modulation" means the modulation of aerodynamic noise produced at the frequency at which a blade passes a fixed point and occurring in ways not anticipated by ETSU-R-97, *The Assessment and Rating of Noise from Wind Farms*, at page 68.

"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;

"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; and

"National Public Holiday" means Easter Monday and the third Monday in September.

“Planning Authority” means Moray Council or any successor of it as planning authority.

APPENDIX 5: CORE DOCUMENTS

List of Core Documents

APPENDIX 6: APPEARANCES and WEBCAST

Representation of parties

Party	**Advocate**	**Instructing solicitors**
Clash Gour Windfarm Holdings Limited	Marcus Trinick QC	Eversheds Sutherland
Rothes III Ltd.	Gordon Steele QC	Wright, Johnston & Mackenzie LLP
Moray Council	Ewen Brown, advocate	Morton Fraser LLP
Highland Council	James Findlay QC	Highland Council
Save Wild Moray	Ian Kelly MRTPI	

Party	**Witnesses**
Clash Gour Windfarm Holdings Ltd	Landscape and visual effects James Welch, FLI Malcolm Spaven MA MSc. Dr. Stuart Lumsden Socio-economic effects Graeme Blackett BA(Hons) MEDAS MIED Policy and legal framework Alison Sidgwick BSS MURP MRTPI
Rothes III Ltd.	Landscape and visual effects Brian Denney, FLI MIEMA, chartered environmentalist Sqd Ldr Mike Hale MBE MSc CFS RAF (Rtd) Professor Philip Best, FRSE Socio-economic effects Nick Skelton MA MSc. MEDAS MIED Ornithology Claudia Garrett PhD. BSc. Noise conditions Rob Shepherd MEng. MIOA Planning and legal framework David Bell BSc(Hons) DipUD MCIHT MRTPI

Moray Council	Landscape and visual effects Carol Anderson CMLI (on effects of Clash Gour) Mark Steele BA DipLD CMLI (on effects of Rothes III) Planning and legal framework Gary Templeton MRTPI
Highland Council	David Mudie BSc.(Hons) MURP MRTPI
Save Wild Moray	Ian Kelly MRTPI
Speyside Community Council	Marion Ross
Finderne Community Council	Brian Higgs
City and Royal Burgh of Elgin Community Council	Alastair Kennedy
Energising Moray	Graeme Hilditch
Andrew Chadderton BSc (hons)	gave evidence on his own behalf

Webcast

Landscape and visual effects	1 September 2020 2 September 2020 3 September 2020 4 September 2020 15 September 2020
Socio-economics and tourism	8 September 2020
Rothes III Ornithology	8 September 2020
Conditions	9 September 2020
Andrew Chadderton's evidence	9 September 2020
Policy and legal framework	16 September 2020

APPENDIX 7: CLOSING SUBMISSIONS

Clash Gour applicant

Rothes III applicant

Moray Council

Highland Council

Save Wild Moray

Andrew Chadderton