

GS/876/IK

Electricity Act 1989

Town and Country Planning (Scotland) Acts 1997 and 2006

PROPOSED TALLADH-a-BHEITHE (T-a-B) WIND FARM

Jones Lang LaSalle per Talladh-a-Bheithe Wind Farm Limited

Electricity Act Section 36 Consent Application

PKC Ref: 14/00001/WIND

OBJECTION

on behalf of

THE JOHN MUIR TRUST (JMT)

Submitted: 22nd August – by Email only

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Background

1. This objection in respect of the s.36 Electricity Act application for the proposed T-a-B wind farm, near Rannoch, is formally submitted to the Scottish Ministers and copied to the Perth and Kinross Council (PKC). The objection has been prepared and lodged on behalf of the John Muir Trust. The Trust's concern arises primarily from the location of the proposed wind farm partly within the NSA and wholly within the 2014 Wild Land Area 14: Rannoch-Nevis-Mamores-Alder. This s.36 wind farm application is one of a number of renewable energy proposals that have the potential, individually and cumulatively, to impact adversely on the limited resource of Wild Land in Scotland – as identified in the SNH 2014 mapping.
2. The John Muir Trust is the leading wild land conservation charity in the United Kingdom. Based in Pitlochry, the Trust works with people and communities to conserve, campaign and inspire. The Trust is a membership organisation that seeks to ensure that wild land is protected and enhanced and that wild places are valued by and for everyone. It does this by owning and managing land to protect and enhance wild land; engaging with people throughout the UK to help them discover, explore and conserve wild places through the John Muir Award; and through working with decision-makers and others to achieve public policies which will help protect and enhance wild areas. The instructions in this case have been issued by Ms Helen McDade, the Head of Policy for the JMT.
3. The JMT has been tracking the progress of this proposal for some time and has worked constructively with other local interests, including the local objector group, local Estates and individuals, in the assessment of this wind farm application. The Trust will continue to work with these local interests through to the eventual determination of this application.
4. The applicant has submitted a final design proposal for a scheme of 24 turbines, each 125m high to blade tip, along with associated on site infrastructure and infrastructure upgrades. The detail of how the turbines would be delivered to the site is NOT described and assessed in the application ES. This is a serious omission.

5. The objection has been prepared by Ian Kelly MRTPI, Head of Planning at Graham and Sibbald, and a chartered town planner with thirty seven years' experience in the public and private sectors, mainly in Scotland but also involving work south of the Border, and in Europe, mainly in Scandinavia. His relevant project work has included more than twenty major wind farm cases at various stages in the s36 consent/deemed planning permission process, and a greater number of wind farm planning applications. More recently a significant part of his workload has been the assessment of individual wind turbine and run of stream hydro proposals.
6. In addition to site visits and general knowledge of the area, the objection has been fully informed by two related specialist reports – both attached as appendices and referenced in this objection. Those reports are:
 - a. A Review of Impacts on Wild Land – Wildland Research Institute, Leeds University (WRI)
 - b. An LVIA Review – Mark Steele Consultants Ltd (MSC)
7. This objection has been submitted in the full knowledge of the considerable number of local individual objections and the local group objections that will have been lodged. Those objections should all be fully taken into account in the determination of this s.36 wind farm application.
8. The objection has been copied to PKC as the “relevant planning authority”. The JMT submits that PKC should object to the application and thus trigger a Public Inquiry. However, in the event that the Council does not object, the ECDU is requested to have careful regard to:
 - a. The terms of this objection and that from the local Keep Rannoch Wild Group
 - b. The significant and adverse landscape and visual effects on receptors including local residents and locally designated and important landscape resources and viewpoints including the mapped Wild Land Area 14 and the NSA
 - c. The adverse effect on local amenity, and

- d. The complexity of the landscape and visual impact issues (and the associated landscape capacity issues)
9. These factors should lead the ECDU to recommend to Scottish Ministers that they refuse this application. However, it is understood that such an outcome can only flow from an Inquiry (PLI). If that is the case then an Inquiry should be directed by Ministers irrespective of the stance adopted by the Council. As the ECDU will realise from the recent experience of the Dunbeath, Spittal, Wester Dod, Druim Ba, Harelaw, Allt Duine, Rowantree and Glenmorrie wind farms, it is only at a PLI that the fullest possible assessment of any s.36 wind farm application takes place.
10. This is an objection in respect of this proposal alone, but there is a wider Trust concern about the overall cumulative effects of wind farms on the defined Wild Land Areas of Scotland given the number of proposals and given that, since the refusal of Dunbeath, Scottish Ministers have yet to reject a wind farm on Wild Land grounds.

The Statutory Tests

11. This application is one that will be considered by the Council as Planning Authority following a consultation by the Scottish Government in respect of an application under s.36 of the Electricity Act 1989. An objection from the Council will trigger a Public Inquiry, as a matter of law (Schedule 8). The Electricity Act was passed in 1989 to re-organise the then Electricity industry and to govern the connection of large thermal power stations to the National Grid. Given its date, it was not of course designed to deal with the detailed assessment of onshore wind farms generally in remoter rural areas.
12. It is considered that this form of application gives rise to two sets of tests as follows.
13. In terms of the first set of tests Paragraph 3 of Schedule 9 of the 1989 Act provides a specific requirement on the Scottish Ministers (who are the nominated decision makers under the 1989 Act) to have regard to:
 - a. *The desirability of preserving natural beauty, of conserving flora and geological or physiographical features of special interest and of protecting*

*sites, buildings and objects of architectural, historic or archaeology interest:
and*

- b. *The extent to which the developer has complied with its duty to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites buildings or objects.*

14. These provisions apply to Licence Holders or exempt persons. It is unclear if the current applicants are either, being a special purpose vehicle (SPV) set up specifically for this project proposal. Having regard to the decision of Lady Clark of Calton in the Petition of *Sustainable Shetland*, reported at [2013] CSOH 158, the same principle would make the current application an unlawful one. The Scottish Ministers have appealed that decision and have secured an overturning of Lady Clark’s opinion in the Inner House. It is understood that the matter might now be referred to the Supreme Court by a party from another case. The view of the Government is that the s.36 process should carry on unchanged for the moment. The issues that arise might be finally resolved in late 2014, but if they are not then this will have been an unlawful application and all of the time and money spent on assessing it and objecting to it will have been an unnecessary and unreasonable expense.

15. Whilst views can vary on the Schedule 9 tests set out above, the precise language used means that it is almost impossible not to comply with these so-called tests. Indeed there is nothing in them that would actually prohibit or prevent the destruction of key natural assets as a developer could “*have regard to the desirability of preserving*” and then not preserve. These requirements do not set out specific criteria or thresholds against which to assess a project, but at their simplest, they clearly indicate that there is a balance to be struck between the claimed policy and technical justification for any project and the directly associated environmental and other impacts (whether capable of mitigation or not).

16. In terms of the second set of tests, given the deemed planning permission aspect of the process (see s.57 of the 1997 Act), it is well established in practice that the application should be assessed in order to consider whether the proposed development complies

with the Development Plan. As a minimum, the 1997 Act planning criteria are an important material consideration in any s.36 application decision. That will, in turn, necessitate a consideration of whether there are any other material considerations which may affect the conclusion that flows from the Development Plan assessment.

17. Those material considerations will include Government renewable energy and climate change policies but these will only have significant weight in the absence of positive, supportive and up to date national planning policy, Development Plan, SPG and SPP policies. However, the generalised policy making on these two topics of renewable energy and climate change does not, in any way, overrule either national planning policy or the Development Plan, or call for the Development Plan to be set aside in the determination of an application.
18. In this case national planning policy has just been updated (June 2014), the Development Plan is up to date (February 2014), and the Council is in the process of preparing Landscape Capacity Studies and new SPG in relation to wind energy proposals. **There is, therefore, a full and up to date policy basis for the detailed assessment of the s.36 application for the proposed T-a-B wind farm.**
19. In order to take a pragmatic approach to the processes described above this objection proceeds on the basis that the current application requires to be tested against **both** the Electricity Act tests and the Development Plan tests, with the bulk of the detailed assessment being in respect of the national planning policy on wind farms and in respect of the Development Plan (and related material considerations).

National Climate Change and Energy Policy

20. It is not appropriate to challenge Government Policy in an objection and this submission does not seek to do so. However, as the applicants seek to draw considerable support from this (energy and climate change) policy, it is certainly appropriate to consider how such Government Policy translates through to the land use planning system including assessing the outcome of s.36 wind farm applications in the light of the breadth of policy. The correct route, in a transparent, Plan led

system, is via the determination of acceptability in accordance with the Development Plan, and having regard to material considerations (including any relevant SPG/SG).

21. The Scottish Government’s renewables policy, which sits within UK National Energy Policy, is now well known. Ministers are fully committed to promoting the increased use of renewable energy sources where it is environmentally appropriate, and so long as impacts can be satisfactorily addressed. According to Ministers, this commitment recognises renewables’ potential to tackle the causes of climate change and harmful pollution, as well as their potential to support economic growth. Scottish Ministers have set clear targets for renewable electricity, announcing a series of increasing targets. The current target is for the equivalent of 100% of consumption to be met by renewables by 2020 with an interim target of 50% by 2015. However, this political aspiration was not accompanied by any Strategic Environmental Assessment (SEA) until the publication of a draft SEA addressing the “Routemap 2020” which, in turn, has been followed by an updated (2013) Electricity Generation Policy Statement (EGPS) and a recent post adoption SEA statement.
22. The draft SEA was subject to criticism but, in responding to the criticism, the Scottish Government has made it specifically clear that neither the Routemap nor the EGPS are promoted as a plan, programme or framework for other consents. Therefore, it is not considered necessary to take the time to analyse those documents in detail where there is very up to date policy and/or guidance available to assess the acceptability of the proposal.
23. Therefore, at this point in time, the Scottish Government’s renewable energy target is simply one of a number of key considerations for Planning Authorities when updating their Development Plans and when preparing SPG/SG, and for Ministers when considering those documents. But a politically driven target by itself does not presume that consents/permissions must follow for any particular site. The existence of a target does not define the outcome of this or any other s.36 consent application.
24. The Planning System has already played its full part in ensuring that the earlier 2011 interim target of 31% of electricity consumption was met. There is very considerable

consented or approved capacity that has not yet been built, meaning that there is already significant progress towards the 2015 interim target and the 2020 target.

25. At the time of writing, there is no indication of any fundamental change to current national planning policy as set out now in SPP2. The NPF3 and SPP2 (considered later) look to strengthen spatial planning and guidance for onshore wind energy, but the basic position remains – the Scottish Government’s policy direction generally favours onshore wind farm developments on appropriate sites, but it does not do so unquestioningly. In short only suitable sites should be approved. There is nothing in the weight of Government climate change or energy policy to justify approving projects that are unacceptable in terms of adverse environmental and other impacts and that are, as a result, contrary to Development Plan policy. There is nothing in any of the Government’s Renewable Energy Policy that changes the law or the operation of the planning system or that provides any priority or advantage to renewables projects within that system.

The Scottish Government’s Current Policy on Wild Land

26. This case is fundamentally about Wild Land. The proposal, as can be seen in the contents of the application and in its supporting ES, is a direct challenge to the current national planning policy of “strengthened” protection for Wild Land and for not having wind farms in NSA’s. From the perspective of the JMT that new, “strengthened” policy should, on its own, lead to the robust rejection of this wind farm proposal. Therefore, in a change to the normal format of how s.36 applications are assessed and commented upon, the issue of the directly relevant national policy is addressed prior to the consideration of any other issues.
27. At the very end of April 2013 the Scottish Government consulted on its proposals for NPF3 and SPP2. At the same time SNH published a map showing the Core Areas of Wild Land. In the NPF3 consultation document the first sentence of Question 2 stated: *“Current planning policy already safeguards areas of wild land character.”* It is, therefore, obvious that Scottish Ministers were perfectly clear as to the then current policy position.

28. The text of Question 2 continued: *“Do you agree with the Scottish Government’s proposal that we use the SNH mapping work to identify more clearly those areas which need to be protected.”* Therefore, this document was not a consultation on a range of possible options. Rather it was seeking views on what was clearly the Government’s proposal. That was consistent with the anecdotal knowledge that Ministers saw several versions of the Core Areas of Wild Land Map before agreeing the version that went out with the NPF3 and SPP2 documents.
29. **NPF3** was formally published in June 2014. Paragraph 3.23 states: “Scottish Planning Policy sets out the required approach to spatial frameworks which will guide new wind energy developments to appropriate locations, taking into account important features including wild land.” It is difficult to imagine that a new spatial framework in the Perth and Kinross area would positively guide major wind farms to locations within the boundaries of mapped Wild Land.
30. Paragraph 4.4, when addressing Scotland’s landscapes states: “We also want to continue our strong protection for our wildest landscapes – wild land is a nationally important asset.” There is not any room for interpretation in that wording.
31. **SPP2** was also published in June 2014. The approach to Spatial Frameworks is set out in Table 1. National Scenic Areas are a Group 1 designation as “areas where wind farms will not be acceptable”. A significant part of this wind farm site boundary lies within the Loch Rannoch and Glen Lyon NSA and that also leads to clear national planning policy conclusions. Although no turbines are within the NSA the fact that the site access and a substantial part of the “red line” site are within the NSA should lead to refusal of the application.
32. Wild Land is a Group 2 nationally important mapped environmental interest. The first introductory sentence in the Group 2 listing states “Recognising the need for significant protection, in these areas wind farm may be appropriate in some circumstances.” Reference is then made to effects being “substantially overcome” by siting, design or other mitigation. No further explanation is provided. It is impossible to conclude that building a very large wind farm within or immediately adjacent to a mapped Wild Land area amounts to (strengthened) significant protection.

Furthermore, the concept of “substantially overcome” is not defined, nor is “other mitigation”. These two sentences cannot logically be explained as they are at odds with both the rest of policy and with how Ministers described their understanding of policy in the PR – see below.

33. Paragraph 169 sets out the range of matters to be taken into account in development management decisions on wind farms. In this case the relevant matters have been set out in the ES and in some of the statutory responses, excepting “net economic impact” as there is no evidence based assessment of the net economic effect – for example environmental externalities and income transfer effects – in the submitted ES (see later).
34. Paragraph 200 refers to areas of wild land character having “little or no capacity to accept new development”. The policy is that “Plans should identify and safeguard the character of areas of wild land as identified on the 2014 SNH map of wild land areas.” It simply cannot be plausible, then, that permitting a major wind farm within a mapped Wild Land area could be considered as amounting to “safeguarding the character”.
35. Paragraph 215 refers to “In areas of wild land development may be appropriate in some circumstances.” It was originally assumed that this might refer to non wind farm development such as run of river hydro schemes or even small buildings used in land management. But the wording could have been clearer.
36. SNH published the **Wild Land Areas 2014 Map** alongside NPF3/SPP2. The application site lies within the defined Wild Land Area – Area 14 – known as the Rannoch-Nevis-Mamores-Alder WLA. The SNH response to this application, in terms of the effects on this WLA (and the NSA), is not yet available.
37. The Scottish Government issued a **Press Release** to accompany the new policy documents and maps. On the aspects of new measures to strengthen protection for scenic areas and wild land in relation to onshore wind farms that Press release stated:

“The Scottish Government remains strongly committed to releasing Scotland’s onshore wind energy potential, however, we have always made clear that we want the

right developments in the right place. We have taken steps to ensure that no wind farms can go ahead in our cherished National Parks and National Scenic Areas, and we have strengthened the protection of wild land, with new maps and inclusion directly in the SPP and NPF3.”

So, again, there can be no doubt about the policy position there – the protection of Wild Land is “strengthened” and there are to be no wind farms in NSA’s.

38. In conclusion, it is the fundamental position of the JMT that the clear intention of NPF3/SPP2 is that the location of a wind farm within an NSA and/or the situation of a wind farm having significant adverse effects on Wild Land (as identified in the 2014 mapping) would lead to proposals not being in accord with policy and thus being refused. It is simply not possible to read the overall policy position in any other way.
39. Given the above, and given the evidence of significant adverse impacts of the T-a-B proposal on the Wild Land Area 14 (in which it is located) and given that a significant part of the application site is within the NSA, then the outcome of this case should be absolutely clear – the proposed wind farm will be refused s.36 consent and deemed planning permission on account of the adverse effects on the NSA and the Wild Land making it incompatible with national planning policy.

The Proposals and the Submitted Environmental Statement Addendum

40. The applicants have submitted an **Environmental Statement**. It is primarily for the Council (in any of its relevant capacities as a consultee) and the other statutory consultees to assess the veracity of the submitted Environmental Information. At this stage the JMT does not intend comment in detail on the ES (beyond the assessments in the WRI and MSC reports). The Trust will revert to that aspect in more detail at the Inquiry stage, by which time the views of all the relevant statutory authorities will be known. In the meantime the following comments are submitted:
- a. Para 3.2.4- because of the date of the application the key aspects of the protection of NSA’s in SPP2 and the mapped 2014 Wild Land Area are not properly considered and/or included in the list of designations

- b. Para 3.3.4 – the request for a 50m micro-siting allowance simply reflects the poor quality of the existing site investigation – nothing else. It should be resisted as it is not known, at this stage, if moving some or all of the parts of the development by up to this distance (and only a horizontal measure is proposed, not a vertical limit change) will change the significant environmental effects
- c. Para 3.3.16 – the objection by SEPA is noted later but it is clear that a considerable amount of detail about the delivery of the larger components is simply missing from the ES and, therefore, cannot be assessed in the ES
- d. Para 4.7.8 – it is noted that 12.8km of new tracks are proposed with a width corridor of 20m. This is neither illustrated in the ES nor assessed in the ES
- e. Chapter 7, LVIA – this is fully reviewed in the two commissioned reports that are lodged as part of this objection
- f. 7.5.3 – the consideration of Wild Land is now out of date and the ES assessment is not based on the SNH 2014 mapping and the associated Advice to Ministers
- g. 7.5.13 – the Pegasus Group critique of the SNH Wild Land work is fully addressed in the submitted WRI report. A series of errors and misunderstandings are identified
- h. Tables 7.12 and 7.13 – the aspect of reversibility no longer applies with the publication of SPP2
- i. 7.16 – as mentioned several times the assessment of Wild Land is now out of date and reference should, instead, be made to the WRI report
- j. Table 7.15 – the fact that the nearest wind farm for the cumulative assessment is some 35km away from the site is telling in itself
- k. Chapter 15 – Socio-economic effects – the JMT has seen the submission from the Keep Rannoch Wild Group and notes and supports the economic review

that formed part of that submission. The JMT is also of the view that this ES chapter completely fails to properly account for the value that should be placed on Wild Land or on the activities associated with Wild Land. This is a matter that will be addressed in more detail at a subsequent PLI

- l. Chapter 15 – much of the material in the chapter is generic background material and there is no actual assessment of the actual effects of the proposed development on the local tourism resource. Nor is there a full, balanced economic impact assessment that accounts for all of the costs of the proposed development
- m. Table 15.19 – it is noted that this claims a total of 13 jobs in Perth and Kinross directly employed on the operation and maintenance of the proposed wind farm. The JMT is not aware of any operational wind farm having anywhere near this level of permanent employment. Therefore, any decision to consent this scheme should tie this claimed “benefit” into the consent by way of a legally binding section 75 Agreement
- n. In terms of the visualisations in Volume 4 these have been fully assessed in the MSC report and no further detailed commentary is needed at this stage beyond the limited number of matters set out below:
 - i. Figure 7.2 – this illustrates very well how the wind farm lies at the heart of an extensive wind farm free area.
 - ii. Figure 7.3 – this shows that part of the application site lies within the NSA and, in terms of SPP2, wind farms are not to be permitted in NSA’s
 - iii. Figure 7.9 – this shows the extensive visibility of mainly all of the turbines from locations other than the valley floors (Figure 7.15 shows this in more detail in a site centred view)
- o. The above comments have all been taken into account in the assessment of the application

41. The applicants have also produced a **Planning Statement**. Rather than comment on this in detail the planning policy position on behalf of the JMT is as set out later in this objection submission. However, it can be noted that, as the application was in effect rushed in during June the submitted Planning Statement was not able to address the critical aspects of the new NPF3, SPP2 and the 2014 SNH Wild Land Maps (and the associated Advice to Ministers). At this point it is unclear how the applicants and the ECDU are to address this matter.

The Position of SNH

42. At the date of submission of this objection the consultation response from SNH was not yet available. The reasons for this are understood but it is a situation that places objectors such as the JMT at a considerable disadvantage as they really should be able to consider, comment and/or rely on the assessment of an application like this by the statutory advisors to Scottish Ministers on all matters relating to the natural heritage. Therefore, the JMT reserves the right to submit a further note once the SNH response has been published.

43. The JMT understands that it is now the general policy position of SNH that matters relating to habitat effects, including management effects, should be fully worked up, in the form of an HMP, prior to the determination of the application. Therefore, if the application ES is found to be deficient in this aspect it is expected that SNH would object.

44. The Trust understands that SNH might well raise the matter of aquatic fauna, in particular the Arctic Char in its response. The Trust is fully supportive of such national level ecological interests being properly addressed in the assessment and determination of this application. In that regard it is not currently known the extent to which SNH will highlight ornithology issues in its response. However, the JMT is aware of Golden eagle and Osprey activity in the area in and around the wind farm application site. It is considered that this is an aspect that is not adequately addressed in the ES and, as such, could be considered as an omission by the applicants.

45. Overall the Trust is very hopeful of a formal national interest objection from SNH.

The Position of SEPA

46. The position with SEPA is set out in their consultation response of 12th August 2014.

In short, SEPA **objects** to the application on the grounds of a lack of information on:

- a. CAR aspects of the proposed access
- b. Impacts to peatlands
- c. Borrow pits

47. The consultation response letter then goes on to set out extensive information requirements, noting that some of the issues were first raised with the applicants at a meeting as early as January 2011. The concerns around the Loch Ericht infrastructure option effectively amount to the need for a full, new EIA. The requested information about peat, although properly and fully raised, needs to go beyond what is set out in the SEPA letter and address the fact that peat is a living organism that contributes to both the ecology and the landscape. Once disturbed it can never be exactly the same again.

48. The Trust welcomes the objection from SEPA. However, it is extremely concerned that, following the application of significant resources to this objection, it could be faced with having to assess and respond to extensive amounts of new information that should have been lodged with the application in the first place.

49. It appears from the SEPA objection that the application is materially deficient in information that is essential in order to assess the significant environmental effects. The application should be rejected on that basis.

50. In the meantime, at this stage, it is possible to comment on the general approach of SEPA in seeking to defer detailed assessments of other aspects to the post consent CEMP or CAR application stage when matters are much less in the full view of the public. That approach should be very strongly resisted.

Other Reports Informing This Objection

51. As advised two commissioned pieces of work have informed this objection as below.

52. In terms of the **WRI Review of Impacts on Wild Land** this concluded that;

- a. This report has been prepared on behalf of The John Muir Trust by the Wildland Research Institute. The report assesses the potential impacts of the proposed Talladh-a-Bheithe Wind Farm proposal in terms of wild land as defined by Scottish Natural Heritage (SNH) and highlighted in Scottish Planning Policy (SPP2) and the National Planning Framework (NPF3) all as finalised on 22 June 2014. The report additionally addresses the relevant points raised by Pegasus Planning Group acting on behalf of Eventus BV and corrects errors made in their submissions included within the application Environmental Statement.
- b. A final map of wild land areas was developed by Scottish Natural Heritage and published in June 2014 along with the SPP2 and NPF3. This map supersedes SNH's earlier maps identifying search areas for wild land in 2002 and core areas of wild land in 2013. The new map has received cross-party and ministerial support and so can be regarded as the final version. A total of 42 wild land areas are identified covering just under 20% of the land area of Scotland.
- c. Although wild land and the areas identified by the SNH mapping is not a statutory designation, Paragraph 200 of the SPP states wild land is *"very sensitive to any form of intrusive human activity and have little or no capacity to accept new development" and that " Plans should identify and safeguard the character of areas of wild land"*.
- d. The proposed Talladh-a-Bheithe wind farm lies inside wild land area number 14 (Rannoch-Nevis-Mamores-Alder) as identified on the SNH 2014 map of wild land areas. Analyses developed as part of this report show that a development of the scale proposed (twenty four 125m high turbines and associated infrastructure) would have a significant adverse impact on the qualities of this area of wild land, with the likely outcome that if the development goes ahead the area of wild land in the vicinity would be reduced by approximately **9,520ha** or **8.1%**. These analyses are based on the same

approach, methods, data and techniques used by SNH in developing the 2014 map of wild land areas.

- e. Additional analyses are carried out to assess the wider national context of the proposal in regard to visibility of wind farms from wild land areas and further reduction of the area of Scotland currently without visual impact from industrial wind turbines. The Rannoch area is one area which is as yet free from visual impact. These analyses show that construction of the Talladh-a-Bheithe wind farm, should it be consented, would impact significantly on this “visual impact free” area and further reduce the "wind farm free" area across Scotland as a whole by **68,686ha** or **1.9%**.

53. In terms of the **LVIA Review by MSC** the relevant findings and conclusions were as below:

The salient points arising from the MSC Review of the proposed siting and design are:

- the location of the proposed development fails to ‘*Minimise the potential visual effects upon National Scenic Area*’;
- the design iterations may have ‘*avoided*’ and ‘*reduced*’ some but not all effects. It is unclear what effects are ‘*offset*’;
- the ES reliance on ‘backgrounding’ as a design opportunity is misguided, as this would increase rather than mitigate landscape and visual effects;
- In addition, the site infrastructure (tracks, substation etc) would be visible from elevated viewpoints (which are not illustrated on the ES photomontages) and would add to the magnitude of landscape and visual effects;
- greater weight should be given to recent SNH guidance and in particular that relating to wild land;
- the ‘*landscape and views*’ constraints are either red or amber for all potential development areas. None are green (the least constrained); and

- no details are provided for the works required to enable the two proposed access options (by barge via Loch Ericht and/or by rail via Rannoch Station) or any assessment of effects that might justify either of the options.

The salient points arising from the MSC Review of the ES methodology are:

- no definitions are provided for the levels of landscape sensitivity;
- MSC conclude that effects are long term and are unlikely to be reversed within a generation; and
- ‘*dominating*’ and ‘*overbearing*’ are terms more commonly used to describe the acceptability of residential visual amenity effects rather than the magnitude of effect.

The salient points arising from the MSC Review of the assessment of landscape effects are:

- the ES and MSC assessments find that LCT 3, 2a would be subject to significant landscape effects (which the MSC assessment finds to be adverse);
- the ES assessment finds significant effects at the centre of the Plateaux Moor LCT whilst the MSC assessment concludes that effects would not be significant due to the distance from the proposed turbines. A similar conclusion applies to the ES finding of significant effects on the Blanket Bog LCT;
- the ES finds significant effects on the Carn Gorm / Schiehallion landscape character unit of the Highland Summits and Plateaux LCT and the lower slopes of Ben Alder within the Isolated Mountain LCT. Given the particular sensitivity of these two LCTS, MSC agrees that significant landscape character effects extend beyond 5km and into the areas described;
- there are no other existing, consented or planning stage windfarms that impact upon the LCTs affected by the proposed development;
- the NSA references to ‘*wild summits, mountain grandeur and natural beauty*’ demonstrate that views are important;

- contrary to the findings of the ES, MSC conclude that there would be significant harm to the special qualities of the NSA; and
- the special qualities of the NSA have already been adversely affected by windfarm developments to the southeast of the NSA.

The salient points arising from the MSC Review of the viewpoint assessment and visual effects are:

- the ES and MSC assessments of sensitivity and magnitude of effect vary, nevertheless both assessments find significant visual effects at ES Viewpoints 4 to 11, 19 and 21 to 25. However the MSC assessment finds these effects to be adverse;
- In addition the MSC assessment finds significant adverse visual effects at ES Viewpoints 2 (for an alternative viewpoint location) and 3 (for highway improvement works);
- The ES fails to acknowledge hill walkers or field sportsmen as baseline visual receptors, despite the majority of viewpoints being located on mountain summits;
- As ES viewpoints 5, 7, 8, 11, 22, 23 and 24 are all found to be subject to significant adverse visual effects, it is reasonable to assume that the remaining Munros (that are not represented by ES viewpoints and are within 20km of the proposed development) would also be subject to significant adverse visual effects;
- Therefore walkers on the summits of fourteen Munros (~ 5% of the total 282 Munros in Scotland) may be subject to significant adverse visual effects;
- only ES Viewpoint 10 (Loch Erich Shoreline) is located on a Core Path. Both the ES and MSC assessments find significant effects at this viewpoint and it can be anticipated that walkers on sections of other Core Paths would be subject to significant visual effects;

- there are no ES viewpoints on any other paths and tracks (apart from the summits of some Munros). However it can be anticipated that walkers on sections of these paths would be subject to significant visual effects; and
- ES Cumulative Viewpoints 8, 11, 14 and 23 demonstrate that the proposed development makes the largest contribution to cumulative visual effects.

The MSC Conclusions are:

- The ES design approach is based on the false premise that a landform backdrop mitigates landscape and visual effects. Nevertheless, the ES does acknowledge that there would be significant landscape character effects, as well as significant visual effects from surrounding mountains.
- The ES does not provide details for (or assessment of) the works required to enable the two proposed access options, when both options may give rise to significant adverse landscape and visual effects.
- The ES fails to acknowledge hill walkers as visual receptors, when walkers on approximately 5% of Scotland's Munros may be subject to significant adverse visual effects.
- Furthermore, the MSC assessment finds that there would be significant adverse effects on perceptions of the '*wild summits, mountain grandeur and natural beauty*' attributes of the Loch Rannoch and Glen Lyon National Scenic Area.
- Therefore there is ample justification for a refusal of s.36 consent and deemed planning permission on the grounds of insufficient information and/or significant adverse landscape and visual effects.

54. A full copy of each of the above reports has been lodged as Appendices to this objection. The reports should be read in full as forming an integral part of the objection. The reports and their conclusions have been fully taken into account in the Development Plan assessment that follows.

Consideration in terms of the Development Plan

55. As set out earlier **the correct approach to assessing the detailed acceptability or otherwise of this proposal is through the consideration of the Development Plan (and then material considerations)**. The overall very up to date Development Plan policies below provide a full basis for the assessment of the submitted application (in addition to the conclusions that flow from the new NPF3 and SPP2, including the 2014 SNH Wild Land maps. This Development Plan assessment has had full regard to the earlier content of this objection submission and to the two specialist reports commissioned to support the objection.
56. It is first necessary to consider the Strategic Development Plan (SDP) **TAYplan 2012 – 2032**.
57. One of the two most potentially relevant policies is Policy 6 Energy and Waste Resource Management Infrastructure. That policy sets out various requirements for Councils in preparing their Local Development Plans and does not provide any basis for properly assessing the acceptability or otherwise of individual wind farm proposals. However, the issues set out in paragraph C do encompass many of the key issues for this T-a-B wind farm application.
58. The other potentially relevant policy is Policy 3 Managing TAYplan's Assets. This policy is again directed at the contents of Local Development Plans with a view to safeguarding valuable assets such as natural and historic assets. It does not provide a basis for the assessment of specific development proposals.
59. Therefore, it can be concluded that the Strategic Development Plan does not provide any basis for testing the acceptability of the proposed wind farm.
60. The Local Development Plan is the very recently **Adopted Perth and Kinross Local Development Plan** (February 2014).
61. The most directly relevant topic specific policy is Policy ER1: Renewable and Low Carbon Energy Generation. That policy provides that proposals will be supported subject to a number of factors (criteria) being taken into account. Having regard to

those factors, and taking into account the ES, the specialist assessments by WRI and MSC, this submission, the objection from SEPA, and the local group objection, it is considered that the proposed wind farm would have:

- a. Individual and significant adverse effects on biodiversity, landscape character, visual integrity, tranquil qualities, and wildness qualities
 - b. No measurable and/or verifiable effects in terms of carbon reduction
 - c. Uncertainty in terms of the effects from the grid connection
 - d. Probable very significant adverse transportation effects including the visual and ecological implications associated with new pier/port facilities and loch transportation none of which is detailed or assessed in the ES
 - e. Highly visible hill tracks and borrow pits
 - f. Adverse effects on carbon rich soils (noting that SEPA are seeking considerably more information)
 - g. Likely negative and cumulative negative net effects on the local and the Perth and Kinross economies
 - h. Adverse implications on a scheme specific basis for the future spatial framework as that is very unlikely to promote wind farms that are located in NSA's and/or mapped Wild Land areas
62. The Local Development Plan also mentions a landscape capacity study and supplementary guidance (including supplementary guidance on wind farms and on landscape). None of these documents is yet available for public consultation and therefore no assessment can be made.
63. The proposed wind farm is therefore not in accord with the key, relevant and topic specific policy in the very up to date LDP. That should lead to rejection of the proposal. In that the proposal fails this directly relevant policy, there is no need to consider the remainder of the Plan policies as compliance, or otherwise, with them would not overturn the conclusion from the assessment against ER1. However, in

order to provide a lead into evidence at any future PLI, it is considered that it would be helpful to Scottish Ministers to briefly consider some of the other LDP policies.

64. The application can be considered in terms of Policy PM1A Placemaking. In that regard the proposal does not contribute positively to the quality of the surrounding built and natural environment. In terms of the criteria within the policy, the proposal does not:
- a. Respect the character and amenity of the place
 - b. Respect site topography and the surrounding landmarks and views
 - c. Have a design that complements its surroundings in terms of height, scale and massing

The proposal does not, therefore, accord with policy PM1.

65. Policy NE1A: International Nature Conservation Sites states that “Development which could have a significant effect on a site designated... will only be permitted where: (a) an appropriate assessment has demonstrated that it will not adversely affect the integrity of the site, or (b) there are no alternative solutions, and (c) there are imperative reasons of overriding public interest, including those of social or economic nature. In reading the ES closely, there are a number of places where a full and robust assessment of the potential impact on the local ecology has not been completed and/or where information is missing. The proposal, therefore, is likely to be in breach of Policy NE1A.

66. Policy NE1B: National Designations – states that “Development which would affect a National Park, National Scenic Area, Site of Special Scientific Interest or National Nature Reserve, will only be permitted where the Council as Planning Authority is satisfied that: (a) the proposed development will not adversely affect the integrity of the area or the qualities for which it has been designated; or (b) any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance.”

67. In relation to the National Scenic Area, the ES argues that the impact on the NSA is not significant. However, this reflects a lack of understanding of the NSA as described by SNH and it misunderstands current national planning policy. The application site includes a significant area of land within the NSA and, therefore, part B of the policy is invoked. In that regard the proposal will adversely affect the integrity of the area designated (although it should now be noted that the SPP2 test is simply one of location, not effects), and these adverse effects are not outweighed by social, environmental or economic benefits of national importance (again noting that SPP2 does not now require any such balancing assessment for wind farms within NSA's).

68. Policy ER6 – states that “Development and land use change should be compatible with the distinctive characteristics and features of Perth & Kinross’s landscapes. Accordingly, development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross.” In terms of the criteria in this policy the proposed wind farm would:

- a. Erode local distinctiveness, diversity and quality of the landscape, the visual and scenic qualities of the landscape and the quality of the landscape experience
- b. Not safeguard views, viewpoints and landmarks from development that would detract from their visual integrity, identity or scenic quality
- c. Not safeguard the tranquil qualities of the area’s landscapes
- d. Not safeguard the relative wildness of the area’s landscapes
- e. Not provide high quality standards in landscape design, including landscape enhancement and mitigation schemes

The proposal is, therefore, not in accord with Policy ER6.

69. As has been set out above there are other LDP Policies that can be cross referenced following the assessment in terms of the key policy. However, in that there is a breach of the primary Local Development Plan policy dealing with a renewable energy project/wind farm in this location, there is no need to make a full and final set of

findings on those other policies in this objection. Those other related Policies, which all support refusal of this application, would be addressed in more detail at any subsequent Inquiry stage following an objection by PKC.

70. In terms of the benefits of the proposed wind farm there is a very limited economic impact (but with no fully balanced assessment in terms of net economic effects including the income transfer effects of the ROCs system) and, in terms of environmental benefits, these simply reflect the assumed benefits of the energy output and the consequent greenhouse gas savings. These environmental benefits are the assumed generic benefits of renewable energy that are already built into the positive policy framework, including the positive and up to date Development Plan policies. The benefits are, as stated, very limited in comparison with the scale of adverse impacts. There are no other, scheme specific additional benefits claimed that should be weighed in the planning balance.
71. The proposal is, therefore, **not in accordance** with the Adopted Local Development Plan. Therefore, in terms of the **overall Development Plan conclusions**, the proposed wind farm is considered to be in breach of the relevant PKC Local Development Plan Policies. This is principally on account of its significant adverse landscape and visual impacts, including adverse impacts in terms of being located within an NSA and in terms of Wild Land. These significant adverse effects are not outweighed by the generic benefits of the scheme which are already built into the positive policy environment.
72. **Based on the conclusions of Development Plan non-compliance the presumption should therefore be for refusal of the deemed planning permission aspect for the proposed Talladh-a-Bheithe Hill wind farm application.**

Material Considerations

73. **National climate change and energy policy** is often cited as a key consideration of some weight in the determination of wind farm proposals. It is accepted that it is an important factor. However, this Government policy “green card” cannot simply trump all other considerations.

74. Rather, the Government's political policy imperative should be delivered through the proper operation of an up to date Plan led system, and decisions should be transparently taken within the operational processes of the Planning Acts which were designed to properly, openly and fully assess the *acceptability* of proposed developments. National climate change and energy policy do not call for the Planning system to be set aside. All renewables policy, at every level, while stressing the policy importance of renewable generation, is subject to the express caveat that generating plant, including wind power stations, should only be approved in appropriate and environmentally acceptable locations. In real terms it is the Planning System that forms the basis of deciding whether or not a site is environmentally acceptable and whether significant impacts have been satisfactorily addressed.
75. In terms of the **benefits** of the proposal, the potential economic benefits will be relatively minor. They may be concentrated on any local fabrication and assembly works and on the civil engineering works at the construction stage. Furthermore, no balanced, overall economic impact assessment is presented by the applicants – for example the income transfer effects of the ROCs system (and the associated opportunity costs) and the pricing of environmental externalities (which are very significant in this case) are not factored into the assessment in the ES or any other supporting document.
76. Therefore, overall, the scheme specific economic benefits, beyond the production of electricity, are likely to be very limited indeed and should be given little weight.
77. That leaves the environmental benefits to be addressed. The potential greenhouse gas savings and the associated climate change impacts are often the principal claimed environmental benefits of wind farm proposals and that is the case for this proposal. However, these assumed generic benefits are already built into a favourable policy environment. Therefore, there are in reality **no** additional, scheme specific and verifiable environmental benefits claimed for the proposal.
78. **The National Planning Framework NPF3, June 2014** sets out the key planning issues and high level spatial planning guidance for Scotland. The NSA and Wild Land

aspects of renewable energy projects have been fully considered earlier in this objection.

79. Paragraph 3.7 stresses that there should be a planned approach to onshore wind energy development. Paragraph 3.23 in NPF3 cross references to SPP2 and stresses that spatial frameworks should guide wind energy developments to appropriate locations, taking into account important (landscape and natural heritage) features. Paragraph 4.4 sets out that “Scotland’s landscapes are spectacular, contributing to our quality of life, our national identity and the visitor economy”. It continues “Landscape quality is found across Scotland and all landscapes support place-making”. Paragraph 4.5 confirms that biodiversity in Scotland is rich and varied. Paragraph 4.7 states “We have long sought to protect Scotland’s environment, recognising that it is a dynamic resource rather than a fixed asset. To better reflect this, more proactive and innovative environmental stewardship is required”.
80. This all confirms that the landscape and biodiversity are of national importance meaning that a planned and balanced approach is needed in considering the location of renewable energy developments notwithstanding the targets for renewable energy generation.
81. There is nothing in the remainder of the NPF3 which changes the normal approach, for wind farm applications, of a balanced assessment of benefits and disbenefits in the light of the Development Plan policy. The Wild Land aspects of NPF3 should lead to the rejection of this proposal.
82. The consolidated **Scottish Planning Policy SPP2 (June 2014)** provides up to date planning policy guidance on wind farms. It can be safely assumed that this very up to date national planning policy document has had full regard to international and national Climate Change and Renewable Energy policy. The NSA and Wild Land aspects of SPP2 have been separately addressed earlier in this objection.
83. Onshore wind is addressed in paragraphs 161 to 172. Paragraphs 161 to 166 deal with spatial frameworks and represent what Councils should be doing. Table 1 sets out the approach to these spatial frameworks. The Table confirms the Group 1 “no wind

farms” areas and then sets out a series of Group 2 areas – areas to be afforded significant protection. These areas include Wild Land, Natura 2000 and Ramsar sites, and community separation distances of 2km (in this case the significant access upgrading works must be taken into account in this aspect). Again all of these considerations would easily lead to a conclusion that this is not a location that would be positively promoted in new spatial guidance.

84. The Development Management considerations for this type of development proposal are set out in paragraph 169. Most of these are addressed in the ES, and in this objection, although it should be noted that the applicant has not carried out a net economic impact assessment, nor has the applicant provided any verifiable evidence as to the measurable effects of this proposal on actual greenhouse gas emissions.
85. Paragraph 170 confirms that locations identified for wind farms should be suitable for use in perpetuity. That rules out the “reversibility” argument that has been set out in several locations in the ES lodged by the applicant.
86. Local landscape character is addressed in paragraphs 196 to 201 and the resultant Development Management considerations are set out in paragraphs 202 to 206. Paragraph 203 confirms that planning permission should be refused where the scale or nature of proposed development would have an unacceptable impact on the natural environment. That is the situation that arises with the current proposal.
87. Therefore, overall, the provisions of SPP2, including the NSA and Wild Land aspects assessed earlier, support the conclusion that this wind farm proposal should be rejected.
88. The Council has produced and Adopted **Supplementary Planning Guidance on Wind Energy Proposals** (May 2005). Within that document the application site lies within a Sensitive Area (on account of a range of interests in table 2). For such an area the SPG Policy 2 sets out that there will be a presumption against wind energy developments. All proposals are to be subject to a detailed EIA process.
89. In terms of these primary tests/caveats within Policy 2 the proposed turbines are of an inappropriate size and scale and are in a location that leads to a range of significant

adverse effects, including adverse effects on landscape, character, amenity and habitats.

90. In terms of the relevant detailed Policy Guidelines, it can be concluded as follows for the relevant Guidelines:

- a. Guideline 1: there will be substantial adverse impact on landscape character that cannot be mitigated and is within 5km of sensitive locations including the NSA
- b. Guideline 2: the proposal will have substantial adverse visual impact which cannot be mitigated
- c. Guideline 3: the proposal will lead directly to substantial adverse cumulative impacts on important receptors in terms of current schemes but, by introducing turbines into an otherwise turbine free area, will create the potential for future adverse cumulative effects if further schemes are then brought forward
- d. Guideline 4: the proposal is likely to adverse effects on biodiversity, including adverse effects on protected species
- e. Guideline 6: the proposal is likely to lead to significant adverse effect on amenity and on the environment arising from both the construction traffic and the road and marine construction works that will be needed to ensure the delivery of turbines to the application site

91. The proposal is, therefore, not in accordance with the Council's Supplementary Guidance. However, given the age of this Guidance and given the commentary on it at several wind farm Inquiries it is considered that only limited weight should be given to the conclusions that flow from the Guidance.

92. In summary, the material considerations assessed above and earlier do not change the conclusions arising from the Development Plan assessment that this wind farm application should be refused s.36 consent and deemed planning permission on account of failure to meet the Electricity Act tests and on account of non-compliance with the Development Plan.

Overall Planning Policy Assessment and Conclusions

93. It is only an objection by the Council that will trigger a full Public Local Inquiry. Experience to date has shown that it is only at a full Public Inquiry that all aspects of proposed major wind farms are fully assessed. The Council will consider the consultation on the application as Planning Authority. In that respect the application is clearly contrary to the very up to date Local Development Plan. Therefore, the JMT fully anticipate that the Council will object to this proposal.
94. In reaching the overall conclusions in this objection, the approach has been to consider both the benefits of the scheme and the likely adverse impacts, or disbenefits of the scheme (the planning balance). For the reasons set out above, it is considered that the material benefits of the proposed wind farm scheme are only the limited economic benefits and those generic, assumed environmental benefits associated with wind energy generation and these generic benefits (which are now known to be only assumed benefits) are already factored into the favourable policy environment for this type of development and should not be counted twice.
95. In relation to the tests in the Electricity Act, it is not considered that these provide any valid basis for the *detailed* assessment of the acceptability of the scheme. However, they must be considered and they require a balance of benefits with adverse effects. Given the significant adverse landscape and visual impacts, including adverse impacts on the NSA and Wild Land, given the likely adverse impacts on valued local landscapes and viewpoints which cannot be mitigated, and given the other potential adverse effects, it is concluded that the applicant has neither preserved natural beauty and flora, nor secured reasonable mitigation. The Electricity Act Schedule 9 tests are not met.
96. In terms of the deemed planning permission aspects, the proposals have been assessed against the Development Plan always seeking to balance the identifiable scheme specific benefits in the equation.
97. Based on the above it is concluded that the proposed wind farm development is contrary to the Development Plan principally on account of its significant adverse

landscape and visual impacts, including adverse impacts on valued landscapes and viewpoints/routes that cannot be mitigated. This range of significant adverse effects is not offset by the limited economic benefits of the scheme or by the assumed generic environmental benefits of the scheme.

98. Therefore, the overall conclusion of this objection is that the proposal is not in accordance with the Development Plan and that, therefore, the presumption is for the refusal of deemed planning permission for this wind farm s36 application.
99. As set out in this objection a range of material considerations, including the very up to date NPF3, SPP2 and 2014 Wild Land mapping have been taken into account. The conclusions on all of these matters are set out above. In summary, it is concluded that there are no material considerations that would change the conclusion that arises from the Development Plan assessment.

Objection Submission

100. It is, therefore, respectfully submitted that Scottish Ministers should conclude, following a Public Local Inquiry if that is necessary, that the proposed Talladh-a-Bheithe s.36 wind farm application should be refused s.36 consent as the Electricity Act tests are not met and that, in terms of the deemed planning permission aspect, deemed planning permission should be refused on the grounds that the proposal is not in accordance with national planning policy and with the Development Plan.

[END]