

JMT+WLL/Glenshero/IK

Electricity Act 1989

Town and Country Planning (Scotland) Acts 1997 as Amended 2006 and 2019

ECU Code of Practice

PROPOSED GLENSHERO S36 WIND FARM

ECU Reference: ECU00000517

Highland Council Reference: 18/04733/S36

DPEA Reference: WIN-270-11

CLOSING SUBMISSIONS

on behalf of

JOHN MUIR TRUST and WILDLAND LTD

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Introduction

1. These Closing Submissions have been prepared in respect of the statutory Public Inquiry into S.36 Electricity Act application for the proposed Glenshero wind farm which Inquiry followed on from an objection by the Relevant Planning Authority. The Closing Submissions address the whole case jointly on behalf of the two objectors, the John Muir Trust (JMT) whose interests are in all aspects of wild land (and who are the owners of Ben Nevis) and Wildland Ltd, an adjacent landowner whose Estates assets are likely to be adversely affected by the proposed Glenshero wind farm on account of scheme specific and cumulative significant adverse environmental effects.
2. As the Reporter will have all of the evidence, his notes, and the webcast of the Inquiry available to him there is no need for excessive, detailed repeating of what has already been said. Rather, the approach in these Closing Submissions is one of concentrating on comments on a few key issues. The evidence on behalf of the JMT and Wildland Ltd is addressed first before commenting on the cases put forward by the applicants and by the other parties.

The Inquiry Procedure

3. A fully virtual Public Inquiry was held. The document management aspects and the actual conduct of the Inquiry all worked very well in the circumstances. However, three points arose:
 - a. Firstly, as addressed in other correspondence with the DPEA, and as now appears to be recognised by the DPEA, this was a Public Inquiry, not an Examination. The Reporter has no powers under the terms of the Electricity Act or from the Minute of Appointment to conduct a Planning Act type Examination. Therefore, all references to the overall procedure should refer to an Inquiry
 - b. Secondly, unlike the position at the conjoined Aviemore Inquiry in September there was no Programme Officer and, therefore, evidence documents were not displayed on the webcast screen for the public or on the Zoom feed to participating parties. The public would have found it difficult to follow the evidence on this basis

- c. Thirdly, the absence of the large monitor screens from Aviemore (and with the resultant ability to zoom in for everyone to see at the same time what was being referred to) meant that the fine grain detail of much of the mapped evidence was lost
4. It is accepted that there is no plausible case for arguing that these factors caused prejudice in a legal sense, but they do represent matters that should be addressed by the DPEA.

The Approach to the Case

5. Very careful consideration was given to the approach to the joint JMT and Wildland Ltd case for this Inquiry having regard to the interests of both objectors and to the evidence to be produced on behalf of the other objector parties. The written evidence on behalf of the RSPB had also been taken into account. In considering these matters the key aspect was to develop an approach that sought to minimise repetition and duplication whilst still enabling the Reporter to gather the best evidence.
6. Taking these points on board the decision was made to bring a focus to the evidence and to consciously avoid simply repeating what it was anticipated that the Council, NatureScot, the CNPA and Mountaineering Scotland would say in their evidence. Therefore, the agreed approach was the following:
 - a. Inquiry Session 1 – LVIA – Effects from key viewpoints as set out in the JMT Fieldwork Report
 - b. Inquiry Session 2 – WLA – Quantification of the effects on the Wild Land attributes and the mapped Wild Land Areas as established from the re-mapping of the WLAs using the original methodology but with the relevant wind farm developments in place
 - c. Hearing Session 3 – Policy and Socio-economics – A general overview of the issues, including the Development Plan, Supplementary Guidance, and material considerations without replicating the detail that had been included in the Council Committee Report of Handling (and in the Council Report on Stronelairg)
 - d. Closing Submissions – A general overview of the whole case

7. This approach reflects the clear fact that the evidence on behalf of these two objectors is simply a particular part of the overall case against this proposed wind farm rather than being put forward as a standalone case for rejection of the application. It is hoped that this approach of combining focus with accepting that this is a contribution to the overall case has contributed to the efficient running of the Inquiry in what was still an unusual Covid related set of circumstances and procedures.

The Application

8. The original application was proposing 39 turbines, at 135m to blade tip (noting in passing that most new applications are seeking higher turbines than this), plus associated infrastructure, including 28km of new on site tracks, seven borrow pits, and an on-site concrete batching plant. It is considered important that the effects of all of the associated infrastructure aspects are factored into the assessment of the application by the Reporter. Furthermore, it is also important to understand that these tall turbines are proposed on a site of already considerable elevation, close to Munro level, meaning that the turbines will be highly visible features in the landscape.

The Landscape Evidence

9. The landscape evidence on behalf of the two objectors was prepared for two purposes. Firstly, to show that there was no intention to totally ignore the recommended NatureScot approach to assessing effects on Wild Land Areas and, secondly, to provide an input to the policy evidence. For reasons that were explained the fieldwork was not carried out by Mr Kelly who was the witness for this session.
10. In the event the evidence was taken as read and there was no cross examination. Therefore, there is nothing to be added to what has already been submitted in the form of the LVIA Inquiry Report and Precognition.

The Evidence of Dr Carver

11. The evidence of Dr Carver, in Inquiry Session 2, sought to provide an objective data and software based assessment of the scheme specific and cumulative effects on the Wild Land Areas using the original methodology that the then SNH used to define the Wild Land Areas in 2014. It was no part of the evidence to suggest that the other parties' evidence that was provided using the 2017 Draft and the recent Final

NatureScot Guidance should be set aside. Rather, the approach was one of offering an objective, repeatable approach to contrast with the subjective professional judgement approach of the other witnesses in this Inquiry Session. As noted later in these Submissions, Dr Carver’s conclusions broadly accorded with those of NatureScot which had flowed from the professional judgement approach.

12. The critical difference between the approaches is that whilst the other professional witnesses presented a range of differing conclusions (and the Reporter will form his own conclusions in due course) should another GIS/WLA specialist have repeated what Dr Carver has done using the same data and the same methodology then the outcome would be the same.
13. As Dr Carver explained, while the Phase 1 mapping of wildness attributes, and their combination as the Phase 1 wildness quality index, provides a clear and spatially nuanced picture of the intricate variations in pre-development and post-development wild land quality, the Phase 2 mapping approach and subsequent drawing of Phase 3 WLA boundaries is sometimes open to question. The SNH methodology relies on a statistical classification of wildness across the whole of Scotland to define Phase 2 areas and on professional judgement (from landscape professionals) in the drawing of the final Phase 3 boundaries. This inevitably means that the re-mapping of Phase 2 and Phase 3 boundaries in local circumstances cannot provide the spatial nuance required to properly and fully answer cross examination questions in an Inquiry. This was well demonstrated in this instance, wherein the initial Stronelairg S36 wind farm consent decision resulted in the necessity to redraw the Phase 3 boundaries post-CAWL mapping (but without SNH first revisiting the Phase 1 and Phase 2 mapping work). The Stronelairg turbines and associated infrastructure have had a significant adverse impact on the Monadhliath mountains, and the decision to consent Dell alongside the subsequent S36 applications at Glenshero and Cloiche are all simply expansions to the Stronelairg site leading to further significant adverse visual impact issues regarding Wild Land Area effects and landscape capacity within the region.
14. The cross examination by Mr Trinick QC focused on the GIS repeat mapping of the SNH Phase 1 wildness attributes and wildness quality index and his suggestion that it could not replace the professional judgement of trained and experienced landscape professionals such as James Welch. While this is true to an extent, by the same logic

neither can subjective professional judgement replace the information provided by the objective mapping. This was demonstrated several times in cross examination where marked differences in opinion existed between the assessments provided by experienced landscape professionals (between James Welch and Carol Anderson). By comparison, as noted already, should the repeat Phase 1 and Phase 2 GIS mapping be carried out by more than one GIS professional in parallel following the SNH methodology and using the same datasets, then the same answers will be produced. The conclusion to be drawn from this, is that both approaches are valuable and can, when employed collaboratively, support each other and provide the Reporter with full information on which to base the recommendation to Ministers. It appeared from cross examination that Mr Trinick QC seemed not to fully understand the detail of the mapping methodology (especially the use of the Viewshed Explorer model) nor its implications for the Inquiry. Rather, the questions seemed to focus on repeated criticism and on the semantics of wildness qualities versus wildness attributes. More time and space (to include the physical examination of maps alongside the ability to zoom in and interrogate digital images on large screens) would have greatly helped the Reporter and Mr Trinick understand the analyses and what they mean.

15. The evidence of Dr Carver concluded that there needs to be a more strategic approach to planning onshore wind energy developments when considering the protection of WLAs and other sensitive landscapes. The Inquiry Report Scotland-wide mapping of cumulative visibility as seen from WLAs and other sensitive landscapes including National Parks and NSAs needs to be seen as a useful strategic planning tool in informing the scoping and assessment phases of wind farm planning and S36 applications including this case.
16. As the Reporter will be able to see from his notes, from the evidence, and from the webcam recording, Dr Carver's evidence and conclusions were fully compatible with the NatureScot evidence on the assessment of impacts on the Wild Land physical attributes. These Wild Land physical attributes are what people perceive as the Wild Land qualities. It follows that if the physical attributes of the surrounding Wild Land are lost to the extent predicted then so is the ability to perceive these attributes. On this matter Dr Carver's evidence supports the conclusions reached by NatureScot. Dr Carver also identified that the area of greatest significance in terms of impacts on Wild Land was within the Glenshira Forest on the southern slopes of the Upper Spey

and along the northern flanks of the Creag Meagaidh ridge. This also accords with the NatureScot conclusions on the exacerbation of the Stronelaig impacts on their Sub-Area A.

17. Dr Carver’s objective evidence in the form of his Report, his Precognition and his evidence in chief, alongside his cross examination answers are all commended to the Reporter.

The Policy Evidence

18. In reaching the overall detailed conclusions on policy matters the approach was to consider both the benefits of the scheme and the likely adverse impacts, or disbenefits of the scheme (the planning balance) in the context of national and local Policy and Guidance. For the reasons set out in the evidence (and as commented on later in these Closings Submissions), it is considered that the material benefits of the Glenshero wind farm scheme are (very likely) only the limited economic benefits and those renewable energy benefits associated with wind energy generation. Those benefits (which are largely assumed benefits) are already factored into the favourable policy environment for this type of development and should not be counted twice. The UK policy position also falls to be considered carefully by the decision maker as does the implication for transmission systems (including the current very high and continuing constraints payments). The UK Government has now published its Energy White Paper and parties await to see if the Reporter will seek views on that new document.
19. In relation to constraints payments the Scottish 2020 figure for payments to wind farms as of 1st December 2020 was £225m and is likely to end up at twice the 2019 figure. For the adjoining Stronelaig wind farm the 2020 figures so far, as at 8th December, was almost £13.6m of payments with the a total of 193,531 MWh of electricity production forgone. It would appear to make little strategic sense to consent another wind farm adjoining such a heavily constrained off wind farm.
20. 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. This is especially so when it is remembered that the Act is from 1989 and was never intended, in its drafting, to be the basis for assessing the acceptability of otherwise of large scale wind farms in remote, mountainous, rural locations. However, the

provisions must be considered and a reasonable interpretation is that they require a balance of benefits with adverse effects. There was an exchange on these tests in the earlier preliminary written submissions on policy resulting in a broad agreement as to the approach to be taken. The wording of the tests is clear but some nuance needs to be applied rather than just simply remaining with a narrow “have regard to” approach. Given the inappropriate siting, the significant scheme specific and cumulative adverse visual impacts on the nationally valued landscapes of the two mapped Wild Land Areas, and on viewpoints, all of which cannot be mitigated, and given the other potential adverse effects including the likely adverse effects on protected bird species and associated habitats, it is concluded that the applicant has neither preserved natural beauty and flora, nor secured reasonable mitigation. It is considered that on the basis of this nuanced approach the Electricity Act Schedule 9 tests are not met for this application.

21. In terms of the planning balance the proposals have been initially assessed against the Local Development Plan and the Adopted Supplementary Guidance always seeking to balance the identifiable scheme specific benefits in the equation.
22. Based on the above it was concluded that the proposed wind farm is contrary to the Local Development Plan as it is in breach of the relevant HWLDP Policies 67, 28 and 57. This conclusion arises on account of the wind farm’s siting, its adverse scheme specific and cumulative significant visual effects, and adverse effects on landscape, especially the two mapped Wild Land Areas and ornithology, alongside the potential adverse economic effects on local tourism, all of which adverse effects are not outweighed by the benefits of the scheme. That conclusion should lead to a refusal of deemed planning permission for the proposal unless material considerations indicate otherwise.
23. Therefore, the overall planning policy conclusion on behalf of the JMT and Wildland Ltd 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 Glenshero S36 wind farm application.
24. As set out in the evidence a range of material considerations, including the NPF3 and SPP2 provisions in respect of landscape, economic effects, and wildness, have been taken into account. The conclusions on all of these matters were set out earlier in

evidence. In summary, it is concluded that there are no material considerations that would change the conclusion that arises from the Development Plan assessment and it can also be concluded that the proposal is not in accord with National Planning Policy on account of its inappropriate siting and the significant adverse visual effects and adverse effects on, landscape, Wild Land Areas, and ornithology.

The Case for the Applicants

25. The applicants set out a business case in support of the proposed wind farm. Although the aspects of alternatives and net economic impact were addressed by the objectors they did not lead separate expert evidence on the specifics of the applicant’s business case. Commenting on the business case was not part of their submitted objection.
26. However, it was an important aspect of the Inquiry evidence and the issues that arise are clear for parties such as Wildland Ltd who have an understanding of international PLC business practice including balance sheets, profit and loss accounts, and cash flows for the parent group and for subsidiaries. Taken shortly and drawing on that Wildland Ltd experience it is noted that:
 - a. There was nobody in attendance from either the Scottish Government or HIE to testify to the claim of national level benefits or to set out the detail of any other financial relationships between the Scottish Government and the Alliance (including significant underwriting provisions). There was not even a written submission of any sort from either party
 - b. The reality of the Scottish wide economic benefits of on shore and offshore wind farms are that some civil engineering contractors and some ports operators have secured extensive contracts but there is little sign of any “Saudia Arabia of wind” being established in Scotland and with the current situation at Bifab illustrating the challenges
 - c. A project that takes at least six years to address planning/consenting/construction/commissioning, that involves considerable risk, and that will require substantial capital investments before becoming revenue positive does not seem to be the obvious best PLC business case choice if the primary objective is to secure, in early course, a known electricity supply at a known cost for the smelter and associated facilities when

compared with the alternative options (whilst noting, in the passing, that an existing hydro scheme owned by the alliance and supplying the smelter has been sold)

- d. The proposed PPA for the output from the proposed wind farm is now to be secured only by way of a condition on a S36 consent rather than by way of a Unilateral Undertaking (corrected applicant's submission of the 3rd December). Such a condition could be varied in the future on application and, in any event, the ability for enforcement would probably not exist in one or more of the PPA participating legal entities were to be liquidated or otherwise cease trading. Little weight should now be given to this

27. Overall, and based on current experience within the objectors' teams, the proposed business case and the claims for national level benefits seem unlikely to be plausible in the context of normal international PLC business processes, whilst the proposed revenue earning investments in the rural Estate are matters that could probably be progressed anyway over time. Mr Trinick QC was understandably reluctant to allow questioning of witnesses on the performance to date of the Alliance in terms of delivering on promises made to the local community.

28. The Inquiry was never provided with any explanation as to why Mr Welch was the sole landscape witness for the applicants replacing Ramboll and the EIA-R assessments for both Inquiry Sessions. It is difficult to succinctly categorise his evidence. Indeed it is difficult to know how his late involvement in this proposal can be fully comprehensive when he has clearly not been involved in the site selection and in the wind farm design process. In summary, despite this coming late to the case, the LVIA and WLA evidence appeared to be that the proposal is acceptable because he finds it to be acceptable based on his own subjective assessments

29. Perhaps, rather than going into the detail of what Mr Welch has said, a simple overview is appropriate taking on board the point made by Dr Morris on behalf of Mountaineering Scotland. That point is that the assessor inevitably takes his values into the field with him as a perfectly understandable but inescapable influence on the assessment. That overview, and the paragraph above, lead the objectors to the conclusion that Mr Welch would appear to have a lower level of appreciation of and sensitivity to Scotland's high mountain landscapes than the other witnesses in that he

finds it acceptable (his words) to place a wind farm of this scale with turbines of this height at this elevation in the heart of a key mountain area.

30. In terms of Mr Bell’s policy evidence he clearly sincerely believes in the net zero and climate emergency statements set out by various Governments and agencies and believes that those statements should lead to more wind farms being approved (and presumably built) in remote rural areas in Scotland.
31. There is no doubt that climate change poses a range of challenges and both objector parties fully recognise this and both are fully committed to a range of actions and initiatives to help meet the Scottish Government climate change targets and to mitigate the adverse effects of climate change. In doing so they take a broad, objective, and evidence based approach.
32. However, in contrast, the objectors have three basic concerns around this climate related approach of Mr Bell in his evidence. These are as below:
 - a. Firstly, there is the important “no double counting point” set out earlier
 - b. Secondly, there is an absence of evidence as to the emissions reductions performance of individual wind farms. Certainly, at UK National and Scottish levels, the replacement of fossil fuel electricity generation by renewables reduces greenhouse gas emissions and there is a consensus among scientists that this is an important factor in addressing climate change. However, the Inquiry was not presented with any associated evidence on the actual performance of actual individual wind farms having regard to actual load factors and outages due to being constrained off etc. Rather, the evidence was an assumed calculation
 - c. Thirdly, despite declaring a climate emergency, the Scottish Government has not sought to change the weighting to be given to the factors in the planning balance that is ultimately applied when determining wind farm applications. There is an intention by the Scottish Government to consider such changes via NPF4 (where there will be a range of differing views no doubt) but those changes have not happened at this stage. The weightings of the factors in the balance remain as before as was set out by the Reporter in the Culachy case

33. The above concerns are not suggesting that the asserted climate change benefits of wind energy should be ignored. Rather, the concerns point to giving these claims an appropriate weight in the planning balance. Certainly these asserted benefits do not automatically outweigh the significant harm that arises in this case.
34. In summary, it might be surmised that the witnesses for the applicant are basically just trying to find ways of setting out a case for what is fundamentally the wrong development in the wrong place.

The Case for Other Parties

35. The Highland Council set out a clear case stemming from the Report of Handling whilst also being mindful of the issues arising from the “undoing” of the mitigation put in place to enable Stronelaig to be consented. There was discussion around what fieldwork might or might not have been undertaken by Ministers or on behalf of Ministers to assess the application and the mitigation. It is a pity that nobody asked the witness on behalf of the objectors as a detailed answer could have been given. That answer, for the record, is that the consented scheme was never the subject of an in the field visualisations and viewpoints assessment by any Civil Servants based on a new set of visualisations (THC or SNH standards) for the revised and ultimately consented scheme. It was simply never assessed in the normal way and, as Dr Carver’s evidence shows, the precise effects on the Wild Land Areas was never mapped using the appropriate methodology.
36. In terms of the evidence on behalf of the CNPA and NatureScot the assessment by Carol Anderson is commended to the Reporter. However, there is no doubt that the objectors would have preferred that the CNPA had appeared separately. It is considered such an approach might have resulted in much more detailed National Park related policy advice for Ministers, especially in terms of advice on the effects of wind farms outwith the Park, bearing in mind that Scottish Ministers are signatories to and partners in the National Park Management Plan which has a specific policy on that topic.
37. The evidence on behalf of Mountaineering Scotland was given by a highly experienced mountaineer speaking from the perspective of someone who, from an understanding of the international context, fully appreciates the beauty of Scotland’s

mountains but who, on renewable energy, still supported the concept of the right development in the right place. More could have been made of this evidence during the oral Sessions. The commentaries on the viewpoints are commended to the Reporter. The objectors very much endorse the right development in the right place approach.

Conclusions and Submission

38. There is no point in trying to disguise the view of the objectors that the consenting of Stonelairg, without a full and proper assessment of the LVIA and WLA effects of the eventual scheme, was a profound mistake. It was a mistake that had a significant adverse effect on the Wild Land resource as well as resulting in very significant constraints payments to the wind farm operators virtually since the first day of commissioning. It was a mistake that should be acknowledged and not be compounded by the consenting of a further large scale wind farm scheme in this locality.

39. Therefore, having regard to the totality of the evidence, it is respectfully submitted that the Reporter, when preparing his report for Scottish Ministers, should recommend that Ministers should refuse S36 consent as the Electricity Act tests are not met and that, in terms of the deemed planning permission aspect, they should refuse deemed planning permission on the grounds that the Glenshero proposals are not in accordance with the Development Plan and Guidance.

[END]

Submitted: 17th December 2020

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