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Our ref: ECU00002043

11 January 2022

Dear Mr Hall

APPLICATION FOR CONSENT UNDER SECTION 37 OF THE ELECTRICITY ACT 1989 TO INSTALL AND KEEP INSTALLED THE PROPOSED 132 KV OVERHEAD ELECTRIC LINE BETWEEN A PROPOSED SUBSTATION AT LIMEKILN WIND FARM NEAR REAY ON THE NORTH COAST OF CAITHNESS, TO A SEALING END TERMINAL STRUCTURE LOCATED AROUND 900 METRES TO THE SOUTH OF DOUNREAY SUBSTATION

Application

1. I refer to the application (“the Application”) made on 6 April 2020 under section 37 of the Electricity Act 1989 (“the Act”) by Scottish Hydro Electric Transmission Plc (“the Company”), a company incorporated under the Companies Act with company number SC213461 having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ. The application sought consent under section 37 of the Act to install and keep installed approximately 5 kilometres (km) of new single circuit 132 kilovolt (kV) overhead electricity transmission line (OHL), supported by trident H wood poles, between a proposed on-site substation at Limekiln Wind Farm (approximate OS Grid Reference NC 977 627) and a sealing end terminal structure located around 900 m to the south of Dounreay substation (OS Grid Reference NC 985 658).

2. Ancillary development would be required to facilitate the construction and operation of the proposed development. This would include tree felling and vegetation clearance, temporary measures to protect road and water crossings, upgrades to existing access tracks and existing access points, and new temporary access routes. The Company requested that the Scottish Ministers give a direction that planning permission for such ancillary development is deemed to be granted.

3. This letter contains the Scottish Ministers’ decision to grant consent for the Development as more particularly described at Annex 1 (“the Development”).

Planning Permission



4. In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 Scottish Ministers may on granting consent under section 37 of the Electricity Act direct that planning permission is deemed to be granted in respect of the overhead electric lines and ancillary developments. **This letter contains the Scottish Ministers' direction that planning permission is deemed to be granted.**

Consultation

5. Under paragraph 2(1) of Schedule 8 to the Act, notice of the Application must be served on the relevant Planning Authority, and notice was served on Highland Council. Notifications were also sent to Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland (HES). A range of other relevant organisations were also notified and consulted.

6. On 21 July 2020, the Company submitted additional information on peat landslide hazard risk assessment in response to Scottish Ministers' request under regulation 19(2) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the 2017 regulations"). Information, in the form of the documents comprised of EIA Report Volume 3 Figures 8.5 (Breeding Bird Survey Birds Of Conservation Concern), 8.7 (Target Species Flightlines), 8.8 (At Risk Flightlines), 8.9 (Breeding Raptor And Owl Surveys), and, 9.1 (Cultural Heritage), was previously submitted on 18 and 21 May 2020.

7. In accordance with regulation 20 of the 2017 regulations, the additional information was advertised, placed in the public domain and opportunity was given to those wishing to make a representation.

Consultation responses

8. No objections were received from consultees.

Statutory consultees

9. Highland Council ("the Planning Authority") does not object. It considers the proposed overhead transmission line forms part of the delivery of a fit for purpose transmission network, facilitating the move to net zero. It considers that subject to the application of appropriate conditions, in particular in relation to compensatory planting, the impact of the proposed development can be managed. In relation to Development Plan policy (Highland Wide Local Development Plan 2012, Caithness and Sutherland Local Development Plan 2015 and Highland Council Supplementary Planning Policy Guidance) the Planning Authority considers the proposed development accords with the Development Plan.

10. The Planning Authority commented in relation to Schedule 9 to the Electricity Act 1989 and the extent to which the Company has had regard to the preservation of amenity. The Planning Authority considered that the Company has had regard to the desirability of preserving natural beauty but through the design process has mitigated the effects of the proposed development in relation to the effects on the natural beauty of the countryside.

11. The Planning Authority concluded that the proposed development accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

12. The Planning Authority recommended a number of planning conditions, relating to limits of deviation for tracks and poles; line marking between NC999627 and NC981624; construction hours; compensation for woodland removal; construction environmental management; construction traffic management; a site restoration method statement; decommissioning; access management; and the terms of appointment by the Company of an independent Ecological Clerk of Works. Scottish Ministers have included conditions which provide the mitigation measures suggested by the Planning Authority.

13. Historic Environment Scotland (HES) did not object to the proposed development and advised that the proposals do not raise historic environment issues of national importance. It recommended against the implementation of the mitigation proposed in paragraph 9.7.5 of chapter 9 of the EIA Report (and summarised in Chapter 12, Table 12-1 under mitigation reference CH3) stating that this would have a worse effect than felling and that this mitigation measure should not be implemented. HES also suggested further mitigation in the form of marking and fencing around scheduled monuments. Scottish Ministers have included conditions which provide the mitigation measures suggested by HES.

14. The Scottish Environment Protection Agency (SEPA) did not object and advised that a number of planning conditions should be included if Scottish Ministers were minded to grant consent, and that subject to the inclusion of these conditions SEPA did not object to the proposed development.

15. SEPA identified the need for planning conditions in relation to the following:

- The removal all components of the line from the site for recycling or disposal should the line be decommissioned, and
- The need for agreement of a finalised layout prior to the commencement of the Development.

16. Scottish Ministers have included conditions which provide the mitigation measures suggested by SEPA. SEPA also highlighted guidance on various regulatory requirements and good practice advice which can be found on the Regulations section of its website or by contacting the local SEPA office in Thurso via NHNI@sepa.org.uk.

17. Scottish Natural Heritage (SNH, now rebranded as NatureScot) stated that there are natural heritage interests of international importance on the site, but in its view, these will not be adversely affected by the proposed development. SNH advised Scottish Ministers that the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the “Habitats Regulations”) or, for reserved matters, the Conservation of Habitats and Species Regulations 2017 require consideration of the effect of the proposed development on Caithness and Sutherland Peatlands Special Protection Area (SPA), North Caithness Cliffs SPA and Caithness Lochs SPA (“the Natura 2000 sites”) before it can be consented.

18. For the Caithness and Sutherland Peatlands SPA, SNH advised the proposed development is likely to have a significant effect on hen harrier, short-eared owl, golden plover, and wigeon. For the North Caithness Cliffs SPA, SNH advised the proposed development is not likely to have a significant effect on any of the qualifying species in relation to the conservation objectives. For the Caithness Lochs SPA, SNH advised there was a likely significant effect on Icelandic greylag geese and Whooper swan.

19. SNH commented on wider countryside birds. In relation to crossbill, SNH stated it is satisfied that there is the potential for disturbance to breeding birds but this can be mitigated by the timing of works and/or the use of buffers around breeding site as identified in the Breeding

Bird Protection Plan within appendix 3.1. SNH stated it is satisfied there will be no significant impacts on pink footed geese.

20. SNH stated it welcomes the species protection plans provided in Appendix 3.1 of the EIA Report. If the measures within these plans are implemented then SNH are satisfied that there will be no impacts to protected species. In relation to peatland, SNH advised that areas of peatland within the site have been extensively modified by commercial forestry plantation resulting in the peat being locally degraded, and that it is satisfied that these areas are not of national importance. SNH also stated it is satisfied that the proposed development will not result in significant adverse impacts on wild land.

Non-statutory consultees

21. BT has no objection to the proposed development.
22. No response to the consultation was received from Caithness District Salmon Fisheries Board.
23. No response to the consultation was received from the Caithness West Community Council.
24. No response to the consultation was received from the Civil Aviation Authority.
25. Crown Estate Scotland has no objection to the proposed development.
26. The Defence Infrastructure Organisation within the Ministry of Defence has no objection to the proposed development.
27. No response to the consultation was received from the Flow Country Rivers Trust.
28. No response to the consultation was received from the John Muir Trust.
29. The Joint Radio Company has no objection to the proposed development.
30. The Ministry of Defence (Royal Air Force) has no objection to the proposed development.
31. No response to the consultation was received from Mountaineering Scotland.
32. NATS Safeguarding has no objection to the proposed development.
33. RSPB Scotland has no objection to the Development. It stated that it had concerns that potential impacts on priority species have been underestimated and therefore not adequately assessed.
34. RSPB Scotland commented in relation to the common scoter qualifying interest of the Caithness and Sutherland Peatlands Special Protection Area that 'knowledge of scoter movements in the Flow Country are lacking but it is possible that birds breeding in the Caithness and Sutherland Peatlands SPA could commute and/or migrate through the proposal site to and from the sea, increasing the likelihood of collision risk. There is also historical useage [*sic*] of Loch Saorach within the wider forest area.' RSPB Scotland added that 'therefore, a justification must be provided as to why risks to this species has not been addressed in the EIA.'

35. RSPB Scotland commented in relation to the hen harrier qualifying interest of the Caithness and Sutherland Peatlands Special Protection Area that ‘SNH guidance states that Vantage Points (VPs) “should not be located near to sensitive sites for target species, i.e. nest, roost or lek sites.” We note that VP1 is located within suitable habitat for breeding moorland raptors and is in a historic hen harrier territory. This might have affected the behaviour of birds in the area, therefore this choice of VP location should be justified.’

36. RSPB Scotland stated that ‘it would have also been prudent to undertake surveys for raptors outside of breeding season as some target species such as hen harrier will still be present over the winter months, adding that much of the habitat through which the proposed development passes would be suitable for hen harrier winter roosts.’ RSPB Scotland also quoted from SNH guidance that “it is also important to note that areas without breeding pairs can be used by immature and non-breeding birds. These are important in supporting the wider population as they will include birds that will breed in future. Several raptor species, especially red kite, white-tailed eagle and hen harriers, form communal roosts mostly outwith the breeding season. Any roost sites within 2km of a proposed wind farm site should be identified.” RSPB Scotland stated that significant disturbance could result from this development within 1km of any roosts.

37. RSPB Scotland highlighted that the EIA Report shows large numbers of breeding birds of conservation concern within and in the vicinity of the Limit of Deviation (LOD), and that it would, therefore, be best practice to undertake all works outside of the bird breeding season. RSPB Scotland added that it understands this is not possible and agrees with the standard best practice mitigation outlined in Section 8.8.

38. RSPB Scotland commented on the new potential barrier for wintering geese and swans introduced by the line around Loch Achbuiligan, increasing collision risk for these species when landing or taking off from the loch. RSPB Scotland advised that figure 8.8 shows that the majority of at risk flight lines are in this area, and recommended undergrounding the section of line between the proposed sealing end structure (south of the A836 at NC985658) and the north of the road at Achvarasdal (at approximately NC990650), avoiding sensitive habitats and Ground Water Dependent Terrestrial Ecosystems (GWDTEs). RSPB Scotland stated this will eliminate any risk of collision of whooper swans, in particular. RSPB Scotland stated that if this was not considered to be possible then it would be necessary to ensure this section of line is marked at 5m intervals according to SNH Guidance.

39. RSPB Scotland stated that it has identified some stretches of OHL that run through particularly sensitive areas and suggested some precautionary mitigation measures including undergrounding, line marking, winter pre-construction surveys, and avoidance of construction during bird breeding season. RSPB Scotland made general recommendations that planning conditions should require the Company to have approval of pre-construction surveys by an Ecological Clerk of Works and SNH before construction commences; that construction work should stop immediately if line deviation cannot avoid the risk of disturbance and/or displacement of breeding birds. RSPB Scotland commented that common crossbill, a schedule 1 species, can breed all year round therefore pre-felling work surveys will need to be conducted at any time of year to ensure that breeding crossbills are not disturbed within 150 m of nest sites.

40. RSPB Scotland commented on habitat (peatland) impacts and the habitat restoration plan. RSPB Scotland stated that although the EIA Report (section 10.3.6) explains that the peatlands on site have been extensively modified and degraded by commercial forestry plantation through ploughing and drainage, areas of blanket bog and deep peat over 2.5m are

found in the southern end of the line and four poles are located in this area. RSPB Scotland advised that micro-siting should be used to ensure poles avoid these areas to avoid the loss of this Annex 1 habitat.

41. RSPB Scotland referred to a response it had given to Scottish Ministers during the consultation on the EIA Scoping Report prepared by the Company prior to the submission of the application for the proposed development. RSPB Scotland commented that it had requested that a detailed Habitat Management Plan (HMP) be submitted with the application and had not seen justification for the exclusion of a HMP.

42. RSPB Scotland commented that despite the fact that no breeding raptors were confirmed during surveys, the evidence presented suggests a successful hen harrier breeding attempt in the open areas of Creag Leathan or Creag Mhor, which RSPB Scotland said is consistent with historical use of the area by this species and short-eared owls. RSPB Scotland added that during surveys, these owls were typically recorded hunting along the northern edge of the forestry, and again, although no nests were found during the surveys, historical breeding has been recorded in this area. RSPB Scotland stated that short-eared owl nests are notoriously difficult to find, and the evidence collected indicates a breeding attempt in the area.

43. RSPB Scotland agreed that pre-construction surveys should be carried out, and recommended that precautionary measures should be put in place and work on the section of line between NC991640 and NC982624 should be prioritised to be undertaken outwith the bird breeding season if possible; and roost searches should be undertaken prior to any construction work being carried out in winter (October to March inclusive), adding that this will also be essential in the event of helicopters being used to assist in the construction.

44. RSPB Scotland stated that raptors are also prone to collisions with power lines, particularly hen harriers during display flights. RSPB Scotland advised that figure 8.8 shows a number of at risk flight lines at the northern forest edge and within the forest rides through which the OHL will run, and recommended that the sections of line between NC991640 and NC991638, and NC991633 and NC988627 are undergrounded (avoiding sensitive habitats, GWTDEs and deep peat); and the section of OHL between NC988627 and NC981624 suitably marked. RSPB Scotland added that if undergrounding is not possible then the whole stretch of line between between NC991640 and NC982624 should be suitably marked through any open areas according to SNH Guidance.

45. RSPB Scotland made a general recommendation that if construction in the areas not mentioned above cannot be undertaken outside of breeding season (April to July inclusive) as expected, pre-construction surveys (following standard guidance) must be undertaken, and results reviewed by SNH and an Ecological Clerk of Works (EcoW) before construction commences, ensuring appropriate safe working distance buffers are set up. RSPB Scotland added that if line deviation cannot avoid breeding birds without a risk of disturbance and/or displacement, work must stop immediately and only recommence once the breeding season has finished. RSPB Scotland stated that this requirement for pre-works surveys and avoidance of disturbance to breeding birds must also apply to future maintenance of the proposed development.

46. RSPB Scotland stated that the EIA Report indicates that 7 poles are to be located in sensitive habitats, amounting to a permanent loss of 24m² of habitat. RSPB Scotland added that a restoration plan should be produced to compensate this loss if poles cannot be micro-sited to avoid these losses e.g. via peatland restoration of the modified bog habitats within the forest.

47. RSPB Scotland stated that the biodiversity net gain actions could include strategically planned compensatory planting using native species (avoiding deep peat) and further bog restoration or scrape creation for waders in the rough, wet fields in the northern area of the site.

48. Scottish Ministers have included conditions which provide mitigation measures suggested by RSPB Scotland for line marking and species protection, with a requirement that the Planning Authority consult RSPB Scotland under those conditions. Scottish Ministers consider that the planning conditions address all of RSPB Scotland's concerns.

49. No response to the consultation was received from the Scottish Rights of Way and Access Society (Scotways).

50. Scottish Water stated that the proposed development impacts on existing Scottish Water assets near Lochside Road, Achvarasdall, and that an assets impact application showing diversion proposal should be submitted to Scottish Water for review by the Asset Impact Team as soon as possible to prevent any possible delays to construction.

51. No response to the consultation was received from the Scottish Wild Land Group.

52. No response to the consultation was received from the Scottish Wildlife Trust.

53. No response to the consultation was received from Visit Scotland.

Scottish Government Internal Advice

54. The Energy Consents Unit obtained advice on the peat landslide hazard risk assessment (PLHRA) from its contractor, Ironside Farrar Limited. Ironside Farrar Limited advised Scottish Ministers to seek supplementary information, which they did, receiving additional information from the Company. Following consideration of the EIA Report and additional information, Scottish Ministers adopt the advice from Ironside Farrar and conclude that the PLHRA is satisfactory, noting that there is adequate mitigation in areas where there is any significant risk of landslide or bog burst.

55. The Scottish Government's internal fisheries advisors, Marine Scotland Science (MSS), commented that electrofishing surveys carried out for the Limekiln wind farm reported both salmon and trout populations present in the Achvarasdall Burn, which is assessed in the EIA Report. MSS noted that the scoping report discussed the intention of the developer to routinely monitor the water quality of watercourses to ensure no deterioration of the water quality as stipulated by the Water Framework Directive; however, there appears to be no details of this proposed monitoring in the EIAR.

56. MSS advised that it encourages, in addition to water quality monitoring, that the ECoW carries out regular visual inspections of all watercourses particularly during and after periods of prolonged precipitation and downstream of where construction work is taking place, where traffic is frequenting, and at watercourse crossings.

57. MSS recommended that the developer consults the UK Forests and Water Guidelines particularly in relation to the removal of all felled material from within and adjacent to watercourses as felled material can result in the leaching of nutrients into watercourses which can lead to deleterious impacts on the aquatic fauna, especially as acidification is a known problem the area.

58. The Scottish Government's internal forestry advisors, Scottish Forestry (SF), welcomed the commitment to minimise tree felling required for the Development, and added that the Development is considered to be a development requiring compensatory planting. SF advised that it cannot accept the proposed way of delivery of compensatory planting, as described in sections 11.7.1– 11.7.5 of the EIA Report's Chapter 11 – Forestry. SF advised Scottish Ministers that the Company will need to establish a mechanism to deliver the compensatory planting before the proposed development becomes operational.

59. SF advised that the Compensatory Planting Plan (CPP) for an area of at least 4.78 ha needs to be submitted by the Company and approved by Planning Authority before the proposed development becomes operational (the new OHL is energised), and the planting operation completed within 2 years from the date of CPP's approval. The newly planted woodland will need to be appropriately protected and maintained (including any additional planting required to maintain minimal stocking density), until established.

60. Scottish Ministers have included condition 4 which provides that a strategy must be submitted to Scottish Ministers to provide compensatory planting for any felling resulting from the Development.

61. Transport Scotland advised that the proposed route of the OHL is sufficiently remote from the trunk road network that its construction is unlikely to cause any discernible environmental impacts on the trunk road network. Transport Scotland has no objection to the proposed development on the grounds of environmental impacts on the trunk road network.

Representations

62. The Scottish Government received no representations from members of the public regarding the proposed development.

Public Local Inquiry

63. Under paragraph 2 of schedule 8 to the Act, if the Planning Authority makes an objection and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held. Highland Council did not object to the proposed development, therefore, paragraph 2 does not require that a Public Local Inquiry (PLI) be held as a statutory requirement.

64. Paragraph 3 of schedule 8 provides that where objections or copies of objections have been sent to Scottish Ministers in pursuance of regulations made under that paragraph, the Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they must cause a PLI to be held. The Scottish Ministers have taken all material considerations into account. The Scottish Ministers do not consider it appropriate to cause a PLI to be held. It is considered that significant issues have been adequately considered in the EIA Report, consultation responses, and the assessment of the proposal, and that there is sufficient information to be able to make an informed decision on the application without the need for a PLI.

The Scottish Ministers' Considerations

Legislation

65. On granting consent under section 37 of the Act for a development, the Scottish Ministers may also direct that planning permission for that development is deemed to be

granted in terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997. The section 37 consent and planning permission may each be subject to conditions.

66. In accordance with paragraph 3 of schedule 9 to the Act the Scottish Ministers have had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. Scottish Ministers have also had regard to the extent to which the Company has complied with its duty to do what it can to mitigate the effects of the proposed development.

67. Under schedule 8 to the Act and the Electricity (Applications for Consent) Regulations 1990 (“the 1990 Regulations”), Scottish Ministers are required to consult the relevant Planning Authority and any other interested parties. In addition, to comply with the 2017 Regulations, Scottish Ministers are required to consult the relevant Planning Authority (in this case Highland Council), Scottish Natural Heritage, the Scottish Environment Protection Agency, Historic Environment Scotland and any other public body which in Scottish Ministers’ opinion is likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local and regional competencies.

68. Regulation 3(a) and (b) of the 2017 Regulations requires that Scottish Ministers must not grant consent under the Act for Environmental Impact Assessment (EIA) development or direct that planning permission is deemed to be granted under section 57(2) or (2ZA) of the Town and Country Planning (Scotland) Act 1997 in respect of EIA development, unless an EIA has been carried out in respect of that EIA development and in carrying out such assessment, the Scottish Ministers must take the environmental information into account.

69. Regulation 4 of the 2017 Regulations outlines the obligations under the EIA process, including the preparation by the Company of an EIA Report, consideration by Scottish Ministers of the likely significant effects of the proposed development, and the consultation, publication and notification procedures required.

70. The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) require Scottish Ministers to consider whether the proposed development would be likely to have a significant effect on a European site or European offshore marine site (either alone or in combination with other plans or projects), as defined in the Habitats Regulations, and if the proposed development is directly connected with or necessary to the management of the site.

Possible Effects on European and International Protected Sites

Conservation of Habitats and Species Regulations

71. SNH advised Scottish Ministers of the potential for the Development to have a significant effect on the qualifying interests of the following Natura 2000 sites: Caithness and Sutherland Peatlands Special Protection Area (SPA), Caithness Lochs SPA and North Caithness Cliffs SPA which are collectively referred to in this letter as “the Natura 2000 sites”.

Caithness and Sutherland Peatlands Special Protection Area

72. The Development has the potential to have a significant effect on the qualifying interests of the Caithness and Sutherland Peatlands Special Protection Area and is not directly connected with or necessary to the management of the site. The status of the Caithness and Sutherland Peatlands Special Protection Area means that the requirements of the Habitats

Regulations apply and consequently Scottish Ministers must consider the effects of the proposed development before consenting such applications.

73. An appropriate assessment has been carried out which concludes that the Development, whether on its own or in combination with other plans or projects, would not adversely affect the integrity of the Caithness and Sutherland Peatlands Special Protection Area when consent is granted with the conditions included in this decision letter at Annex B. Scottish Ministers are satisfied this conclusion is beyond reasonable scientific doubt. SNH has reviewed this conclusion and is content.

Caithness Lochs Special Protection Area

74. The Development has the potential to have a significant effect on the qualifying interests of the Caithness Lochs Special Protection Area and is not directly connected with or necessary to the management of the site. The status of the Caithness Lochs Special Protection Area means that the requirements of the Habitats Regulations apply and consequently Scottish Ministers must consider the effects of the Development before consenting such applications.

75. An appropriate assessment has been carried out which concludes that the Development, whether on its own or in combination with other plans or projects, would not adversely affect the integrity of the Caithness and Sutherland Peatlands Special Protection Area when consent is granted with the conditions included in this decision letter at Annex B. Scottish Ministers are satisfied this conclusion is beyond reasonable scientific doubt. SNH has reviewed this conclusion and is content.

North Caithness Cliffs Special Protection Area

76. The Development has the potential to have a significant effect on the qualifying interests of the North Caithness Cliffs Special Protection Area and is not directly connected with or necessary to the management of the site. The status of the North Caithness Cliffs Special Protection Area means that the requirements of the Habitats Regulations apply and consequently Scottish Ministers must consider the effects of the Development before consenting such applications.

77. Scottish Ministers have carried out an assessment and conclude that the proposed development is not likely to have a significant effect on any of the qualifying species in relation to the conservation objectives of the North Caithness Cliffs Special Protection Area. Scottish Ministers are satisfied this conclusion is beyond reasonable scientific doubt. SNH has reviewed this conclusion and is content.

78. The Scottish Ministers are satisfied the requirements of the Act, the 1990 Regulations, the 2017 Regulations, and the Habitats Regulations have been met.

Main Determining Issues

79. Scottish Ministers in making their determination on the application for the Development have considered fully and carefully the application, EIA Report, the responses from consultees, and other material information; and consider the main determining issues are:

- The environmental impacts of the Development;
- The extent to which the Development accords with and is supported by planning policy; and

- The contribution the Development will make to realising the wider benefits of renewable electricity generation connection to the national grid.

Environmental Impacts

Roads, Transport and Outdoor Recreational Access

80. Transport Scotland considers the proposed development is sufficiently remote from the trunk road network that its construction is unlikely to give rise to any discernible environmental impacts on the trunk road network.

81. The Planning Authority considers the impact of the proposed development on the local road network is likely to be significant over a limited period due to the nature of the Development. The Planning Authority considers it is likely that construction of the OHL will be progressing at the same time as the permitted Limekiln Wind Farm. Scottish Ministers agree with the Planning Authority that the cumulative impact of construction of these schemes will likely be significant in the short term.

82. The Planning Authority advised Scottish Ministers that a Construction Traffic Management Plan will be required to give due consideration to the other large scale construction projects that are being brought forward in the area and the construction traffic management provisions agreed for those proposals.

83. Scottish Ministers agree with the Planning Authority's analysis and consider that the Construction Traffic Management condition 11 provides sufficient mitigation for potential impacts on road transport.

84. The Planning Authority is content that it is unlikely that there will be an impact on the nearby core path as the proposed development will be accessed from an upgraded existing track by Achunabust and off the new windfarm access track (to be constructed). However, the Planning Authority advised that the upgraded track is partly used for recreational access and as such it must be managed during construction, with any access control (gates, fencing etc) installed or modified by the Development accessible to the public upon completion of the Development. The Planning Authority added that access should be kept open for public use or suitable signage should be in place to manage any restrictions during construction activity, under a condition on maintaining public access.

85. Scottish Ministers agree with the Planning Authority's analysis and consider that the Recreational Access Plan required under the Construction Environmental Management Plan (CEMP) condition 9 will provide sufficient mitigation for potential impacts on recreational access.

Landscape and Visual

(a) Landscape designations and Wild Land

86. As noted by the Planning Authority, the application site or the study area does not sit within any landscape designations. However, the south-western extent of the study area falls within the East Halladale Flows Wild Land Area (WLA) which lies around 1.2km from the southern extent of the proposed development at the Limekiln Wind Farm substation. Scottish Planning Policy paragraph 169 sets out, amongst other things, that considerations for energy infrastructure developments are likely to include effects on wild land.

87. The Company has assessed the impact of the proposed development on this WLA as not being significant due to the distance from the proposed development, the existing effects from commercial forestry and the consented Limekiln Wind Farm. The Planning Authority considers that the Company's appraisal can be accepted given the position of the Development in relation to the WLA and the particular qualities of this WLA which are best expressed to the west of the Beinn Ratha ridgeline and to the south west of the proposed development site. SNH advised that the proposed development will not result in significant adverse impacts on the WLA. Scottish Ministers agree with the Planning Authority and SNH that the proposed development will not result in significant adverse impacts on the WLA. Scottish Ministers conclude that the proposed development would not contribute to an increased significant effect on the WLA whether considered separately or cumulatively with the Limekiln Wind Farm.

(b) Views from buildings and routes

88. The Company considered the impacts of the proposed development on receptors at 16 representative viewpoints within a study area of 1.5 km buffer from the proposed alignment of the OHL. Of those viewpoints assessed, the Company considered that three of the buildings had the potential to experience significant effects: a single storey house to the south of the C1001 near Achunabust; a recently constructed house at Loch Side; and, Shebster View and neighbouring properties (a group of three residential properties located on a small street near Achvarasdal).

89. The proposed development would be located approximately 150m to the east of the house near Achunabust and would be present in views from the workshop and oblique views from the house. The Company has concluded that the visual effect would be significant reducing to not significant once construction is completed as the individual poles would only affect small parts of the view.

90. The proposed development would be located approximately 100m to the north and north east of the Loch Side property and would feature directly and obliquely within the main view. There is another OHL in the view with some screening from vegetation. The Company has concluded that the visual effect would be significant during construction reducing to not significant once construction is completed as the poles would appear relatively small and the main valued aspects of the view would remain.

91. The proposed development would cross through views from the group of properties around Shebster View, however garden vegetation would limit the views. Construction works will distract one's views resulting in a significant visual effect. However as only a small number of poles will be visible when operational the effect would not be considered as significant.

92. The Planning Authority is in broad agreement with the Company's assessment. However, the Planning Authority commented that "in assessing visual impacts in particular, it is important to consider that the viewpoint is representative of particular receptors i.e. people who would be at that point and experiencing that view of the landscape not just in that single view but in taking in their entire surroundings. For residential receptors this includes their journey to and from their house and the use of the land surrounding their property not just the view from the windows of the house. In taking this approach, it appears that the visual impact assessment may have underestimated the impacts of the proposed development. However, in each of the residential receptors considered it is not considered that this underestimation of effect would lead to an increase in significant effects beyond what has been identified by the application." Scottish Ministers agree with the Planning Authority.

93. The Company identified four routes with the potential for views of the proposed development: A836; C1001; core paths in Achvarasdal Wood; and, core paths in Limekiln Forest. The Company provided visualisations from the A836 and C1001 receptors. In the Company's assessment, significant effects on the C1001 are anticipated during construction only.

94. The Planning Authority considers that although the proposed development would be seen from the A836, on the North Coast 500 tourist route, it would only be viewed for a short time within the context of existing steel lattice towers and the effect would not be significant, adding that the impact would reduce further once construction finishes. The Planning Authority stated that the visual effect on users of the C1001 (which forms part of the National Cycle Route 1) is anticipated to be significant during construction works due to passing views of construction works which would cross over the route, leading to potential scaffolds and construction adjacent to the route. The Planning Authority added that this view would be contained to a small section of the route and would therefore reduce to not significant once the construction works are completed. The Planning Authority acknowledged that the Company anticipates some significant visual effects during the construction phase of the Development. On this basis the effects are short-term, the Planning Authority considers the effects to be acceptable. Scottish Ministers agree.

(c) Summary of conclusions on landscape and visual effects

95. The Planning Authority stated that "considering the matter of visual impact in the round, the siting and design of the OHL significantly limits the effects of the proposed development. This includes 1 km of line to the north section of the Development being routed underground between the sealing end structure and Dounreay substation, completing the connection to the National Grid. Furthermore, a significant length of the line is located within commercial forestry (2.6 km). Other areas of the forestry will be removed during the lifetime of the Development based upon the Limekiln Forest Plan. In the areas where the OHL is not located within forestry, it is considered to be well sited and while the wooden poles which will support the line are not diminutive structures, being up to 14m in height (depending on ground conditions and topography), it is likely they would fit relatively well within the landscape. Furthermore, there would be limited areas where receptors would be subject to significant effects of the proposed development cumulatively with other large scale projects in the area." Scottish Ministers agree with, and adopt, the Planning Authority's conclusions.

Water Environment, Hydrology and Flood Risk

96. No issues related to flood risk or drainage have been identified by the Planning Authority. While temporary watercourse crossings are required, details of these can be secured by condition and will be required to ensure that they do not contribute to flooding by virtue of their design.

97. Marine Scotland Science has identified that the watercourses feed the Achvarasdal Burn and Dounreay Burn. Electrofishing surveys carried out for the Limekiln wind farm reported both salmon and trout populations present in the Achvarasdal Burn. As a result, Marine Scotland would like to ensure that the Company considers the impact of the construction of the proposed development with construction of others in the area. The Planning Authority stated this can be secured as part of the Construction Environment Management Document given it is not anticipated that there would be any significant effects.

98. The Planning Authority stated that water quality can be impacted by construction in proximity of a watercourse. Although the Company is not working within or adjacent to the

watercourse during the construction of the proposed OHL, Marine Scotland Science recommend that the appointed Ecological Clerk of Works regularly inspects the watercourses in proximity of the site for evidence of sediment release, particularly in periods of heavy rain. Scottish Ministers agree and have included a requirement for this in condition 15.

99. Scottish Ministers are aware of the potential for overhead line developments to impact on public and private water supplies and consider that robust protection measures are necessary to avoid, or mitigate, any impacts on them. Scottish Ministers agree with the Planning Authority that a Public and Private Water Supply Protection Measures Plan should be required during the construction phase of the Development, however Scottish Ministers consider that the potential for impacts on water supplies remains throughout the lifetime of the Development until it is decommissioned and the site restored and that mitigation measures must be agreed for any harm to water supplies arising from the Development over its whole life.

100. Scottish Ministers have taken into account all responses from consultees and are satisfied the totality of planning conditions they have included ensure that sufficient mitigation measures are provided to avoid any unacceptable impact on the water environment.

Ecology and Forestry

101. RSPB Scotland commented that from Figures 7.2, 7.3 and 10.5 areas of blanket bog and deep peat over 2.5m are found in the southern end of the line and four poles are located in this area. RSPB Scotland advised that micro-siting should be used to ensure poles avoid these areas to avoid the loss of this Annex 1 habitat. SEPA commented that it welcomes the proposal to allow modifications to the finalised route depending on the results of post consent survey, which SEPA said can be helpful for avoiding GWDTEs and peat. Scottish Ministers consider that the limits of deviation proposed by the Company and allowed by this consent provide this opportunity to micro-site and reduce impacts on sensitive receptors.

102. RSPB Scotland also commented that 17 poles are to be located in sensitive habitats, amounting to a permanent loss of 24m² of habitat, and that a Habitat Restoration Plan (HRP) should be produced to compensate this loss if poles cannot be micro-sited to avoid these losses e.g. via peatland restoration of the modified bog habitats within the forest. RSPB Scotland also referred to the Company's principles of Biodiversity Net Gain (BNG) and suggested that action could include further bog restoration or scrape creation for waders in the rough, wet fields in the northern area of the site. RSPB Scotland added that the requirement for 4.78ha of compensatory planting could be incorporated into a BNG scheme and should be planned strategically so as not to result in any adverse environment effects e.g. introducing new planting into areas used by breeding waders. The opportunity for tree planting could be used to enhance biodiversity within the plantation forestry, avoiding deep peat and using native species at low density along hard forestry edges.

103. Scottish Ministers agree with the Planning Authority that the Company should utilise micro-siting of the Development to avoid areas of blanket bog and deep peat, and that there is no requirement for a condition to compensate for the loss of peat because SNH are satisfied that the Company has demonstrated there is no loss of valuable peat.

104. The EIA Report states that the proposed development would be likely to affect coniferous plantations only, and that low sensitivity of the forest and low magnitude of impact indicates the overall significance of effect upon forestry would likely be minor, and thus non-significant. This is not disputed by consultees.

105. Both Scottish Forestry and Highland Council agree that 4.78 hectares of compensatory planting should be secured by condition, to comply with the Scottish Government's Control of Woodland Removal Policy. The Planning Authority and Scottish Forestry note that a suitable method of delivering the compensatory planting is still to be established. Scottish Ministers have included condition 4, which requires a Woodland Planting Strategy to be agreed by Scottish Ministers in consultation with the Planning Authority before development commences.

106. The EIA Report has identified signs of water vole, otter and pine marten within the study area. As a result, pre-commencement protected species surveys and species protection plans are required. The EIA Report commits to mitigation for protected mammal species, with specific mitigation measures for water vole, otter, pine marten, badger, bats, birds and wildcats. The EIA Report encloses Species Protection Plans in Volume 4 Appendix 4.1 which must be adhered to. Mitigation is also proposed in the form of an Ecological Clerk of Works to ensure any required mitigation is implemented.

107. The EIA Report does not predict any significant effects of the proposed development on ornithological interests. The potential for significant effects on the Natura 2000 sites has been considered as described at paragraphs 71 to 77 of this letter. RSPB considers that line marking is required between the proposed sealing end structure (south of the A836 at NC985658) and the north of the road at Achvarasdal (at approximately NC990650) for whooper swan, and between NC991640 and NC982624 for raptors. The Planning Authority considers a planning condition is necessary to require line marking between NC999627 and NC981624. The EIA Report also provides Species Protection Plans. Scottish Ministers agree with the Planning Authority that development should proceed according to a Construction Environmental Management Document (CEMD) containing provisions for, among other things, an Ornithological Protection Plan, as well as general Species Protection Plans, and that SNH and RSPB Scotland should be consulted on the CEMD. Scottish Ministers consider that subject to the mitigation referred to in this paragraph in addition to the mitigation proposed in the EIA report, there would be sufficient mitigation to avoid any unacceptable impacts on ornithological interests.

108. SEPA agrees that the Ground Water Dependant Terrestrial Ecosystems (GWDTEs) within the buffer zone are not of high conservation value and most look to be associated with surface water flow channels. SEPA are also content that the schedule of mitigation addresses all their concerns regarding GWDTEs, habitat and peat.

109. The Company provided a Peat Landslide Hazard and Risk Assessment (PLHRA), outlining a number of mitigation measures. Scottish Ministers obtained advice from independent technical experts on the PLHRA and are satisfied that the mitigation measures required by the CEMP will mitigate any issues relating to peat stability.

110. Scottish Ministers have taken into account all responses from consultees and representations from members of the public, and are satisfied that the totality of planning conditions they have included ensure that sufficient mitigation measures are provided to avoid significant effects on ecological interests, arising from the proposed development either in isolation or in cumulation with other existing and/or approved development.

Built and Cultural Heritage

111. The Company has undertaken an assessment of built and cultural heritage within a 2km study area of the OHL, this was increased eastwards to capture the effects on scheduled monuments located on the Hill of Shebster. The proposed development would be situated in

an area containing a number of scheduled monuments, recorded archaeological sites and some previously unrecorded sites that were identified.

112. The EIAR found that of all the sites assessed, one is likely to experience a medium level of impact: the Clach Clais an Tuire standing stone that is situated within a forest clearing on the east side of the Achvarasdal Burn. However, the Development is not likely to have a significant impact due to the setting already being compromised by plantation forestry and mitigation is proposed to reduce the level of impact upon the site. HES agree that the impact would not be significant but do not agree with the proposed mitigation of reducing felling around wayleaves to mitigate any impacts resulting from the OHL. HES suggests that the applicant extends felling around the monument as the existing coupe of forestry currently restricts the ability to appreciate this monument. Scottish Ministers agree with HES that the mitigation proposed in paragraph 9.7.5 of chapter 9 of the EIA Report (and summarised in Chapter 12, Table 12-1 under mitigation reference CH3) would have a worse effect than felling and that this mitigation measure should not be implemented. Scottish Ministers are satisfied that the exclusion of this mitigation measure would not have an adverse effect on other environmental receptors.

113. HES are content that there is sufficient information within the EIA Report to not raise an objection subject to appropriate mitigation. This includes providing a buffer around the Clach Clais An Tuire, standing stone and it is recommended that visible fencing is used to mark out the buffer (outside the scheduled area) and workers should be briefed. Should the track go within 50m of the monument be used then HES considers additional fencing will be required. The Planning Authority has no concerns with the recommendations from HES. Scottish Ministers agree with HES and have included in planning condition 9 a requirement for the Company to produce a Clach Clais An Tuire Mitigation Plan for approval by the Planning Authority in consultation with HES, to ensure HES is satisfied with mitigation measures and felling in relation to the Clach Clais An Tuire standing stone and its setting and that the measures are implemented accordingly.

114. The Planning Authority commented that “in relation to other heritage features it is considered that, with the application of mitigation, the impacts on recorded heritage assets will not be significant. The Council’s Historic Environment Team (HET) are satisfied that any direct impacts have been mitigated through the proposed layout. HET recommend that micrositing continues to avoid direct impacts so that the final access, compounds and layouts avoids all the sites detailed in the EIAR, with an appropriate buffer, with some sites marked-out in advance to avoid accidental damage. If it is not possible for impacts to be avoided in this way, then a programme of mitigation, starting with evaluative excavation must be undertaken.” Scottish Ministers agree and consider that sufficient mitigation will be provided to avoid significant impacts on built and cultural heritage features.

Planning Policy

National Planning Framework NPF3

115. The Development would facilitate the connection and energisation of an already consented windfarm supporting a sustainable future in terms of energy generation, contributing indirectly to the Scottish Government’s central purpose and national outcomes. An enhanced high voltage energy transmission network is considered a National Development under NPF3, vital in meeting national targets for electricity generation, statutory climate change targets, and security of energy supplies. Scottish Ministers consider the proposed development will contribute to this objective and is supported by NPF3.

Scottish Planning Policy (“SPP”)

116. The Scottish Planning Policy introduces a presumption in favour of development that contributes to sustainable development. It sets out that policies and decisions should be guided by certain principles, including: giving due weight to net economic benefit; supporting delivery of infrastructure, including energy, and protecting natural heritage, including landscape and the wider environment. SPP also states the planning system should support the Development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity.

117. The Development will provide connection to the transmission network for an electricity generating station in this area. Scottish Ministers consider the Development contributes to sustainable development as it supports the principles highlighted in paragraph 29 of SPP.

- The Development provides net economic benefit
- The Development is in response to the economic challenge of connecting renewable energy in the north of Scotland and is necessary to realise the opportunities of low carbon electricity generation
- The Development supports delivery of energy infrastructure
- The Development supports climate change mitigation because it supports renewable electricity generation which reduces reliance on fossil fuel
- The Development has regard to the principles for sustainable land use as set out in the land use strategy – which states that land-use decisions should be informed by an understanding of the opportunities and threats brought about by the changing climate. Greenhouse gas emissions associated with land use should be reduced and land should continue to contribute to delivering climate change adaptation and mitigation objectives. The felling of trees (which is a change of land use) will be compensated for by changing land use to forestry and planting trees elsewhere.

118. As the Development contributes to sustainable development, and SPP includes a presumption in favour of development that contributes to sustainable development, this weighs in favour of the Development for support under SPP.

119. Scottish Ministers consider that the relevant considerations for the Development under paragraph 169 of SPP are as follows:

- cumulative impacts
- landscape and visual impacts, including effects on wild land;
- effects on the natural heritage, including birds;
- impacts on tourism and recreation;
- impacts on road traffic;
- impacts on adjacent trunk roads;
- effects on hydrology, the water environment and flood risk;
- the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;

120. Consideration has been given to these matters in the foregoing section of this letter entitled “Environmental Impacts” and conditions relating to the decommissioning of the Development, including ancillary infrastructure, and site restoration, are included in Annex 2 of this decision letter. Scottish Ministers consider that paragraph 169 of SPP supports the Development. The policy in SPP is a material consideration in the Scottish Ministers’ consideration of the application. The Scottish Ministers conclude the Development is supported by SPP.

Local Planning Policies

121. The Planning Authority considered the compliance of the proposed development with the local Development Plan: both the adopted Highland-wide Local Development Plan (HwLDP) and Inner Moray Firth Local Development Plan. The Planning Authority considered that the principal HwLDP policy on which the application requires to be assessed is Policy 69 (Electricity Transmission Infrastructure).

122. The Planning Authority advised the principal HwLDP policy on which the application requires to be assessed is Policy 69 (Electricity Transmission Infrastructure). The Development Plan supports the broad principle of energy development. Policy 69 specifically highlights that the “Council will have regard to their level of strategic significance in transmitting electricity from areas of generation to areas of consumption.” “It will support proposals which are assessed as not having unacceptable impact on the environment including natural, built and cultural heritage features.” Where development is assessed as not having unacceptable significant impact on the environment, then the proposal would accord with the Development Plan.

123. The Planning Authority advised Scottish Ministers the proposed development accords with the Development Plan. Scottish Ministers adopt the Planning Authority’s reasoning and agree the proposed development accords with the Development Plan.

Electricity Act 1989 (Schedule 9)

124. Schedule 9 of the Electricity Act requires sets out what a license holder shall do in relation of the preservation of amenity. Scottish Ministers consider that the proposal has had regard to the desirability of preserving natural beauty but through the design process has mitigated the effects of the Development in relation to the effects on the natural beauty of the countryside. Scottish Ministers note that the Planning Authority has reached the same conclusion.

Renewable Energy Benefits

Scottish Energy Strategy: The future of energy in Scotland (“the Energy Strategy”)

125. Scottish Ministers have considered the role the Development can play in relation to the electricity network. The Energy Strategy states that “Scotland should have the capacity, the connections, the flexibility and resilience necessary to maintain secure and reliable supplies of energy to all of our homes and businesses as our energy transition takes place”.

126. Scottish Ministers consider the value of the contribution the Development can make to facilitating wider deployment of renewable energy is significant and that the proposed development is supported by the Energy Strategy.

Summary

127. Scotland faces a real challenge in building an electricity grid which will allow Scotland to harvest and export its vast resources of clean energy. Scottish Ministers recognise that to achieve the dual aims of maintaining a resilient electricity network for businesses and consumers and enabling renewable ambitions to be realised, the need for grid reinforcement is greater than ever. Scottish Ministers consider that the Development would therefore make a valuable contribution to wider ambitions for deployment of renewables and reinforcement of the network in the area.

128. The proposed development has been considered in full by the Planning Authority against local and national planning policies and the development plan. Scottish Ministers recognise that the Development is likely to have significant visual impacts and impacts on the landscape during construction, but not post-construction, although through the design of the application the Company has done what it can to minimise these effects. Scottish Ministers are satisfied that other environmental issues, including impacts on ornithological interests, peat and the water environment, can be appropriately addressed by way of mitigation. Mitigation measures are as set out by the Company throughout the EIA report (and are summarised in Volume 2 Chapter 12) with the exception of the mitigation referred to in paragraph 112, they are further described throughout the body of this decision letter, and are secured by conditions attached to this consent and planning permission. Any impacts which remain are outweighed by the benefits the proposed development will bring.

129. Scottish Ministers are satisfied that this provides a reasoned conclusion on the significant effects of the proposed development on the environment. Scottish Ministers are satisfied this reasoned conclusion is still up to date.

Duration of Deemed Planning Permission

130. Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that deemed planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Scottish Ministers to direct that a longer period is allowed before planning permission lapses. Scottish Government policy is that due to the constraints, scale and complexity of constructing such overhead lines, and the generating stations they are designed to connect, a 5 year time scale for the commencement of development is appropriate. A direction by Scottish Ministers under section 58(2) of the Town and Country Planning (Scotland) Act 1997 has therefore been made as part of the determination for this consent.

The Scottish Ministers' Determination

131. Subject to the conditions set out in Part 1 of Annex 2, Scottish Ministers **grant consent** under section 37 of the Act to install and keep installed above ground the overhead electric line described in Annex 1. The consent is granted for a period of 40 years. Scottish Ministers consider that this period provides sufficient certainty for operators of electricity transmission and distribution systems while ensuring, in view of the lifespan of such developments, that the line is able to continue operating effectively.

132. This consent may, at any time after the expiry of a period of six months from the date of the consent, be varied or revoked by the Scottish Ministers under section 37(3)(b) of the Act.

133. Subject to the conditions set out in Part 2 of Annex 2, Scottish Ministers direct under section 57(2) of the Town and Country Planning (Scotland) Act 1997 that **planning permission be deemed to be granted** in respect of the Development described in Annex 1.

134. Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply to the deemed planning permission but that permission is to lapse on the expiration of a period of 5 years from the date of this direction, unless the Development has begun before the expiration of that period.

135. In accordance with the 2017 Regulations, the Company must publicise this determination on the application website, in the Edinburgh Gazette and in a newspaper circulating in the locality in which the land to which the application relates is situated.

136. Copies of this letter and the consent have been sent to Highland Council as the relevant Planning Authority. This letter has also been published on the Scottish Government Energy Consents website at: www.energyconsents.scot.

137. The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts – <http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=8>

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

Yours sincerely,

WILLIAM BLACK

Deputy Director Onshore Electricity Policy, Strategic Co-ordination & Consents

For and on behalf of the Scottish Ministers

A member of the staff of the Scottish Government

Annex 1

DESCRIPTION OF DEVELOPMENT

- Installation of approximately 5 km of overhead electric line having a nominal voltage of 132 kilovolts (kV), to be supported by double trident H wood poles of maximum height 13.25 metres, between a proposed on-site substation at the Limekiln Wind Farm and a location around 900 m to the south of Dounreay substation (OS Grid Reference NC 985 658).
- A sealing end structure to be located at the northern end of the proposed OHL to transfer the connection to buried cable.
- Ancillary development required to facilitate the construction and operation of the overhead line and sealing end structure including tree felling and vegetation clearance, temporary measures to protect road and water crossings, upgrades to existing access tracks and existing access points, and new temporary access routes.

All as more particularly described in the application made to the Scottish Ministers by the Company on 6 April 2020, and the accompanying Environmental Impact Assessment Report and additional information submitted subsequently by the Company, and as shown on the Approved Plans comprising Annex 3 to this decision letter.



Annex 2

CONDITIONS

Part 1: Conditions applying to section 37 consent

Commencement of Development

1. The Commencement of 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. Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority no later than one calendar month before that date.

Reason: to ensure that installation of the overhead line is commenced within a reasonable time following the grant of consent and to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent.

Non-assignment

2.—(1) This consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise assignment of the consent (with or without conditions) or refuse such authorisation 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.

(2) The Company shall notify the Planning Authority in writing of the name of the assignee, its principal named contact and contact details within 14 days after written confirmation from the Scottish Ministers that they authorise the assignment.

Reason: To safeguard the obligations of the consent if transferred to another company.

Serious Incident Reporting

3. 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 shall provide written confirmation of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and / or to be taken to rectify the breach, within 24 hours of the incident occurring.

Reason: to keep the Scottish Ministers informed of any such incidents which may be in the public interest.

Woodland Planting Strategy

4.—(1) There shall be no Commencement of Development unless and until a Woodland Planting Strategy has been submitted to and approved in writing by the Scottish Ministers, in consultation with the Planning Authority.

(2) The Woodland Planting Strategy shall set out an approach for the replanting of any trees felled by the Company as a result of the Development, covering an area of no less than 4.78 hectares, to be carried out within the Highland Council Planning Authority area. The approach

must consider opportunities for the required planting to be delivered in partnership with community and not for profit organisations.

(3) The approved Woodland Planting Strategy shall then be implemented in full, unless otherwise agreed in writing by the Scottish Ministers.

Reason: To protect Scotland's woodland resource, in accordance with the Scottish Government's policy on the Control of Woodland Removal.



Part 2: Conditions relating to Deemed Planning Permission

Implementation in accordance with approved plans and requirements of this consent

5. Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the application, Environmental Impact Assessment Report (EIAR) submitted by the Company to the Scottish Ministers on 6 April 2020 and all other documentation lodged in support of the application.

Reason: to ensure that the Development is carried out in accordance with the approved details.

Limits of deviation and micro-siting

6.—(1) All poles shall be constructed in the locations, and to the height, shown in Volume 1 Figure 2 of the Environmental Impact Assessment Report. The location of the poles may be adjusted within the following Limits of Deviation:

- (a) no pole shall be positioned more than 100m on the horizontal axis from the proposed overhead line alignment;
- (b) no track shall be positioned more than 20m either side of their proposed locations;
- (c) no pole shall be more than a height of 14m above existing ground levels inclusive of all steel work and insulators
- (d) Micro-siting shall be carried out in accordance with specific procedures and details approved as part of the Construction Environmental Management Document (CEMD) required in accordance with conditions 9 and 16 of this consent or as otherwise approved under the condition.
- (e) All micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works (ECoW) appointed under the terms required by condition 15.

(2) No later than one month after the Date of Final Energisation, the Company must submit a finalised site plan to the Planning Authority, copied to Scottish Ministers, showing the final position of the overhead line, all poles, access tracks, and associated infrastructure forming part of the Development. The plan must also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the approval from the ECoW or Planning Authority, as applicable.

Reason: To ensure that the Development is built in accordance with the description in the EIAR, to allow tolerance for re-siting infrastructure within the limits of deviation so as to take account of local ground conditions.

Construction Hours

7. No work or development associated with the proposed development shall take place outwith the hours of 0700 - 1900 Monday to Sunday between 01 March and 31 October and 0730 - 1700 Monday to Sunday between 01 November and 28 February, unless otherwise approved in advance in writing by the Planning Authority.

Reason: To ensure that construction activity is carried out within defined timescales to control impact on amenity.

Recreational Access Management Plan

8.—(1) No development shall commence unless and until a Recreational Access Management Plan for recreational users of the outdoors has been submitted to and approved in writing by the Planning Authority. The plans shall include details of all areas where access rights apply at present, how access will be managed during the construction process and all areas where access rights will apply following final commissioning of the Development.

(2) The approved Recreational Access Management Plan, and any associated works, shall be implemented in full throughout the construction and post-construction restoration period.

Reason: In the interests of securing and enhancing public access rights.

Construction Environmental Management Document

9.—(1) No development shall commence unless and until a Construction Environmental Management Document (CEMD) has been submitted to, and approved in writing by, the Planning Authority in consultation with SNH, SEPA, HES, Marine Scotland Science, and RSPB Scotland. The CEMD shall be submitted at least two months prior to the intended start date and shall include the following:

- (a) An updated Schedule of Mitigation (SM) drawing together all approved mitigation proposed in support of the application and other agreed mitigation (including that required by agencies and relevant planning conditions attached to this permission);
- (b) Details of change control procedures to manage or action changes from the approved SM;
- (c) Construction Environmental Management Plans (CEMPs) for the construction phase, covering:
 - (i) Method of construction of the pole foundations;
 - (ii) Residual Forest Waste Management Plan;
 - (iii) Water Quality Management Plan - highlighting drainage provisions including monitoring / maintenance regimes, water crossings, surface water drainage management (SUDs) and development and storage of material buffers (30m minimum) from water features;
 - (iv) A copy of the approved Public and Private Water Supply Protection Measures Plan required by condition 10;
 - (v) Pollution Prevention Plan;
 - (vi) Site Waste Management Plan;
 - (vii) Construction Noise Mitigation Plan;
 - (viii) Peat Stability, Peat Slide Risk and Management Plan, which shall include all mitigation measures listed in Chapter 7 of “Peat Landslide Hazard And Risk Assessment - Limekiln Wind Farm 132 kV Grid Connection” submitted to Scottish Ministers by the Company on 21 July 2020;
 - (ix) Plan for Protection of Blanket Bog and Wet Heath Mosaic;
 - (x) Historic Environment Protection Plan including but not limited to:
 - 1. A watching brief, where works must also be designed to minimise the impacts of development on the archaeological site;
 - 2. Protection measures, inclusive of micrositing;

3. A marked buffer for sites, particularly 14;
 4. Clach Clais An Tuire Mitigation Plan including details of tree felling around this monument, visible fencing to mark out the buffer (outside the scheduled area) and briefing for workers;
- (xi) An Ornithological Protection Plan with the following provisions:
1. Works will take place outside the breeding season for upland breeding birds 1st April – 30th August inclusive, if this cannot be achieved a survey within 30m of the proposal will take place and a 1km precautionary buffer applied to all nest sites; and,
 2. Line marking of the line between NC991640 and NC981624 to reduce collision risk.
- (xii) Species Protection Plans, as included in Volume 4 Appendix 3.1 of the EIA Report;
- (d) A pre-construction survey for legally protected species carried out at an appropriate time of year for the species, at a maximum of 12 months preceding commencement of construction, and that a watching brief is then implemented by the Environmental Clerk of Works (ECOW) during construction. The area that is surveyed should include all areas directly affected by construction plus an appropriate buffer to identify any species within disturbance distance of construction activity and to allow for any microsite needs;
- (e) Provision of a communication plan to ensure all contractors are aware of the possible presence of protected species frequenting the Site and the laws relating to their protection;

(2) Thereafter, development shall be carried out in accordance with the approved Schedule of Mitigation, Construction Environmental Management Document and any Construction Environmental Management Plans approved thereunder.

Reason: To secure the final detailed information on the delivery of all on-site mitigation projects; to avoid adversely affecting the integrity of the Natura 2000 sites; and to protect the environment from the construction and operation of the Development, to ensure protection of surrounding environmental interests and general amenity.

Public and Private Water Supply Protection Plan

10.—(1) No development shall commence unless and until a Public and Private Water Supply Protection Plan, which shall include details of any existing groundwater abstractions within 500 m of the Development, has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The Public and Private Water Supply Protection Plan shall detail measures to avoid any impact on existing public or private drinking water supplies arising from the Development throughout the period from Commencement of Development until the Decommissioning Scheme has been implemented in full and condition 13 is discharged by the Planning Authority. The Public and Private Water Supply Protection Plan shall also detail mitigation measures for any impact on a public or private water supply arising from the Development.

(2) Thereafter, the Public and Private Water Supply Protection Plan shall be implemented in full.

Reason: In the interests of public health, to safeguard water supplies and provide mitigation measures should there be any impacts on drinking water supplies arising from the construction, operation, maintenance or decommissioning of the Development.

Construction Traffic Management

11. No development shall commence unless and until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved by, the Planning Authority in consultation with the relevant Roads Authority(s) and Transport Scotland. The CTMP, which shall be implemented as approved during all period of construction and decommissioning, must include:

- a) Confirmation of the traffic volumes and type of vehicles to be used for construction giving maximum and average daily flows per month. This shall be linked to an indicative construction programme;
- b) A description of all measures to be implemented by the developer to manage traffic during the construction phase (incl. routing strategies), with any additional or temporary signage and traffic control undertaken by a recognised suitably qualified traffic management consultant;
- c) The identification and delivery of all upgrades to the public road network, including but not limited to upgrades to the local and trunk road network to make it suitable for construction traffic, to ensure that it is to a standard capable of accommodating construction related traffic to the satisfaction of the Roads Authorities;
- d) Identification of each of the access points onto the public road proposed to be used by Construction vehicles for the Development. Details of appropriate traffic management which shall be established and maintained at these site access points for the duration of the construction period. Full details shall be submitted for the prior approval of Highland Council, as roads authority. The details shall include dimensioned drawings including photographs and shall show the measured visibility splay achievable at each access together with the proposals for the geometry and extent of surfacing of the access. These details shall be in accordance with the Councils 'Roads and Transport Guidelines for New Development'. Thereafter the visibility splays shall be maintained during the period that the accesses are in use by construction traffic for the Development;
- e) Identification of suitable proposals for delivery, collection and storage of materials and plant during construction and for parking of the workforce.
- f) Provision of a suitable proposals detailing the method of erection of the poles and overhead line including the plant to be used.
- g) Wheel washing measures and/or provision of a vacuum road sweeper as required to ensure water and debris are prevented from discharging from the site onto the public road;
- h) Measures to ensure that construction traffic adheres to agreed routes and access points onto the public road.
- i) A concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 under which the developer is responsible for the repair of any damage to the local road network that can reasonably be attributed to construction related traffic. This shall include monitoring and reporting of the construction vehicle movements to enable the cumulative impact of this Development alongside the other large construction projects to be managed by the Council. As part of this agreement, pre-start and post-construction road condition surveys must be carried out by the developer, to the satisfaction of the Roads Authority(s).

Reason: To maintain safety for road traffic and the traffic moving to and from the Development, and to ensure that the transportation of abnormal loads will not have any detrimental effect on the road network.

Post-construction Restoration Method Statement

12. No development shall commence unless and until a construction phase Restoration Method Statement has been submitted to and approved in writing by the Planning Authority. The Statement shall set out contingency restoration / reinstatement provisions for any temporary disturbed ground not required for the ongoing operation of the Development, including: access tracks, storage areas, laydown areas, and all other temporary construction areas. The Statement shall also consider appropriate habitat enhancement for black grouse. The Statement shall include provision for review during the construction period with any amendments requiring the prior written approval of the Planning Authority. The approved Statement shall be implemented in full within 12 months of the final commissioning of the Development.

Reason: To ensure the restoration of the site following construction to limit the environmental impacts of the Development.

Decommissioning Scheme

13.—(1) In the event that the line, after the Date of Final Energisation, fails to transmit electricity for a continuous period of 1 year a Decommissioning Scheme shall be submitted to the Planning Authority for its written approval detailing how the Development will be decommissioned. The scheme shall include, unless otherwise agreed in writing with the Planning Authority and in accordance with legislative requirements and published best practice at time of decommissioning, details about the removal of all elements of the Development, relevant access tracks and all cabling, including where necessary details of:

- (a) justification for retention of any relevant elements of the Development;
- (b) the treatment of disturbed ground surfaces
- (c) management and timing of the works
- (d) environmental management provisions, including species protection plans;
- (e) the removal of all components of the line from the site for recycling or disposal;
- (f) a traffic management plan to address any traffic impact issues during the decommissioning period; and
- (g) details of financial provisions to ensure the scheme to be approved can be implemented in full.

(2) Thereafter the scheme shall be implemented in accordance with the approved details and timetable.

Reason: To ensure that should the line no longer be required that an appropriate mechanism is in place for decommissioning of the Development.

Public Access

14.—(1) No development shall commence until an Access Management Statement for recreational users of the outdoors has been submitted to and approved in writing by the Planning Authority. The plans shall include shall details of all areas where access rights apply at present, how access will be managed during the construction process and all areas where access rights will apply following final commissioning of the Development.

(2) Thereafter the approved Access Management Plan shall be implemented throughout the construction period.

Reason: In the interests of securing and enhancing public access rights.

Environmental Clerk of Works

15.—(1) No development shall commence unless and until the terms of appointment of an Environmental Clerk of Works (“ECoW”) who is independent of the Company have been submitted to, and approved in writing by, the Planning Authority in consultation with SNH, Marine Scotland, and SEPA. The terms of appointment shall:

- (a) Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the EIAR and other information lodged in support of the application and the Construction and Environmental Management Document approved under condition 9; including other plans approved (“the ECoW works”); including the carrying out of regular visual inspections of all watercourses, paying particular attention to watercourses during and after periods of prolonged precipitation, downstream of where construction works are taking place, where traffic may be frequenting and during the salmonid migratory/spawning period (November to June);
- (b) Require the ECoW to report to the Company’s nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- (c) Require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site;
- (d) Have power to stop the job / activities being undertaken within the Development site when ecological interests dictate and/or when a breach or potential breach of environmental legislation occurs to allow for a briefing of the concern to the Company’s nominated construction project manager; and;
- (e) Require the ECoW to report to the Planning Authority any incidences of noncompliance with the ECoW Works at the earliest practical opportunity.

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

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

Post Consent Layout Plans

16. No development shall commence unless and until construction layout plans have been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The

plans shall show the peat and habitat information overlain with the consented and post-consent, construction layout of the Development, as well as micrositing limits for all infrastructure and shall be accompanied by a report which demonstrates that the Development minimises impacts on deep peat, watercourses and GWDTE.

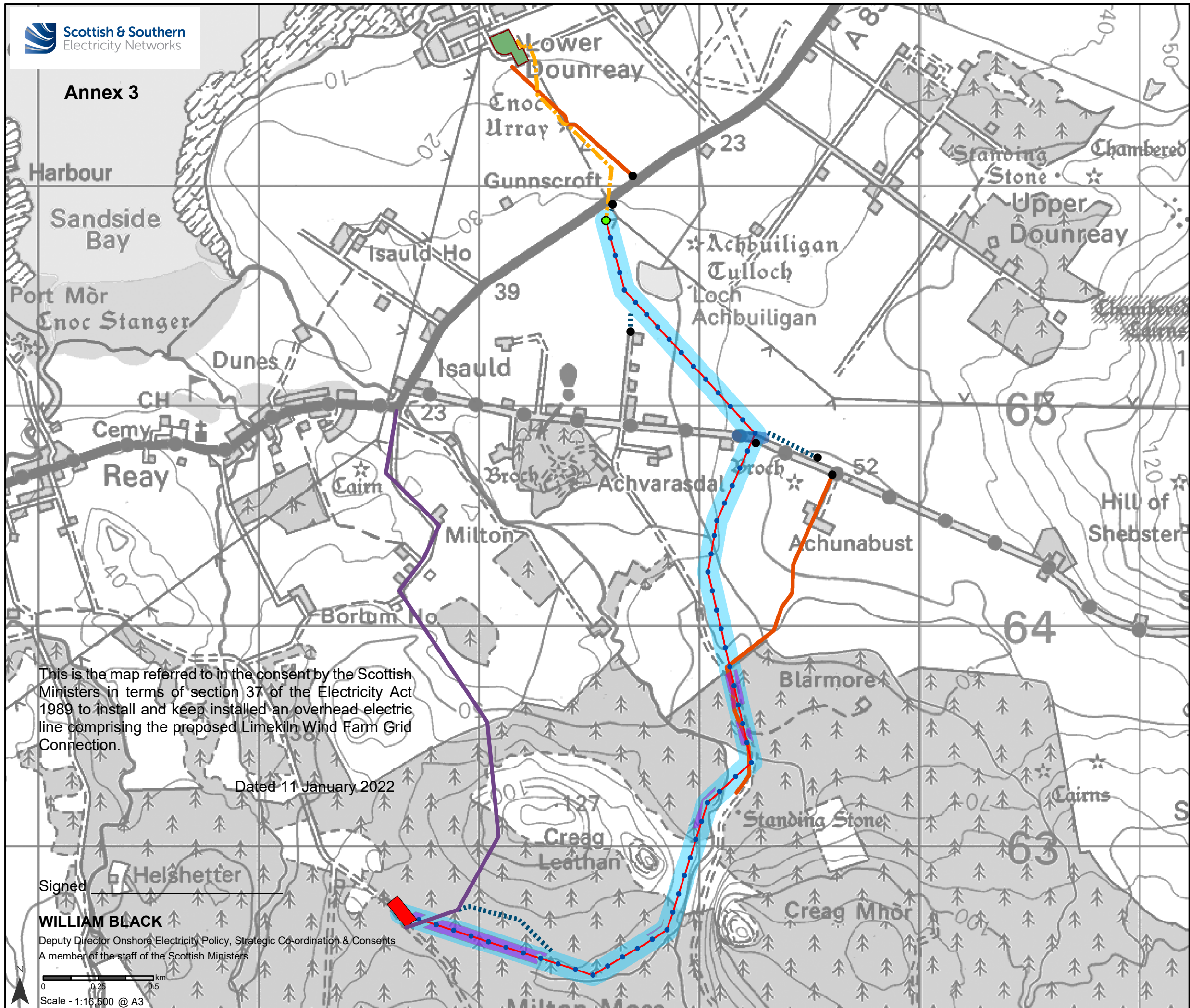
Reason: To demonstrate that impacts on deep peat, watercourses and GWDTE are minimised during the final design and micrositing of the Development.

DEFINITIONS

In this consent and deemed planning permission:-

“Approved Plans”	Means the plans included in the Environmental Impact Assessment Report submitted with the application, Volume 3 Figures 3.1a and 3.1b, reproduced in Annex 3.
“Commencement of Development”	Means the implementation of the consent and deemed planning permission by carrying out a material operation within the meaning of section 27 of the Town and Country Planning (Scotland) Act 1997.
“Date of Final Energisation”	Means the earlier of (i) the date on which all electric lines consented forming part of the Development transfer energy via the grid network; or (ii) the date falling four years from the date of Commencement of Development.
“Development”	Means the development described in Annex 1. (For the avoidance of doubt, this includes the ancillary development described in Annex 1.)
“HES”	Means Historic Environment Scotland.
“Planning Authority”	Means Highland Council.
“SEPA”	Means the Scottish Environment Protection Agency.
“SNH”	Means Scottish Natural Heritage, now rebranded as NatureScot.

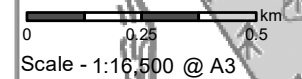
Annex 3



This is the map referred to in the consent by the Scottish Ministers in terms of section 37 of the Electricity Act 1989 to install and keep installed an overhead electric line comprising the proposed Limekiln Wind Farm Grid Connection.

Dated 11 January 2022

Signed
WILLIAM BLACK
Deputy Director Onshore Electricity Policy, Strategic Co-ordination & Consents
A member of the staff of the Scottish Ministers.



Legend

- Limekiln Wind Farm Substation
- Dounreay Substation
- Limekiln Wind Farm access
- Underground Cable (Considered under the Applicant's Permitted Development Rights)

Section 37 Project Elements

- Proposed
- Limit of Deviation (LOD)
- Pole Locations
- Proposed Sealing End Structure

Deemed Planning Permission Project Elements

- Upgraded existing access point
- Upgraded existing access track
- New temporary access route
- Forestry Felling
- Temporary Protective Crossing

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Project No: PT258/259
Project: Limekiln Wind Farm Grid Connection

Title: Figure 2 - The Proposed Development

Drawn by: TD Date: 06/04/2020
Drawing: 118015-D-NTS2-3.0.0