

INQUIRY INTO AN APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF THE LIMEKILN WIND FARM, NEAR REAY, CAITHNESS

DPEA REFERENCE: WIN-270-8

NOTE OF MATTERS DISCUSSED AND ARISING FROM THE PRE-EXAMINATION MEETING HELD ON 31 AUGUST 2017

1. The meeting was in regard to an application for consent under section 36 of the Electricity Act 1989, and deemed planning permission (under section 57 of the Town and Country Planning (Scotland) Act 1997), for the construction and operation of the Limekiln Wind Farm, near Reay, Caithness.

2. The development proposed is largely identical to that proposed in a previous unsuccessful application for a wind farm on the site, also made by Infinergy Limited ('the applicants'). That previous application (under reference WIN-270-1) was refused consent and deemed planning permission by Scottish Ministers following an inquiry held in August 2014. It was agreed in the meeting that the previous and current applications may be referred to as 'Limekiln 1' and 'Limekiln 2' respectively, for the avoidance of any confusion.

3. The application is for the construction of up to 24 wind turbines, 15 of which would have a blade tip height of up to 139 m, and 9 with a blade tip height of 126 m. During the meeting, the applicant confirmed that they would be agreeable to the omission of three wind turbines (turbine numbers 19, 20 and 21) if deemed to be necessary.

4. As The Highland Council ('THC') has lodged an objection to the Limekiln application which has not been withdrawn, Scottish Ministers have decided that a public inquiry should be held into that proposal.

5. Reporters Andrew Fleming and Christopher Warren, from the Scottish Government's Planning and Environmental Appeals Division (DPEA), were jointly appointed by Scottish Ministers on 08 May 2017, to conduct an inquiry into the application and to submit a report to them, with their recommendation as to whether consent should be granted. Ministers will consider the inquiry report and recommendations before deciding whether or not to approve the application.

Code of Practice for handling inquiries under the Electricity Act 1989

6. Unlike mainstream planning cases, there are no detailed procedural rules for the conduct of inquiries under the Electricity Act. DPEA has therefore produced a Code of Practice, which is modelled on the most up to date procedures that apply to planning appeals, set out in the 2013 Planning Appeals Regulations. The Code of Practice is available on the DPEA website and via this link:
<http://www.gov.scot/Resource/0049/00499824.pdf>

7. The code sets out the arrangements which DPEA will apply, to ensure all parties are clear about what will happen and what is expected of them. The code is designed to ensure the process is fair, robust and efficient.

8. The Code enables reporters, with the agreement of the parties, to tailor the procedures to the particular case, which means that only the significant matters in dispute need to be considered by means of an inquiry session, and some matters can be dealt with by a less formal process. There are essentially four options available:

- formal public inquiry sessions – where those giving evidence are open to cross examination
- informal hearing sessions – where the reporter chairs a round table discussion of the issues involved
- further written submissions – where parties are invited to expand/clarify their evidence on a particular issue in writing
- no further procedure – where the reporter already has sufficient written material on the topic, and no oral process is necessary.

Request to conjoin

9. On 02 August 2017 the DPEA received a request, sent on behalf of the applicant (set out in Appendix 1 of the agenda), for the determination of the Limekiln wind farm application to be conjoined with the determination of another section 36 application to construct and operate the Drum Hollistan wind farm, on land approximately 2 kilometres west of Reay and 3 kilometres east of Melvich. The Drum Hollistan applicant also subsequently formally requested that the consideration of the two proposals be conjoined.

10. At the time of the (Limekiln 2) applicant's request, the Drum Hollistan application was with the Scottish Government's Energy Consents Unit, which was not in a position to confirm when the application would be referred to the DPEA for a public inquiry to be held. The Reporters' response to the applicant's request was outlined in an email dated 11 August 2017 (at Appendix 2 of the agenda). This confirmed that, as the Drum Hollistan application was not with the DPEA, they were not in a position to consider holding a conjoined inquiry.

11. During the intervening period between the response from the reporters and the pre-examination meeting, the Energy Consents Unit confirmed that the Drum Hollistan wind farm application was ready to be referred to the DPEA.

12. Parties discussed the advantages and disadvantages of conjoining the two applications.

13. Mr Trinick set out the case for why the inquiry processes for the two applications should be conjoined, referring to the proximity of the sites to one-another, the similar issues which both applications present, and that cumulatively there may be capacity for only one of the two proposed developments.

14. Ms Lyons stated that THC does not support the conjoining of the inquiry process, for the reasons set out by Mr Kelly (in an email dated 22 August 2017 sent on behalf of the Reay Area Windfarm Opposition Group (RAWOG) and the John Muir Trust), it offered no efficiency advantage to THC and because the week beginning 11 December 2017 would no longer be suitable for the inquiry sessions, being too soon and not providing enough time for a conjoined inquiry.

15. On behalf of Scottish Natural Heritage (SNH), Ms Lyons stated that SNH were neutral on the matter of conjoinment.

16. Ms Bundy confirmed that Caithness West Community Council also took the same view as that expressed by Mr Kelly in the email of 22 August 2017.

17. The Drum Hollistan wind farm application was referred to the DPEA on 31 August 2017, and subsequently the reporters have been appointed to the case (in a minute of appointment dated 07 September 2017). In light of this, and having considered the comments of all parties (including those expressed by Mr Kelly, by email) on the issue of conjoinment, the reporters consider that it would be appropriate to hold a conjoined inquiry into both applications. The reporters are satisfied that conjoinment would not prejudice the position of any parties. Procedurally it would enable the most robust and efficient consideration of the individual and cumulative effects of the two proposals, and for comparisons to be drawn where appropriate.

18. The reporters intend to schedule a second pre-examination meeting as soon as possible (date and venue to be confirmed), to discuss the arrangements and procedures to be followed in the conjoined consideration of both the Limekiln 2 application and the Drum Hollistan application.

19. Much of the discussion at the pre-examination meeting on 31 August 2017 was necessarily and expressly based on the assumption that the Limekiln 2 application would proceed independently from the consideration of the Drum Hollistan proposal. The reporters acknowledge that the views of parties expressed during the meeting regarding arrangements and procedures cannot be assumed to apply to a conjoined inquiry process. Despite this, the main matters discussed are nevertheless noted below, where appropriate and where this may facilitate discussions at the second pre-examination meeting.

Main issues to be examined and further procedure

20. The reporters provided a preliminary list of subjects (set out in Appendix 3 of the agenda), which outlined the issues for which they considered further procedure may be required in respect of Limekiln 2. This list was compiled based on the reporters' initial assessment of the application and associated documents.

21. In advance of any discussion on the preliminary list of subjects that may require further procedure, Mr Trinick advised that the applicant intends to submit further environmental information by 15 September 2017. This would include cumulative landscape and visual and wild land information relating to the Drum Hollistan proposal with commentary on the additional combined effects of both

proposals. It would also include updated information in respect of carbon calculations, ornithology, noise and socio-economic information.

22. Following discussion, parties were in agreement that an inquiry session should be held in respect of landscape and visual effects (including effects on users of surrounding roads and recreational routes including the North Coast 500 route; residential visual amenity; and cumulative effects).

23. Parties were in agreement that an inquiry session in regard to the impact of the development on the East Halladale Flows Wild Land Area 39 is required. Having regard to the views expressed by parties on whether or not wild land issues could be part of an inquiry session on landscape and visual effects, the reporters consider that a separate session for wild land would be their preferred approach.

24. Parties present at the meeting were in agreement that the topic of energy policy and planning policy could be appropriately dealt with in writing. Mr Kelly was not present at the meeting and therefore his views on this suggestion, on behalf of RAWOG and the John Muir Trust, are currently unknown, but this may be clarified in advance of, or during, the second pre-examination meeting.

25. Parties are in agreement that a hearing session would be appropriate in respect of conditions and any legal agreement.

26. In respect of further written submissions, given the nature of further environmental information which is expected to be submitted by the applicant, the reporters wish to review this information and any subsequent responses to it, before giving further consideration to the need to request further written submissions from any parties. If the reporters require further written submissions, these will be requested through one or more procedure notices in due course, separate from this note.

27. In any event, it is important to reiterate that the procedures discussed and outlined above are all subject to change following the decision to conjoin the consideration of the Limekiln 2 and Drum Holliston applications.

28. There was discussion over whether an evening session would be held, in the same way as was provided during the Limekiln 1 inquiry. The reporters are agreeable to hold such a session and this will be scheduled once dates for the conjoined inquiry are confirmed, and will be during the same week(s). The evening session will be offered on the same terms as previously (i.e. those attending would have the opportunity to make a brief statement (up to 5 to 10 minutes) about their concerns; the statements would not raise any new matters, not previously raised in representations made about the application; and there would be no cross-examination or questioning of those who wished to make a statement).

29. The reporters would intend to broaden the scope of an evening session to allow for statements to be made in regard to either or both proposals to be part of a conjoined process.

Participation in further procedure

30. Parties indicated which inquiry and hearing sessions they would intend to participate in. Following the subsequent decision to conjoin the consideration of the Limekiln and Drum Hollistan wind farm proposals, this will be discussed again at the second pre-examination meeting.

Dates and location of inquiry and hearing sessions

31. Parties proposed a date of the week beginning 11 December 2017, with the first four days suitable for inquiry sessions. THC would not be available for an inquiry session on Friday, 15 December, but that date would be convenient for any hearing session(s).

32. Whilst conjoinment is likely to render the week beginning 11 December 2017 as unsuitable for a conjoined inquiry, parties are asked to maintain their availability during that week until an alternative date is confirmed. Parties are also asked to identify convenient dates during January and February 2018. Dates and other housekeeping matters will be discussed again at the second pre-examination meeting.

33. Various venues were suggested as alternatives to The Weigh Inn, Burnside. The DPEA will explore the suggested options and confirm the venue after the second pre-examination meeting, once dates and requirements are confirmed.

Prior disclosure of cases

34. There are a number of written exchanges which need to take place before the inquiry, to ensure that each party is fully aware of the case to be made by those on the other side of the argument. The sequence and deadlines for these will be set out in a note of the second pre-examination meeting, once that has taken place.

Site inspections

35. The reporters had familiarised themselves with the site and surrounding area prior to the meeting, and they have carried out further unaccompanied site inspections since the meeting. The reporters also intend to carry out further unaccompanied site inspections before and after the inquiry.

36. During the meeting the reporters indicated that they would wish to make accompanied site inspections to certain viewpoints, principally from residential properties potentially affected by the proposal. This will be discussed again at the second pre-examination meeting, once the reporters have completed their initial review of the Drum Hollistan application.

Deposit of documents

37. All the relevant material connected with the case will be placed on deposit at Reay Village Hall, where it can be referred to by members of the public. This will include the section 36 application, supporting documents (including the

Environmental Statement, Further Environmental Information, responses from consultative bodies, and representations/ objections), together with all the inquiry papers lodged by the parties participating in the inquiry. The applicant and the council should liaise to ensure that these documents are deposited locally and that they are kept up to date.

38. The reporters anticipate that Reay Village Hall would also be used for the deposit of documents in relation to the Drum Hollistan application, particularly given the conjoining of the inquiry process should mean a number of core documents and inquiry papers would be common to both proposals. This will however be discussed further at the second pre-examination meeting.

DPEA contact

39. Anyone wishing to contact the DPEA about the application or the inquiry, should phone Jane Robertson on 01324 696467 or e-mail her at jane.robertson@gov.scot. The address of the Directorate is 4 The Courtyard, Callendar Business Park, Falkirk FK1 1XR. You can also keep in touch with developments in the examination through the DPEA website: www.dpea.scotland.gov.uk. The DPEA reference numbers for the Limekiln and Drum Hollistan applications are WIN-270-7 and WIN-270-8 respectively.

Note of the meeting

40. This note records the points discussed and agreed at, and arising from, the pre-examination meeting. It is being sent to all of those who have indicated they wish to be involved in the process, together with any others who have signed the attendance list at the meeting. This note will also be published on the DPEA website.

41. Whilst this note will be an important reference for the parties, the main procedural steps which parties need to perform cannot be confirmed until a second pre-examination meeting has been held to consider arrangements for a conjoined inquiry process. Once the second meeting has been held, a note of that meeting will confirm the procedural steps to be followed in respect of both the Limekiln 2 and Drum Hollistan proposals.

ANNEX 1: List of attendees at the pre-examination meeting

<p>For the applicant:</p> <p>Marcus Trinick QC Nick Sage – Infinergy Kirsty Morris – Eversheds Sutherland kirstymorris@evershedssutherland.com</p>	<p>For The Highland Council:</p> <p>Karen Lyons, Solicitor karen.lyons@highland.gov.uk Cllr. Matthew Reiss matthew.reiss.cllr@highland.gov.uk</p>
<p>For Scottish Natural Heritage:</p> <p>Alexander Macdonald alexander.macdonald@snh.gov.uk Catherine Harry catherine.harry@snh.gov.uk</p>	<p>For Caithness West Community Council:</p> <p>Jillian Bundy [REDACTED]</p>
<p>Derrick Milnes Isauld Lodge Reay, KW14 7RW [REDACTED]</p>	<p>[REDACTED]</p>
<p>Brenda Herrick (on behalf of CWIF) [REDACTED]</p>	<p>David Gray [REDACTED]</p>
<p>Grace Gray [REDACTED]</p>	<p>David Craig dcraig7670@aol.com</p>
<p>Eric Maughan [REDACTED]</p>	<p>Dr. Graham Crittenden [REDACTED]</p>
<p>K and J Morrison Strathmauer, The Terrace, Reay KW14 7RQ</p>	<p>Cllr. Karl Rosie [REDACTED]</p>
<p>John Moisey (on behalf of Muirden) 1 East Nevay Cottage, Eassie [REDACTED]</p>	<p>Rowland Shaulcross [REDACTED]</p>
<p>Heather Thompson (on behalf of RAWOG) [REDACTED]</p>	<p>Ruth Shallcross Birkness, Reay, KW14 7RC [REDACTED]</p>
<p>Celia McDougall (on behalf of RAWOG) [REDACTED]</p>	<p>George McDougall (on behalf of Caithness West Community Council) [REDACTED]</p>
<p>William Straker-Nesbit [REDACTED]</p>	<p>Margaret and Gerry Devine [REDACTED]</p>
<p>J. Sinclair [REDACTED]</p>	