LW/RFL/IK

Electricity Act 1989

Town and Country Planning (Scotland) Act 1997 as amended

PROPOSED LEITHENWATER S36 WIND FARM

ECU Ref: 00004619

Scottish Borders Council Reference: 24/00512/S36

INITIAL HOLDING OBJECTION

on behalf of

Raeshaw Farms Ltd

(third party objectors)

Submitted: 1st August 2024 by email only

Ian Kelly MRTPI,

Ian Kelly Planning Consultancy Limited

REDACT

Background and Introduction

1. This **holding objection** has been prepared in respect of the proposed Leithenwater S36 wind farm, ECU reference ECU00004619 (Scottish Borders Council application reference 24/00512/S36). The holding objection has been prepared by Ian Kelly MRTPI (see later for qualifications and experience) on behalf of Raeshaw Farms Limited, simply referred to as Raeshaw or the Estate for the purposes of this submission. The Estate is the owner and operator of farming and sporting land and property lying broadly to the north of the wind farm application site.

2. This initial holding objection in respect of the application has been instructed by Belvedere Property Management on behalf of Raeshaw. At an earlier stage the Estate responded at the scoping stage for this proposal but neither the applicant company nor their advisors followed up on the offer of a meeting to discuss the Estate's concerns.

3. It is the intention of the objectors that this initial Holding Objection is followed up, in due course, with a further objection submission once the formal response of the Scottish Borders Council, as the Relevant Planning Authority, is submitted to the ECU. Moreover, at a later stage it is intended to submit a full landscape and visual impact review report to supplement the submissions below.

4. As noted, the response has been prepared by Ian Kelly MRTPI, of Ian Kelly Planning Consultancy Ltd. He is a chartered town planner with 47 years' experience in the public and private sectors, mainly in Scotland, but also involving work south of the Border, and in Europe, mainly in Scandinavia. His relevant project work has included expert witness advice in relation to a very considerable number of wind farm proposals – both planning applications and S36 Electricity Act applications.

The Application Proposals

5. The application, in its current form, consists of the following key elements:

    a. 13 turbines at either 180m or 200m to blade tip (with 9 of the turbines having visible red aviation lighting).

    b. Visible lighting on 7 of the turbines.

c. A 100m micrositing allowance.

d. Approximately 15 km of access tracks of which 8km will be new tracks.

e. A battery storage facility rated at 10MW.

f. A new junction and an upgraded junction on the B709.

g. Up to five on site borrow pits (three new borrow pits and expansion of two existing borrow pits).

h. Felling of 65ha of commercial forestry.

6. The grid connection (including any OHLs) is not part of the current proposal even although it is clearly and intrinsically part of the overall scheme. The failure to assess its impact as part of the Environmental Information Assessment means that the whole project has not been assessed in accordance with the requirements of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. For that reason alone, the application should be refused.

7. The published ECU Guidance makes it quite clear that there will be only very limited opportunity to amend a scheme once it has been submitted to Ministers. It is to be hoped that the ECU will, itself, follow this guidance in this case and not allow any late changes to the scheme design without compelling reason. Such late changes are a source of very considerable concern and are most unfair to the objectors and to local communities who will all have expended significant resources on the assessment of the scheme as originally submitted to Ministers.

The Emerging Cumulative Position

8. The application EIA-R addresses the known cumulative position at the cut off date that was agreed with the Council and the ECU. However, as addressed in the Landscape and Visual Review submitted with this objection, the current scheme status cumulative position is not properly represented in the application EIA-R text. The known up to date position is that in addition to this application there is also the undermined (latest) Cloich Forest application and proposals at Scawd Law, Wull Muir

and Greystone Knowe. Further to the northeast in the Lammermuirs there are wind farm proposals at Longcroft, Dunside, Ditcher Law and Newlands Hill, along with a planning application scale wind farm proposal at Wedderlie. The objectors are very much of the view that the Scottish Borders Council, when determining its view on this application, should take full account of the overall, up to date cumulative position as known at that time, including wind farm applications which are still at the scoping stage.

9. In addition, it is becoming clearer that the dispersed random pattern of energy production is leading to the need for significant grid connections in the form of new OHLs, upgraded OHLs, and new and/or expanded substations. These aspects should all normally be included in the cumulative visualisations and in the cumulative assessments. If they are not included, then the decision maker has only a partial picture of what the outcome of a consent would be (as well as constituting a failure to comply with the Regulations as specified in para 5 above). Again, the Council is asked to consider this aspect when forming a view on the application.

Community Safety Issues

10. The application proposals include provision of a 10MW battery energy storage system (BESS. In recent years it has been increasingly realized that the risk of fire from this type of battery storage is a potentially serious hazard that could impact on the local community and the local environment.

11. It is generally accepted that the operation of the planning and consenting systems should not seek to replicate or duplicate other regulatory regimes. However, it is also understood that the Scottish Fire and Rescue Service (SFRS) is not a statutory consultee in respect of planning applications or S36 applications. That means that there is a potential gap in the consideration of the possible risks involved with BEES applications.

12. An objector for the recent Fasnakyle BESS planning application in the Highland Council area (THC reference 23/04100/FUL) decided to contact SFRS directly and received the undernoted answer (an extract is provided):

a. *However, from an operational perspective, there are a couple of pertinent points I would seek clarification on.*

b. *Would the BESS be upwind from any residential housing? These systems can produce toxic gases/smoke. A gas release can occur well before and without the occurrence of a thermal runaway, at temperatures of approximately 90°C. If the emitted gases are mixed with air in a confined or partially confined environment (e.g. the battery box itself), there is a risk of gas overpressure which can cause an explosion. This may result in debris being ejected over a considerable distance. According to the attached document, the minimum safe distance from buildings would be 25 m and 10 m from combustible vegetation.*

c. *To deal and extinguish these types of fires require copious amounts of water. Are there adequate water supplies nearby? This can also lead to environmental considerations from water run-off.*

d. *In terms of response to an incident involving a BESS, this would likely include a HAZMAT response and would include resources from surrounding stations including Cannich, Drumnadrochit, Beauly, Ft Augustus, Inverness and possibly strategic resources from further afield.*

e. *I am unaware if there has been consultation with SFRS on any Risk Management Plans or Emergency Response Plans shared. Like I mentioned, my colleagues in Prevention & Protection may be aware so I have cc'd them into this email.*

13. This response clearly articulates the issues and the risks. A few points can be made in further response, drawing on other situations where the planning system has to address risk issues:

    a. It is agreed that the correct principle is that the planning and consenting systems should not seek to duplicate other regulatory regimes.

    b. But in the case of nuclear, oil and gas, MoD, railways, and shipping/port related proposals there has always been a protocol for liaison with the relevant

safety regulator and, when taking an application to Committee for determination, the relevant planning officer would be aware of what the Regulator was going to decide.

c. However, it appears that there is no such protocol for BESS proposals.

d. As seen from the SFRS response above there could be environmental consequences which are material planning considerations (in addition to the obvious safety issues).

e. The recent very extensive wildfire at Cannich in the Highlands shows just how quickly a fire can get largely out of control in these remote rural woodland and scrub ecosystem locations (forests, heather, peat, wildlife) with widespread and devastating consequences as well as clearly showing the challenges of responding to a fire in such locations.

14. Taking all of these points together the key planning issue is the significant environmental risks and damage that would follow from a fire at a BESS site and from the fighting of that fire at such locations. The scale of those risks to the environment and to local residents in Innerleithen and in the scattered houses along the B709 adds significantly to the case for refusal of this application.

The Need Case

15. This is now considered by the objectors to be a fundamental consideration. There is a growing overprovision of renewable energy in Scotland as can be seen from this short series of official energy statistics.

16. The 2023 Q3 energy statistics were published by the Scottish Government in December 2023. The figures were not produced in the most helpful format (for example the onshore wind pipeline is shown as a bar chart with no scale and no individual technology figures), however, the position can be summed up as below:

a. Onshore operational capacity – 9.4GW

b. Onshore wind pipeline, total figure only – 13.3GW

c. ONSHORE WIND TOTAL (installed capacity and pipeline) – 22.7GW

d. Total installed renewables capacity, all technologies – 15.GW

e. All technologies pipeline – under construction 4.2GW, awaiting construction 7.1GW, in planning 12.5GW, Total 23.7GW

f. OVERALL TOTAL – 38.7GW

17. The 2023 Q4 energy statistics were published on 28th March 2024 but in a slightly different form. The figures are:

    a. Onshore operational capacity – 9.5GW *(a 01.GW increase)*

    b. Total installed renewables capacity, all technologies – 15.3GW *(a 0.3GW increase)*

    c. *Note – no separate onshore pipeline figures are given.*

    d. All technologies pipeline – under construction 3.27GW, awaiting construction 7.65GW, in planning 14.94GW, Total 25.9GW *(a 2.2GW increase)*

    e. OVERALL TOTAL – 41.2GW *(a 2.5GW increase)*

18. The 2024 Q1 Energy Statistics were published on 27th June 2024 again with a slightly different format and with the inclusion of separate Battery Energy Storage Site (BESS) figures for the first time. The BESS figures are NOT included below as they are not generating electricity. The key other figures are:

    a. Onshore operational capacity – 9.6GW *(a 0.1GW increase)*

    b. Total installed renewables capacity – 15.4GW *(a 0.1GW increase)*

    c. Onshore wind pipeline – under construction 2.4GW, awaiting construction 5GW, in planning 7GW, Total 14.4GW *(a 1.1GW increase from Q3 2023)*

    d. All technologies pipeline (excluding BESS): under construction 3.8GW, awaiting construction 8GW, in planning 15GW, Total 26.8GW *(a 0.9GW increase)*

e. OVERALL TOTAL – 44.2GW *(a 1.0GW increase)*

19. Whilst changes to the way the figures are presented makes quarterly comparisons slightly difficult, these figures continue to show that the official energy statistics are now recognizing the clear potential for excessive generation provision when the 44.2GW figure is compared with the current Scottish peak winter demand of 4.6GW and the OFGEM predicted peak future 2050 Scottish demand figure of 9.4GW.

20. This conclusion becomes even more pronounced if the likely future outputs from all of the ScotWind offshore leases are also included (leading to a total potential generation capacity of around 75 GW, almost 8 times predicted future peak demand). There is absolutely no need for any new onshore wind farms to be consented to meet the public interest and policy aspects of either future demand for electricity or the securing of a net zero outcome.

21. In summary, the predicted high levels of renewable electricity generation in Scotland, combined with the modest levels of consumption and the limited capacity to transfer electricity south (especially when generation is in the far north of Scotland), means that already significant amounts of electricity that is produced in Scotland cannot be used. Such generation is, therefore, frequently turned off and curtailed. That is what will happen if Leithenwater is consented and built, with any output from Leithenwater that makes it to the grid simply displacing the same amount of output from another wind farm and thus contributing no net benefit.

Scottish Government Draft Energy Strategy and Just Transition Plan (Jan 2023)

22. Although some of the detailed figures are slightly different because of what is actually counted into the assessment, and because of the earlier date of this document, the general point around the scale of possible future generation significant overcapacity can be found in the text of Chapter 3, and in particular figures 14, 15, and 16 in that Chapter, within the above Scottish Government document.

23. In terms of electricity supply and demand, the document also confirms that current Scottish demand, and all future Scottish demand, is already met, on a year round basis, by the existing operating onshore and offshore wind farms.

24. In short, these official Scottish Government figures confirm the significant scale of overprovision of generating capacity that is likely to arise in Scotland if new schemes continue to be consented.

The Application Documents

25. The application is accompanied by various documents some of which are considered below, and the comments set out should be considered as forming part of the submitted Holding Objection.

26. The application **Planning and Renewable Energy Policy position** is predicted on something that is patently not correct. It is assumed that building this wind farm and operating it alongside other Scottish wind farms will somehow result in beneficial changes to **global** climate patterns. There is no evidence that any such effect will be secured. Scotland's share of global emissions is so small, around 0.1%, that achieving net zero (which can involve exporting or offsetting emissions rather than eliminating them) will have absolutely no measurable or verifiable global climate change benefits.

27. Accepting that fact does not mean doing nothing in the face of the local challenges arising from global climate change. However, it does mean that the evaluation of policy options and the assessment of proposals should be based on factors and weightings that are realistic with outcomes that are capable of formal review and evaluation in the future (this aspect is considered further when NPF4 Policy 1 is addressed). In the case of wind farms located in valued landscapes such a more realistic and objective approach to climate change responses would give very much higher weighting to the protection of the landscape and to the protection of nature including protected bird species.

28. The **EIA Report** (EIA-R) contains a number of chapters on which some comment is appropriate. However, before doing so it is important to stress that, should the proposal be permitted, then there will need to be provisions made for effective and efficient access to sufficient funds to <u>decommission</u> the wind farm <u>at any stage</u> in its life. These funds should be linked to a Section 75 Agreement so that the

decommissioning liabilities, in the event of insufficient monies being available, can be properly enforced against the landowners and their successors in title.

29. EIA Report Chapter 5 Landscape and Visual addresses the standard LVIA approach for wind farms although at 160 pages long it is considered excessive in terms of the sheer volume of text. It makes finding the conclusions somewhat difficult as the summary table at the end of the chapter, lists the findings of significant effects but does not summarise the analysis. The contents and conclusions for this chapter have been considered in assessing the compliance with policy.

30. Having addressed the general points the following comments are now made on some of the day time visualisations for some viewpoints of direct interest to the objectors (but with the limited commentary having clear regard to the work that will be undertaken by the Council). For each the limited number of viewpoints the EIA- R LVIA finding is summarised followed by an assessment on behalf of the objectors (but without prejudice to the submission of the full landscape and visual impact report referred to above).

    a. VP 1- Cardie Hill Buzzards Nest Car Park

        i. The EIA-R LVIA finds high sensitivity, low magnitude of change leading to a finding of a not significant minor effect that will become moderate and significant if the forestry is felled.

        ii. This is a very poorly chosen viewpoint. There is extensive foreground clutter – a construction site – in the baseline photograph whilst the view out towards the application site is dominated by trees that are not under the control of the applicants. The proposed wind farm is likely to be highly visible form locations to the west of the site and just north of Peebles, as shown in the ZTV. A more representative viewpoint should have been chosen that would have illustrated the cumulative effects looking east and northeast. Therefore, reliance is placed on the wireline and it is agreed that there will be a significant effect if the forestry is felled at any point during the proposed lifetime for the wind farm.

b. VP 3 – Blackhope Scar

    i. The EIA-R LVIA finds medium sensitivity, high magnitude of change leading to a finding of a major significant effect.

    ii. The wireline figure 5.10a shows clearly shows the contribution of the proposed wind farm to both materially extending the horizontal spread of turbines, mainly on the ridgeline and contributing to turbine clutter cumulative effects in several directions of view. The photomontage figure 5.10 shows how the turbines will dominate the view. It is agreed that this is a major significant effect.

c. VP 7 – Cross Borders Drove Road

    i. The EIA-R LVIA finds high sensitivity, medium magnitude of change leading to a finding of a moderate significant effect.

    ii. The wireline figure 5.14a illustrates how the spread of the much taller turbines, compared with the compact layout of 80m tall turbines at Bowbeat, leads to the medium magnitude of change, although this could be assessed as a high magnitude of change given that the turbines are only 6km from the viewpoint.in the photomontage figure 5.14f the lack of contrast with the sky means that the turbines are far less visible than they would be in real life. This is a moderate significant effect that might be re-assessed as major.

d. VP 9 – Manor Sware Peebles

    i. The EIA-R LVIA finds high sensitivity, high magnitude of change leading to a finding of a major significant effect.

    ii. This viewpoint is much more representative of views from the west than VP 1. Both the wireline and the photomontage show how Leithenwater (and Scawd Law) would introduce an extensive line of tall turbines into the view in a situation where, currently, only the much more compact design layout and much lower turbines of the

Bowbeat wind farm (80m to blade tip) are visible. The forestry that provides a degree of screening to the lower parts of some turbines is not under the control of the applicants. It is agreed that this is a major effect although, as the turbines are 500m further away from the VP than in VP 7 it does tend to suggest that VP 7 should also be classed as a major significant effect.

e. VP 10 – White Meldon

   i. The EIA-R LVIA finds high sensitivity, medium magnitude of change leading to a finding of a moderate significant effect.

   ii. The wireline 5.17a shows how the proposed development would completely fill the gap between Bowbeat and Scawd Law at a distance of less than 7km from the viewpoint. This could be considered as a major significant effect but, at this stage, the conclusion of the LVIA is agreed.

f. VP 11 – Windlestraw Law

   i. The EIA-R LVIA finds high sensitivity, medium magnitude of change leading to a finding of a moderate significant effect

   ii. The wireline figure 5.18a shows again that the proposal will both extend the horizontal spread of turbines and fill in a turbine free gap in the horizon. However, a number of other wind farms are seen in differing directions of view and therefore the finding of a moderate significant effect is considered to be correct.

g. VP 18 – A702 North of Carlops

   i. The EIA-R LVIA

   ii. At this distance of 15.55km from the nearest turbine the photomontages are not particularly helpful with the compressed vertical scale underplaying the real life visibility of the turbines.

However, the wirelines, particularly Figures 5.25b and 5.25c, show how Leithenwater (this time with the outlier site of Cloich Forest) would materially extend the horizontal spread of turbines into a view where, currently, only the blade tips and one of the hubs of the Bowbeat wind farm are visible.

h. VP 22 – Eildon Hills

i. The EIA-R LVIA finds high sensitivity, low magnitude of change leading to a finding of a minor not significant effect.

ii. The wireline figure 5.29a shows that the combination of Leithenwater and Scawd law creates a cluster of turbines where none are visible just now. However, the distance to the nearest turbine is 27km and, therefore, although the turbines will be visible and be a discordant feature in the landscape this is a minor not significant effect.

31. As noted earlier, a fuller assessment of the landscape and visual effects, including the consideration of the night time effects and the NSA/SLAs effects, will be prepared at a later stage in the consideration of this application.

32. Ornithology is addressed in EIA-R Chapter 8 Ornithology. The objectors have significant concerns about the scheme specific and cumulative effects on protected bird species, especially with regard to the South of Scotland Golden Eagle project. The extent of current and proposed wind farm development in this locality, and in the wider area to the east and northeast, must mean that habitat loss and habitat displacement, as a result of cumulative effects, must be a particularly serious determining issue. Based on the raptor death figures published by NatureScot collision risk must be another serious effect to be considered. Further comment on this aspect will be made in the context of the responses from the Golden Eagle Project Board and the RSPB, once those responses have been published.

33. The assessment of effects on peat is included in Chapter 9 Hydrology, Hydrogeology and Geology. The objectors have a concern about the loss of peat but the core of their concern in respect of this aspect was the experience of seeing just how poorly the peat

resource was managed when the original Fallago Rig wind farm was constructed. There is little confidence that matters will be any better for this case.

34. Noise is addressed in EIA-R Chapter 10 Noise and Vibration. There is considerable concern that there will be very significant scheme specific and cumulative noise effects that will impact on the enjoyment of recreation in the outdoor landscape as well as adverse noise effects impacting on several properties. Further comment will be made once the response from the Scottish Borders Council is known.

35. Socio-economics and tourism is addressed in Economic Impact Assessment Report which does not specifically address the effects on field sports (indeed there was no contact with the Estate to assess likely issues for inclusion in the chapter). NPF4 now seeks that applicants look to maximise net economic impact, and this has been reflected in recent appeal decisions which look for something beyond an impact assessment. In that respect there are no measures set out in the application material on how the net benefit would be maximized in the locality.

The Position of NatureScot

36. NatureScot submitted a detailed response on 15th July 2024. In terms of natural heritage interests there are two key aspects to their response.

37. Firstly, in relation to Golden Eagles, NatureScot concludes that the Eagles in the occupied territory close to the application site are unlikely to be significantly affected by the proposed development. This somewhat tentative conclusion is reached despite the detailed analysis that is set out in appendix 2 of the letter concluding that there is a collision risk to these birds, but this risk will probably not have a population level impact. The assessment differs from that set out by the RSPB, see below, and in the view of the Estate the various uncertainties and variables should have led to a precautionary objection.

38. Secondly, in relation to the Upper Tweeddale NSA the NatureScot assessment and advice is summarised at the top of page 9 in the letter. In short, they find a scheme specific non localized significant adverse effect on SLQ 4, and localized significant adverse effects on SLQ1 and SLQ3. Cumulatively, along with the undetermined

Cloich Forest wind farm proposal, there would be a non localized significant adverse effect on SLQ4. Despite these findings NatureScot do not object to the proposal, rather they "suggest" reducing the turbine height to under 150m to blade tip. There are two Special Landscape Areas (SLAs) near to the application site but the assessment of the effects by the Council's landscape architect is not yet available. The effects on the NSA and on the two SLAs will be addressed further in the full landscape and visual report to be submitted at a later stage.

The Position of the RSPB

39. The RSPB response was submitted on 5th July 2024. The response advises the mitigation measures are inadequate to address impacts on Golden Eagle (roosting and foraging), Black Grouse and Curlew. In addition to seeking further surveys and assessments the RSPB is seeking the deletion of turbine 13 and the deletion or relocation of turbines 11 and 12. The assessment is in stark contrast with that provided by NatureScot.

The Position of the South of Scotland Golden Eagle Project

40. There has been no response from this group. That is surprising given that the proposal is a potential threat to two Eagles that were established in the area by the project.

The Position of Historic Environment Scotland

41. Historic Environment Scotland (HES) responded to the application on 3rd June 2024. The response disagreed with the applicant's reliance on screening from vegetation to mitigate the adverse effects on the Category A listed Leithen Lodge, Arch, Outbuildings and Sundial. In addition, HES was of the view that the conclusions reached in the cultural heritage chapter of the EIA-R have underestimated the severity of the impact on several heritage assets and their settings. Further detail on all of these points, including advising of the multiple requests for design changes, was set out in an annex to the letter. Despite these significant concerns HES decided not to object to the application.

The River Tweed Commission

42. The Commission provided a detailed response on 31st May 2024. On page 6 of the response, it is noted that the applicants were incorrect in scoping out salmon from the assessment as salmon are known to be present in the Leithen Water. Local knowledge suggests that trout might also be present. Earlier in the response the need for various detailed surveys was set out. Extensive additional information is likely to be needed for a final view to be reached.

The Position of the MoD

43. The MoD submitted an objection on 18th June 2024. The two grounds for the objection are physical obstruction in a low flying area and the effects on the Eskdalemuir Seismic Array.

44. The issues around the operation of what is known as the noise budget at the Seismic Array are well understood and apply to a considerable number of wind farm cases. It is submitted that it would be reasonable to sist the processing of any further wind farm cases, where this MoD ground of objection applies, until such time as it is known whether any further wind farms could be permitted by way of a suitable suspensive condition. The outcome of an ongoing study and the international responses to the outcome might be known at some point in late 2025.

The Development Plan Assessment

45. **Although this is an Electricity Act application the most appropriate practical approach to assessing the detailed acceptability or otherwise of this proposal is through the consideration of the Development Plan (and then material considerations)**. Following on from the consideration of NPF4 the relevant policy in the Scottish Borders Council LDP2 will be considered.

46. Within NPF4 the relatively generic text in the Regional Spatial Strategy for the South (pages 33, 34 and 35 of NPF4) lists renewable energy generation and transmission as one of the priorities whilst recognising the area's exceptional assets and natural resources. However, this broad brush generic statement of spatial planning priorities

cannot then translate directly across to an approval for any specific project in any specific location. The various relevant policies in NPF4 still have to be applied. NPF4 is very clear on this aspect.

47. In terms of NPF4 the Leithenwater S36 wind farm proposal is a national development (national development 3 – strategic renewable energy generation). The text in this part of NPF4 is a fairly generic statement and is not locationally specific or project specific in any way. Indeed, what is said is no more than the obvious. It is stated in NPF4 that delivery of this national development 3 will be informed by market, policy, and regulatory developments and decisions. However, it is not explained how these other regulatory systems are to interact with the role of the Planning Authority or with the Electricity Act section 36 determination process.

48. For example, it is understood that OFGEM are actively considering strengthening the transmission charging system to discourage the investment in generation that is remote from the intended market and which, thus, creates the need for "avoidable" OHL grid upgrades. A likely consequence of this is that remoter rural areas of Scotland will be less attractive for wind farm developments and some proposals that are already consented might well not proceed. NPF4 does not address these key issues although they were known about, in draft form, when NPF4 was being developed. Decision making that is not joined up does not help anyone.

49. Nor are any demand or generation figures given. The capacity for Scotland to either use or transmit electricity is limited just now (at around 6GW if all of the interconnectors are working to full capacity) and still will be limited after planned future investments. That fact needs to be explicitly recognised. There is little benefit to be gained from supporting developments that have no route to market and/or no local demand that they would satisfy. The need case needs to be quantified and fully assessed if it is to be of any assistance whatsoever in the decision making on individual projects.

50. In addition, the introduction text to Annex B National Developments and the text under Spatial Strategy makes it clear that proposals still need to be considered carefully at project level, that this status does not grant planning permission (or

presumably deemed planning permission) for the development, and that all relevant consents are required.

51. In summary, for specific project proposals set in a specific location, there is little in the way of specific support that flows from these generic, obvious statements.

52. Therefore, for national developments the location specific and project specific policy assessments from NPF4 still have to address the key question as to whether or not this is the right development in the right location. To do that requires the consideration of NPF4 Policies as addressed in the following paragraphs.

53. Policy 1 (tackling the climate and nature crises) is an overarching policy that requires that significant weight is given to these two issues when considering development proposals. In relation to this Policy there is ample evidence that the Leithenwater wind farm proposal will cause some harm to nature through effects on bird species, and habitat displacement, as partly recognised in the EIA-R. Furthermore, the applicants can point to no evidence that the project, on its own or in combination with other wind farm or transmission projects, will have any verifiable and measurable beneficial effect on global climate. The proposal, therefore, is not supported by any evidence of any beneficial effect on global climate but an adverse effect on nature (that is not offset by net biodiversity gain) and so the proposal fails to demonstrate compliance with the terms of this overarching policy test.

54. In this respect it is noted that, on 18th September 2023, in a response to the BBC about the First Minister attending climate change talks in New York in person, the Cabinet Secretary for Transport, Net Zero, and Just Transition went on to talk about the licence for the Rosebank oil field west of Shetland. What she said, as reported by the BBC Scotland web page, was:

> *"It is an evidence based approach that we want to see taken by the UK Government including a very strict climate compatibility test, and if Rosebank can't meet a strict climate compatibility test I see no reason why it should go ahead."*

55. This statement by the Cabinet Secretary is taken to be supportive of the submission above of seeking an evidence based approach to the evaluation of the asserted climate change benefits of wind farm proposals.

56. The First Minister has recently repeated a wish for the same evidence led approach when testing the climate change policy compliance of proposed new North Sea oil and gas exploration and production licences.

57. In the EIA-R the findings of non significant effects for the various biodiversity considerations are predicated on mitigation being successful. As far as is known there are no NatureScot sponsored peer reviewed scientific studies into the effectiveness of renewable energy related mitigation measures in Scottish energy schemes. On the contrary, the experience with projects such as the existing Fallago Rig wind farm, the Creag Riabhach wind farm (Highland Council area), and the Viking wind farm (Shetland) is that the reliance on planning controls through conditions has not worked and that environmental harm occurs without subsequent effective enforcement action.

58. Policy 3 (biodiversity) is key. Policy 3b provides that for, inter alia, national developments, these will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so that they are in a demonstrably better state than without intervention. Although an outline habitat management plan is provided in a technical appendix the EIA-R does not provide any detailed metric based assessment or related specific proposals and guaranteed delivery mechanisms to deliver on the policy requirement for betterment (having regard to the accepted adverse biodiversity effects of constructing the wind farm). Noting the concerns raised by NatureScot and the RSPB, it is considered that without either metrics or a long term guaranteed delivery mechanism it is simply not plausible to rely on say an outline Habitat Management Plan or Biodiversity Enhancement Plan as a basis for asserting compliance with this NPF4 policy.

59. In terms of the criteria set out in Policy 3b) it is concluded as below for the proposed Leithenwater wind farm:

    i. It is agreed that the context is understood.

ii. It is not clear that all feasible opportunities have been taken to integrate and make best use of nature based solutions.

iii. In terms of the mitigation hierarchy the first principle, avoidance, should have led to a more detailed consideration of alternatives on other sites or the use of other technologies.

iv. There is no evidence of significant biodiversity enhancements of the types mentioned in the Policy text, nor of the required certainty of delivery, nor of binding provisions for the long term management, retention and monitoring that is required to deliver the benefits envisaged by this Policy.

v. Nor are there firm proposals for delivering and securing local community benefits from biodiversity enhancement.

60. In conclusion, the proposal fails in respect of this policy test having regard to the general principles and to the related criteria (bar criterion 1 which relates to the understanding of the existing characteristics). The proposal, therefore, fails in terms of this key policy test.

61. Policy 4 (natural places) is another key policy. In relation to this Policy and applying the test in Policy 4a, the proposal's unacceptable impact on the natural environment means that the proposal should not be supported.

62. In terms of the effects on the landscape, Policy 4c applies given the adverse effects on the relatively small NSA. Based on the analysis by NatureScot on the SLQs it is considered that the scheme specific and cumulative effects do compromise the overall integrity of the designation. In relation to the test in the second part of Policy 4c it is considered that this test sets out a high level of protection. In particular, adverse effects have to be **clearly** outweighed before they can be found acceptable. Moreover, just because the development is a national development does not mean it automatically passes this test. Such an approach would be legally flawed. The benefits must be of national importance, but whatever the benefits they must outweigh the impacts. Given the level of overprovision of electricity generation, as set out earlier, and given that the impacts are particularly significant and it is submitted that,

in considering this Policy, the significant adverse effects are not clearly outweighed by the benefits. This conclusion will be reviewed once the full landscape and visual impacts report has been completed.

63. Policy 4d will be addressed at a later stage once the Council's assessment of the effects on the local SLAs is available.

64. In terms of protected species, Policy 4f, the proposal has failed to deliver adequate protection in that the reduction of effects to a not significant level is again dependent in mitigation whose effectiveness cannot be guaranteed at this stage. The proposal, therefore, fails in terms of this key policy test.

65. Policy 5 (soils) is of importance in respect of the peat resources that would be affected by the project. The project fails to avoid or minimise the adverse effects on the carbon rich soils and, therefore, the proposal fails in terms of this policy test. However, although the harm must be weighed in the balance, given the nature and scale of the local peat resource, it is probable that this will not be the key determining issue for this proposal in this location. However, the experience of how badly the peat resource was managed during the construction of the existing Fallago Rig wind farm clearly indicates that effective on site construction management will be needed.

66. Policy 11 (energy) is the key policy in terms of the assessment of wind farm proposals. The revised wording of the LDP2 Policy ED9 (see later) requires that this proposal is assessed in terms of paragraphs b) to f) in Policy 11.

67. Policy 11b) does not apply as the proposal is not in a National Park or an NSA, although the proposal will result in scheme specific and cumulative adverse effects on the nearby NSA.

68. Policy 11c) addresses net economic impact and whilst the application asserts a number of claimed economic benefits there is no assessment of the net effects to take account of social and environmental costs or displacement. Therefore, the proposal does not demonstrate that the net economic benefit is maximised and the proposal conflicts with this policy.

69. In terms of Policy 11d) the impact on the NSA was considered when assessing the proposal under Policy 4 earlier.

70. In terms of the specific impacts listed in Policy 11e), and taking into account the LVIA conclusions reached earlier, the proposed wind farm has not adequately addressed and mitigated:

    a. Impacts on communities.

    b. Landscape and visual effects. Such effects are not localised, including the effects on the NSA, nor has appropriate design mitigation been applied. On the contrary, proposing 200m turbines exacerbates the impacts. The landscape and visual impacts are very materially under-assessed in the EIAR and are unacceptable.

    c. Impacts on road traffic.

    d. Biodiversity effects including adverse effects on bird species.

    e. Cumulative impacts in terms of the known proposals for major wind farms forming a significant wind farm cluster of highly varying typologies.

71. Notwithstanding that considerable weight is to be given to the contribution to renewable targets and emissions reduction targets, the adverse impacts are unacceptable.

72. Policy 11f) addresses the issue that wind farm, sites should be expected to be suitable for that use in perpetuity. That is the approach that has been taken in this objection.

73. The overall conclusion that is reached is that the proposal, therefore, fails in terms of this key NPF4 policy.

74. Some consideration should be given to Policy 14 (design, quality and place). Although not considered to be a key determining issue, the proposal fails the test of Policy 14a in that it has not been designed to improve the quality of the rural locations it affects. It will not contribute towards creating a successful place.

75. In terms of the policy outcomes for Policy 18 (infrastructure first) the applicants have not demonstrated that the existing infrastructure assets can be used sustainably without the need for this proposed new development.

76. Policy 25 (community wealth building) is also considered to be of some relevance. The various factors mentioned in Policy 25a in terms of building local community wealth have not been addressed by the applicants. A more localised development and use model for renewable energy would be appropriate here following on from the lead given in Policy 15 (local living and 20 minute neighbourhoods) and also reflecting the regulatory update being progressed by OFGEM.

77. The consideration of Policy 29 (rural development) follows on from this. It cannot be seen how this project, which is specifically designed and justified (so far as can be assessed at this stage) on the basis of providing an electricity supply to a distant market and not to a local market, can make a material contribution to helping to create vibrant and sustainable local rural businesses and communities.

78. Therefore, it can be concluded that, overall, and apart from the classification of the proposal within the fairly generic national development 3 description, the proposal can draw no support from the various NPF4 Policies assessed above.

79. In terms of the Local Development Plan 2 (LDP2) the Proposed Plan contained the proposed Policy ED9. Paragraph 1.5 in the pre-amble text explained that the Council was of the view that, subject to updated references, the policy approach from the 2016 LDP Policy ED9 (the wording of which reflected detailed scrutiny at the Examination for that LDP) remained robust as a basis for assessing renewable energy proposals.

80. The Proposed Plan Policy ED9 then set out a criteria based approach for the assessment of wind energy proposals.

81. However, subsequent to the Examination of LDP2 the DPEA Reporters recommended replacing the text of Policy ED9 with a very short, revised wording which lists various types of renewable energy projects and then says that they will be assessed in accordance with NPF4 Policy 11 paragraphs b) to f) and other relevant provisions of NPF4. The SBC is obliged to accept this revised wording.

82. The effect of the above is that the about to be Adopted SBC LPD2 would appear to have no role in the assessment of wind farm proposals whether they are planning applications or S36 Electricity Act applications.

83. However, until such time as the new LDP2 is formally Adopted the Council would have the option of considering the criteria set out in LDP1 Policy ED9. Such an approach is likely to lead to similar conclusions as set out above.

Material Considerations

84. In previous wind farm application stages and subsequent Inquiry cases the applicants have tended to lodge vast amounts of documentation on international and national protocols and treaties and intentions on climate change alongside various documents on energy policy and energy strategy. However, beyond the need to understand the bigger picture, as set out earlier, the objectors are satisfied that all of the appropriate policy provisions and material considerations for a determination are now captured in the very up to date NPF4 and there is no need to go beyond that (with the exception of how market and regulatory provisions are to be taken into account).

85. Therefore, there is, at this stage, nothing that would lead to a setting aside of the conclusions that flow from the assessment of the relevant policies as set out above.

Development Plan Conclusions

86. In summary, for the reasons given in this holding objection, the proposal is not in accordance with the Development Plan, particularly in respect of NPF4, and material considerations do not change this conclusion. That is a material factor which weighs heavily in the balance against section 36 consent being granted.

Electricity Act Assessment

87. The current approach of decision makers to the question of compliance with the provisions of the Electricity Act is simply to assess whether or not sufficient mitigation has been delivered by the proposals. Having regard to the EIA-R, the Council's likely consideration of the application in terms of its own policies, and this

objection, the conclusion that is reached is that sufficient mitigation has not been secured. The proposal, therefore, is not in accordance with the provisions of the Act.

Overall Conclusions in respect of the Electricity Act and the Development Plan

88. In summary two overall conclusions can be reached. Firstly, in terms of the Electricity Act, the applicants have failed to deliver on adequate mitigation and, therefore, the requirements of the Act have not been met. Secondly, in terms of the Development Plan the proposal has been assessed in terms of the very up to date NPF4, and it has been concluded that the proposal is in breach of key policies as insufficient mitigation has been secured to overcome the adverse effects.

Conclusions and Submission

89. The objectors respectfully submit that the Scottish Ministers should refuse S36 consent and deemed planning permission for the proposed Leithenwater S36 wind farm on account of the requirements of the Electricity Act not being met and on account of it being contrary to the relevant provisions of the Development Plan including NPF4.

[END]

Submitted: 1st August 2024

On behalf of Raeshaw Farms Ltd

Ian Kelly MRTPI