

DORENELL  
CLOSING SUBMISSIONS  
ON BEHALF OF  
CAIRNGORM NATIONAL PARK AUTHORITY (CNPA)

Introduction & summary

1. CNPA object to this significant<sup>1</sup> windfarm proposal because of its effect on the Cairngorms National Park (the “Park”). Notwithstanding the significant policy endorsement of renewable energy generation<sup>2</sup> and/or other benefits that may be found to accrue from the proposal (if any) such a large windfarm so close to this remote part of the Park should not be allowed.
  
2. The first statutory aim of designation is the *conservation* and *enhancement* of the natural heritage of the area (cultural heritage is not of importance here save to a degree in respect of Braes of Glenlivet). In conflict with this statutory aim the proposal’s adverse effect in landscape and visual terms will be evident from both near (e.g. the Braes of Glenlivet) and far (e.g. Ben Avon) to a greater or lesser effect. However, of greatest importance, is its impact on the Ladder Hills.
  
3. The first strategic objective of the Cairngorms National Park Plan (the “Park Plan”) is the maintenance and enhancement of the distinctive landscapes across the Park. But it is agreed by all the landscape professionals that the impact on the Ladder Hills will be significantly adverse in terms of visual impact and landscape – contrary to that first objective the landscape will not be maintained let alone enhanced. It will be

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<sup>1</sup> SNH classify it as a very large windfarm, see CD-I-7 (SNH Siting and Designing Windfarms in Landscape at 4.3)

<sup>2</sup> See e.g. opening sentence of paragraph 187 SPP and very recent Government increases in targets.

degraded. That very agreement distinguishes the other appeal decisions upon which the Applicants relied in which there was no such agreement as to actual significant impact on the Park.

4. Mr. Welch restricts that agreement to local impact, by which he means within 5km from application the site boundary. He considers the effects will diminish within a distance of around 5km to a “not significant level”<sup>3</sup> – presumably meaning “insignificant”. However, even he admits there will be significant landscape, visual and corresponding cumulative effects on Little Geal Charn at 6.1km (i.e. at 1.1 km outside the 5km circle he otherwise limits significant effects to). In reality, it is clear significant effects will extend well beyond 5km, i.e. the significant impact is not limited to that area just over 2.5km inside the Park boundary but extends to a significant part of the Ladder Hills.
5. That impact, of itself, could justify a refusal of the application.
6. However, it is also agreed that the Ladder Hills are the wildest section of any part of north east the Park. It has been assessed (see CNPA 10) as wild as parts of, but clearly far from all of, the Central massif. That was not disputed. The second strategic objective for landscape etc. in the Park Plan is the conservation and enhancement of the sense of wildness in the montane area and other parts of the Park (see page 39 CD-F-4). The Ladder Hills are clearly one of those “other” parts and in the context of this section of the Park a very important “other part”. The proposed windfarm thus runs directly contrary to the second strategic objective given its impact

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<sup>3</sup> 8.2.5 L2

on the Ladder Hills and in particular their sense of wildness. The impact on the natural heritage of the area is such that it should be refused.

7. That conclusion is reinforced, if reinforcement is necessary, by the impact on other areas of the Park. The impacts will be assessed to vary but the impact on the Braes of Glenlivet would in particular be serious in the eroding its sense of enclosure and secrecy. The impacts from the more distant viewpoints are also significant bearing in mind the size of the turbines, the number of turbines and their appearance amongst the “landscape of receding and interlocking layers, comprising a series of gently undulating and ascending ridge lines visible when looking across to distant horizons”. “Where ridges are not broken by human structures, the receding horizons reinforce the impression of natural landforms dominating”<sup>4</sup>. Due to the short distance to the boundary and the similarity of landscape on both sides of that boundary, the windfarm will appear to be in the Park and as part of it, and its impact will be accordingly detrimental, even though outside as the turbines appear below, on and above the skyline.
8. For all these reasons the application should be recommended for rejection.

### Statutory framework

9. The National Parks (Scotland) Act 2000 (the “Act”) (CD-A-4) contains the statutory framework. Apart from noting the aims of Parks, which are set out at section 1, there are two other relevant parts of the framework.

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<sup>4</sup> CD-Q-14 page22 top bullet point.

(a) First, no Park will be created unless the area of the park is of outstanding national importance because of its natural heritage or combination of its natural and cultural heritage, see section 2. Two important points:

- (i) First, as already stated, save perhaps in respect of the Braes of Glenlivet, the relevant parts of the Park that are affected by this proposal have been primarily if not wholly designated because of their *natural heritage*.
- (ii) Second, the Act does not provide for a Park to be created *parts* only of which are of *outstanding national importance* and parts which are not. The Park as a whole must have a distinctive character and a coherent identity.

Whilst there is a recognised variation of character across the Park and arguably there may be more significance of impacts in some parts rather than others (e.g. to take an extreme example, a wind turbine on the top of Cairn Gorm would have more impact than a wind turbine on Geal Charn although all may agree that both would be unacceptable) the correct and indeed only statutory starting approach for the purposes of this inquiry is that:-

The whole of the park up to its boundary is of *outstanding national importance* for reasons of *natural heritage*.

(b) Section 14 of the Act requires the decision maker exercising any function which has an effect on any National Park to have regard to the National Park Plan.

- (i) There appeared to be a confusion in this regard evident in some of the questions Mr. Steele Q.C. asked of Mr. Tyldesley in regard to the

relevance of the effect a development outside the Park on the inside of the Park. It is a matter of statutory direction that if, as accepted by Mr. Welch, there is an effect on the Park “regard” has to be had to the Park Plan – of which more below.

- (ii) It is no part and has never been part of CNPA’s case (notwithstanding the references to buffer zones in cross examination<sup>5</sup> or Mr. Bell’s precognitions) that there should be a “buffer zone”. However, effects on the Park from development outside are clearly relevant. This relevance is reinforced by PAN 45 (CD-C-1) at paragraph 75 which requires a cautionary approach to both Parks and, importantly, their wider settings<sup>6</sup>. Both in Parks and in their wider settings the PAN advises that “it may be difficult to accommodate wind turbines without detriment to natural heritage interests”. (CNPA accept it is a “may”, not a “will”.) The thrust of the Applicant’s case however runs contrary to that approach and they see no difficulties in the close proximity of the National Park – as Mr. Steele elicited in examination of Mr. Welch – there is nothing unusual about this application. There is – it is only 2.3 km from a National Park, in an area of similar if not identical character and at the same rough altitude.
- (iii) The requirement to “have regard” does not tell a decision maker what weight to ascribe to impacts. Two factors are relevant. First, what importance should be ascribed to the Park? Second, what importance should be ascribed to the impact? The second is a matter which can only

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<sup>5</sup> Properly read, that part of the officer’s report (CD-K-13) which the Applicants have picked on – paragraph 62 - is referring to the Glasgow Caledonian Report (CD-R-1) and is in the section of the report dealing with economic impact, which did not of itself provide the basis for the Park’s opposition as the Minutes makes clear (CD-K-14)

<sup>6</sup> Interestingly paragraph 75 of PAN 45 is not included in the summary of the PAN at 9.88 and following in Volume 4 of the ES nor specifically considered in that section of APP-P-2 which deals with PAN 45, 6.5.3-6.5.14.

be answered by reference to the specific impact of the specific proposal. The first is, however, mostly independent of the proposal. The Statute tells the decision maker that the area (i.e. the whole area) of the Park is of “outstanding national importance”. That alone indicates that considerable weight should be given to the first factor.

- (iv) SPP (CD-B-9) reinforces this approach. Paragraph 132 requires a precautionary approach, inter alia, to nationally significant resources (which reflects paragraph 75 PAN 45). If there is doubt as to the impact, that doubt must be resolved against the proposal. However, in CNPA’s submission there is no doubt as to the likelihood of *significant irreversible damage* to the aims of the Park, particularly in the Ladder Hills and the impact on its landscape character, visual qualities and wild nature. Paragraph 138 simply reiterates that Parks *are* of national importance for their natural etc. heritage and that regard has to be had to their aims.
- (v) Again, there is no indication that different parts of the Park are to be valued differently although it is clear that character varies across the Park – indeed Strategic Objective a) for Landscape refers expressly to the “distinctive” landscapes across the Park.

### National Park Policy

10. The Park Plan to which regard must be had is the 2007 Plan (CD-F-4). It is important to note it is not a CNPA plan, it is a plan for the National Park and, given its comments about windfarms and affects on the Park from development outside, has

been approved by Scottish Ministers<sup>7</sup>. Reference has already been made to the two most relevant objectives in the summary of CNPA's case above and they are not repeated.

11. As important however, although overlooked by the Applicants, is the clear statement that "*Large-scale windfarms are not appropriate in the National Park due to landscape and natural heritage impacts but ...*" (page 49). This proposal is not in the National Park, but this clear statement does provide useful assistance as to the issue of what weight should be applied to impacts on the Park from wind turbines. Within the Park the clear and unequivocal position is that large-scale proposals such as this are considered (i) adverse and (ii) to be of such significance that such adverse impact should outweigh the pro-renewable policy endorsement set referred to above.

12. Now, this proposal is not within the Park, but it is very close to it and, see further below, is part of the same landscape area. What difference does it make in real terms if it is not just within and but is just without? If it were within the Park, the area covered by it would be subjected to that impact. However as to impact on the remainder of the Ladder Hills or elsewhere the situation would arguably be not much different. The Park boundary is not apparent even if on the Ladder Hills, albeit Mr. Welch doubted this, and certainly not from further afield including the most distant parts of the Ladder Hills. Save as to the area upon which the turbines would be sited, the impact on landscape and visual impact will be very similar if not identical to this one in this location just outside. (In other circumstances, it could be quite different.)

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<sup>7</sup> The TCP(S)A 1997 requires special attention be paid to the desirability of exercising any power under the Planning Acts consistently with it. By parity of policy approach and statutory framework, the same position should be adopted under the Electricity Act.

The Park Plan provides a very clear pointer that this large scale windfarm is unacceptable. CNPA does not argue that all large scale windfarms close to the Park boundary will be unacceptable, individual circumstances would have to be considered albeit one this close presents considerable problems. Hence, given the particular circumstances here, considerable weight can be put on the policy choices that are inherent within the Park Plan.

13. Moreover, as submitted above, the Park Plan applies not just *within* the Park but to developments that affect the Park. Strategic Objective c (page 38) is express in its terms with relevance to renewable energy developments. The potential impacts of such developments in and where relevant beyond the Park are to be assessed to ensure that designs and locations do not detract from the landscape character of the Park. Given the admitted impact on the Ladder Hills this is clearly a “relevant” situation in terms of the Plan. This proposal however clearly detracts from the landscape character of the Park, contrary to the Park Plan and the first statutory aim of the Park.

14. Such submission is reinforced by consideration of policy choices inherent within the Local Plan – both as to its contents and how the Reporters determining its content dealt with the Park Plan. CNPA 6 (part of which is CD-Q-4) contains their deliberations.

(a) The Reporters clearly accepted the submission that the qualities of the Park exist throughout its area and emphasised the point that “an equivalent level of consideration will be given to landscape throughout the whole Park”, see paragraph 13.4. (See also 13.10, 13.17)

- (b) Further, lest there be any doubt as to the approach to the Park Plan’s requirement for conservation and enhancement - minimal or neutral impact on the landscape is insufficient, see 13.13, last sentence. (See also 13.22 – the Park Plan “presumes against development which might be argued to have a neutral effect on the landscape”.)
- (c) The Local Plan (CNPA 7) contains corresponding provisions – effectively securing the Reporters’ approach as part of the policy framework of the Local Plan, see pages 18-20 and 32. In particular, the Local Plan notes that the impact of development on areas with a sense of wildness is important.
- (d) The Applicants place a great deal of weight on the Beauly-Denny decision (BD). It is important to note the context of the decision (and the excerpts provided by the Applicants).
- (i) First, it was a decision that predated the Local Plan, although consideration was given to a draft of it.
  - (ii) Second, at APP-P24a 8.9.1 the Reporters refer to the decision to find against an east coast route or a sub-sea cable or wholesale undergrounding. They then proceed to consider other alternatives.
  - (iii) They do accept at 8.9.36 the CNP Plan is a material consideration and must be afforded significant weight (as it must in this application) but point out at 8.9.39 that even if there are significant adverse effects development may be permitted if clearly outweighed by social and economic benefits of national importance. (That is not this case, compare

Chapter 3 (CNPA 24 at 3.8.17-24) and see 8.9.40 of BD report. (Incidentally Chapter 3 makes it clear that the NPF did support the BD proposals, see 3.8.9-3.8.11 and 3.8.18 contrary to the assertions in Mr. Bell's Supplementary Precognition.)

- (iv) They conclude at 8.9.46 the route should not be precluded from passing through the Park just because of its designation. It was in this context they looked at Landscape Impact in APP-P24b.
- (v) In terms of the National Park there are important conclusions at 1.11.23, 1.11.27, 1.11.28 and 1.11.29. The last paragraph sets the context very well. The applicants were there searching for the least damaging route through the Park. The overall conclusion is reached at 1.11.146/7 and has to be read in the context of the search for a route through the Park that would be least damaging.

15. Mr. Bell would appear to consider the Local Plan is irrelevant, see 1.2.6 and 1.2.9 of his Supplementary Precognition. He gives no consideration to CNPA 6 or 7 in any part of his evidence (nor does Mr. Welch) - despite criticising the Park Plan for not having a spatial dimension. This apparently inconsistent approach is underlined by his continued reliance upon the B-D decision, which, as relevant, primarily concerned impacts within the Park, not affects outside from development within. It is quite inconsistent to rely upon the B-D Reporters' views on the proper approach to development within the Park but to ignore the Local Plan and Local Plan Reporters' divergent views on development within the Park. If the former are relevant (as he clearly considers), so must the latter be.

16. Moreover, in so far as the B-D decision contains comments to the contrary to those of the Local Plan (as to which see below – it is suggested that they have to be read in the context of that decision which context Mr. Bell ignores) it is submitted that greater weight should be given to the statutorily adopted local plan and the policy approach inherent within it.

17. Their approach is also somewhat surprising given that one of the stated purposes of the Local Plan (the first of its kind in Scotland), see 2.6/7 in CNPA 7, is to provide one of the tools to ensure delivery of the Park's aims and objectives. It has been scrutinised by Scottish Ministers. That Mr. Bell and more importantly Mr. Welch have ignored these matters serves to diminish their evidence and in particular their insistence that some parts of the Park, by which they must mean the Ladder Hills, deserve a lesser protection than others which were originally covered by an NSA and so adverse effects can be ascribed a lesser significance. Such approach cannot now be justified.

#### Landscape and visual impact

18. Before the inquiry are the differing views of Mr. Welch and Mr. Tyldesley, both experienced landscape witnesses. Mr. Welch had no criticism of Mr. Tyldesley's methodology and vice versa (after it was made clear Mr. Welch accepted a moderate impact could be significant<sup>8</sup>) – albeit they do not use the same methodology. (In Mr Tyldesley's case a high sensitivity plus low impact is of moderate significance but of

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<sup>8</sup> There is nothing "cautious" about such an approach despite what Mr. Welch claimed.

low significance in Mr. Welch's approach.) Neither complained about lack of clarity as to application of methodology chosen. The sole complaint of Mr. Welch was that Mr. Tyldesley had exaggerated matters, whereas CNPA suggest Mr. Welch has understated matters.

19. Mr. Steele Q.C. in cross examination suggested a few more complaints as to David Tyldesley's evidence, e.g. attacking Mr. Tyldesley's professional approach by reference to his qualifications etc. I will deal with those later as they are, upon examination, without substance.

Starting point – character continuity

20. The starting point for assessment was however agreed – at least in part.

(a) Paragraph 9.113 ES Vol 4 describes the development site. Mr. Welch did not dispute its contents in his written evidence. The proposed windfarm is “located upon an area of open hills” and “runs around a ridge comprising several high tops ...”. The “two large forest plantations lie over the lower moorland hills” between the site and the a941. The ES clearly distinguishes between the site of the proposed windfarm and the two large forest plantations over the lower moorland hills.

(b) Such distinction is clear from the plans and from the aerial photographs (as produced by Mark Steele which, whilst they may not assist significantly with visual impact given they present a bird's eye view, they are very helpful in assessing landscape character). Further, the forest plantations are not particularly apparent (if visible at all) from the Ladder Hills.

- (c) Mr. Welch accepted in cross examination that there is a considerable overlap between the characteristics of the Ladder Hills and the appeal site but sought, orally, to distinguish the two by reference (i) to the presence of forestry (ii) to signs of habitation (iii) by reference to management of the ground and (iv) by reference to height.
- (d) as to (i) forestry, it is, as stated, not particularly if at all apparent from the Ladder Hills and is not on the same type of area as the appeal site as the ES makes clear but lower hills.
- (e) as to (ii), signs of habitation, the juxtaposition of Blackwater Lodge to the appeal site is no different to that of Glenbuchat Lodge to the Ladder Hills.
- (f) as to (iii) management, there is no discernable difference inland management either side of the Park boundary in the vicinity of the appeal site.
- (g) as to (iv) height, the difference in heights between the appeal site and the Ladder Hills is not significant. Little Geal Charn (742) chosen as the representative Ladder Hills viewpoint is in fact lower than Cooks Cairn (755.) (That Cooks Cairn is just outside the windfarm application site matters not for this comparison, it clearly being part of the same landscape character area as that site). The various peaks referred to at CNPA 3.5-3.8 (not disputed evidence) demonstrate a variety of heights.
- (h) Indeed, L3 Figs 4 and 5 serve to reinforce that the Ladder Hills and the application site are in reality part of the same landform/character, a point appreciated in the 1996 CNP landscape survey, CD-Q-5, see the relevant arrow on Fig 17 (a point accepted by Mr. Welch).

(i) The final point on this the Applicants may raise is to say - if this is correct why was it not included within the Park? As David Tyldesley explained, there are many influences on where a boundary is drawn – landscape character being only one. Further, such a question contains a hidden assumption (for which there was no supporting evidence) that all areas of the same character would be included within a Park boundary. That is not the case as David Tyldesley made clear. It is outside the boundary, but the landscape character is very similar and there is no perceptible boundary at this point.

21. It is CNPA's submission that Mr. Welch's attempt to establish a distinction in landscape character between the appeal site (or even the area comprising the three ridge lines as identified by Mark Steele) and the Ladder Hills should fail as it does not accord with reality. His reluctance to agree that they were part of the same general character area is consistent with his under-estimation of the impacts of the windfarm.

22. The lack of distinction is of some importance. When viewed from the Park, what will be seen will be more of the same landscape. Whether from near or far, the appeal site is currently part of the receding landscape without human features. Cf paragraph 37 Cushnie CD-T-22, where views out of the Park in the direction of Cushnie were found to be more influenced by human activity including lowland agriculture, settlements and forestry. Views towards this site from the Park towards the site are not influenced by any of these forms of activity and, as noted above, the forestry, if visible, is not a major influence in views from the Ladder Hills.

Agreement as to effects

23. Not only was there agreement as to the general description of the site, but there was a considerable measure of agreement as to the general characteristics and potential effects of the windfarm, see paragraph 9.55 of ES Vol 4, page 9. Amongst other matters it was agreed by Mr. Welch that:-

- (a) The proposal will diminish the relative scale and sense of openness within the surrounding hills.
- (b) The light colour of the wind turbines would increase their prominence when seen against a land backcloth.
- (c) It was also agreed, in addition, that all views from the Park, save for some from the Braes of Glenlivet, will include turbines seen against a land backcloth. Indeed, in most, some will be seen against a land backcloth, some breaking the skyline and some effectively on it – making it even more noticeable.
- (d) The moving blades would attract attention (as with any windfarm) but (it is submitted importantly here) would contrast with the sense of tranquillity in some locations (which included, it was agreed, the Ladder Hills).
- (e) The pattern of turbines would contrast with the underlying simple landscape texture.
- (f) The extensive tracks would create a complex linear pattern in contrast with the underlying land cover. again, importantly this would be most clearly revealed from elevated viewpoints in the surrounding area - of which there are many in the Ladder Hills.

- (g) Whilst it was suggested that the tracks may in part merge with the hills after a while it was also agreed their incongruity would be amplified by the cuttings etc.
- (h) The large crane pads would add to the visual confusion.
- (i) The two meteorological masts would appear incongruous and increase the complexity of the windfarm albeit considerably less prominent.

24. It is to be noted that the ES Vol 4 also accepted and it was agreed by Mr. Welch that

- (a) the application site lay in an area with an overwhelming sense of openness and simplicity (9.157)
- (b) the application site lay in an area with an absence of prominent of foci within the landscape (9.158)
- (c) the windfarm would diminish the scale of the hills (9.167)
- (d) that in respect of Morven the windfarm would seem to increase the complexity of the view and appear incongruous by seeming to occupy an upland position , while most human development is concentrated within the straths and upon lower slopes (9.355).
- (e) that in respect of the Ladder Hills the impacts would be significant (see 9.370/1 in particular

25. Given these findings in the previous two paragraphs, it is somewhat surprising that the ES found such low impacts on the Park but it was not possible to explore this with the authors.

26. By a further important agreement, Mr. Welch accepted that theoretical visibility can be equated with actual visibility in so far as the Park is concerned.

27. The bases upon which it is submitted that Mr. Welch may have under-estimated the impact of the windfarm were put to him in cross-examination. For the purpose of closing submissions the four most important can be considered and used to formulate submissions on landscape and visual impact.

28. (1) Mr. Welch restricted his consideration to 15km from the site (any significant effects “certainly within -15km of the windfarm” – 3.1.1L2) and in cross examination indicated he had never recorded a significant effect over 20km. It is submitted that this shows a predisposition to underestimate effects.

(a) If Mr. Welch, who as his CV demonstrates has dealt with many windfarm applications, has never experienced a significant effect beyond 20km it is a wonder he readily agrees a 35km search area or that SNH considers it appropriate to do so. (The extension from 20km to 35km more than doubles the area over which he considers there might be significant effect albeit in this case it is reduced even lower to 15km. If he is right, that is all wasted effort.) That is not to say in every case there can be significant effects at that distance but is indicative that there could be.

(b) It was also inconsistent with his own evidence at 5.4.15 – windfarms being apparent if not particularly conspicuous from Cairngorm at distances of that magnitude. It is clearly not a typographical error as he suggested. To read it as “but not particularly conspicuous” or similar is to alter the whole sense of the

sentence. Note also his oral evidence that he could see turning blades of Paul's Hill at a considerable distance from the Braes of Glenlivet. If he could do that, then the sight of (for example) up to 36 hubs at 15-23km between the Dee and Don (see CNPA 3 at 3.54) could well be significant as a suggests (Morven is 23km away).

- (c) It was also inconsistent with the asserted "significant" mitigation in the ES which referred to reducing the number of turbines visible from distant peaks. If the impacts from such distant peaks (being over 15/20km) were never significant how could there be a significant reduction? (see Vol 4 ES table 9.8 page 10 third box and see Vol 5 ES Table 5 page 70 with respect to significant improvement obtained from Cromdale Hills and Meall a'Bhuachaille).
- (d) Finally, in respect of Morven he disagreed with the ES appreciation of the impact on Morven as medium (ES Vol 4 paragraph 9.351).
- (e) It is quite accepted that one has to have regard to the nature of the view, the extent to which the windfarm forms part of the view (the subtended angle), the impact on the horizon etc but this is a very large windfarm in a prominent position seen backclothed by land which it is agreed will increase its visibility, see above. Its orientation to the Park is of limited mitigation given its size. Significant numbers of turbines are visible from the respective viewpoints and the peaks in respect of which they are representative (see CNPA 3 at 3.5-3.8, 3.40-3.41, 3.51, 3.54, 3.65 and 3.72-3 – all factually agreed). Such mitigation as there is of from orientation is also of reducing effect when viewed from the Hills of Cromdale or the between the Dee and Don or even those parts of the Ladder Hills more to the south of the site.

- (f) One of the justifications for limiting his search to 15km given by Mr. Welch was the containment of the site by the surrounding landform (5.2.3 L2 “this containment fundamentally underpins the suitability of the site to accommodate the proposed windfarm”). From the Park there will be no sense of containment.
- (g) By contrast David Tyldesley suggested significant effects could be found at various points within the search radius of 35km, in respect of which he ascribed a range of impacts from slight to substantial.
- (h) On a related matter, Mr. Welch very clearly accepted he placed no reliance on Fig 8 in PAN 45 (CD-C-1). This has clearly been overtaken by higher turbines, although for lower ones it is still relevant (albeit not necessary accepted as visibility depends upon more than just distance). His approach is consistent with SNH guidelines, see CD-Q-13 (note also his agreement with sentiments in various paragraphs put to him in that document), CNPA 10 at 4.2.3 and CD-I-7 at 4.20 (which again refers to backclothed views by implication being more noticeable). Doubt is also cast upon it in the Cushnie decision (CD-T-22) at paragraph 29 and Fellago Rig (CD-T-21B) at paragraphs 6.25-6.29 (see 6.28 as to land backclothed views). Whilst PAN 45 is still government guidance it would be unreasonable to apply it to the scale of wind turbines proposed in the current application with which it was not concerned. PAN 45 is only guidance, it does not require one to suspend human observation, ignore the agreement of landscape architects or ignore the guidance of SNH or enter Wonderland. Mr. Steele Q.C.’s surprising reliance upon Table 8 in cross examination of David Tyldesley was without support from his own witness and introduced an air of unreality about the Applicant’s case.

29. (2) Secondly, Mr. Welch's failure in his evidence to recognise the National Park as a statutory landscape designation (see e.g. 5.14.1 L2) and generally to downplay its importance meant that he underestimated the importance of such impacts as there were. (Note his similar, but equally erroneous, suggestion that the application site was a heavily modified landscape which then led him to form the view that the application site therefore only displayed a medium landscape value, see 5.14.3 L2.)

(a) He did reluctantly accept in cross examination that the National Park designation was in part at least a landscape designation. In the face of paragraphs 125/138 SPP and paragraph 75 PAN 45 and CD-I-7 at paragraph 4.9 he had no option but to do so. But his initial stance demonstrated a misunderstanding.

(b) However he still maintained a distinction between the core of the Park and perimeter for which there is no support in policy or otherwise (and none has been identified by Mr. Bell is his supplementary precognition). Again, that stance betrays a misunderstanding. Would the applicants really state that the Ladder Hills are of less value than the small part of Aviemore or Braemar which lie within the older NSAs?

(c) He did not accept that landscape was of national importance throughout the Park area, again contrary to Park Planning policy as set out above.

(d) He had failed to take into account the inherent policy judgements contained in the Park policies on windfarms.

Had he approached the matter on a correct basis the impacts would have been recorded as more severe.

30. In this regard, the Applicant's repeated insistence that there is a formal and fundamental distinction between National Parks and NSAs was misplaced and slightly

puzzling. Of course there are different formalities giving rise to each; of course, NSA's are only denoted because of their scenic attributes; but to use that to downgrade the protection of the Ladder Hills is unwarranted. Moreover, in nearly every case there was no disagreement as to the sensitivities involved.

31. (3) Thirdly, and perhaps most importantly, Mr. Welch adopted the prime (if not sole) method of assessing impact on the Park used by the ES, which was to assess the area of influence of the windfarm by reference to the ZTV and then compare that with the overall area of the Park. At best such an approach may provide a starting point but it is a very simplistic tool of assessment<sup>9</sup>. The recent enlargement of the Park demonstrated the logical flaw – how can it be that if the Park increases in size the impact on the Park decreases?

(a) Such approach is apparently derived from the reference to “overall integrity of the area” in NPPG 14 (CD-B-3) which does not apply to National Parks, only NSA's – see the distinction now in SPP between paragraph 137 and 138. Policy has followed the background statutory framework. Mr. Welch ignored this distinction and applied a test that was not relevant. Effects on the National Park are to be judged against its aims. Again that undermines his assessment.

(b) Even then, he accepted in cross examination that there was substance in SNH's approach to such test – CNPA 21 paragraph a12 - that damage to the part was to be treated as damage to the whole. But this was not reflected in his assessment.

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<sup>9</sup> As David Tyledesley points out in CNPA 5, paragraph 5.13, the Park is the size of a small country, being about twice the size of the Grand Duchy of Luxembourg.

- (c) The ZTV shows significant parts of the Park are affected and it is the extent of the impact on those parts which should determine the outcome of this appeal, not the simple relationship they bear to the size of the Park as a whole. Mr. Welch's approach to measuring impact on the Park is flawed.
- (d) Mr. Welch relies upon Kildrummy in support (CD-T-12). It is important to note that it predates the separation of the tests for NSA and NP in SPP at paragraphs 137/8. Consider paragraph 13. The Reporter there accepted that (even) an impact from a much smaller windfarm *could* have a significant impact on the Park. She discounted any actual impact for four reasons and concluded (paragraph 14) that "the small windfarm proposed would" not "have a significant impact on the qualities which led to the inclusion of this area" (i.e. the area within 10km) "within the Park for the reasons explained above". In this case, by contrast, it is accepted that there will be a significant impact on the Ladder Hills part of the Park – so Kildrummy is clearly quite different. There will clearly be a significant impact on the landscape character of the Ladder Hills, which is of the same character as the appeal site. Furthermore, two of the four reasons she refers to do not apply in this case (difference actual/theoretical ZTV and scale of windfarm) whilst the other two are of dubious merit taken by themselves for the reasons given by David Tyldesley in answers in cross examination as developed in this submission. Even if his comments are not accepted it is a different set of circumstances. The Reporter also discounted the Park's evidence by reference to her understanding of SNH's lack of objection, which it is accepted by Mr. Welch is not the case here.

(e) A good example of assessment of unacceptable impact on a National Park by just five turbines is provided for by CD-T-17 (albeit it is accepted that the circumstances are not the same). There, the National Park was 2.5km away. Paragraphs 31-35 are of interest, in particular the approach to wildness and the last sentence of paragraph 34. In this application, it would also be very difficult to tell that the windfarm was not in the National Park given the congruity of the landscape either side of the National Park boundary.

32. Mr. Welch has used this simplistic approach to assessment of impact to seek to reduce the acknowledged significant impact of the proposal. What he has not done is to assess the extent of the impact on the Ladder Hills as an important part of the Park. He has concentrated upon the one representative viewpoint only and unlike David Tyldesley has not sought to set that in context and to consider the impact on the other view-points/ridges etc. If unable to explain the impact away by reference to his “proportion of the whole Park” approach Mr. Welch is left without any real case as to why the impact should not be treated as major significance. This is a significant flaw in his assessment.

33. Mr. Welch agreed that the Ladder Hill were well used by hill walkers. There are no figures for the extent of use. However, in this context, where policy protects not just views and landscape character but also wildness little weight can be put on the assertion that this part of the Park is not as popular as others. Again, the whole of the Park deserves protection and unlike other protected areas the preservation of wildness is a particular aim of the Park.

34. (4) Lastly in considering wildness Mr. Welch agreed that he and the ES had concentrated upon SAWL and had undertaken no proper assessment of wildness, see e.g. Table 9.15 Vol 4 ES at Strategic Objective b. In failing to do so he has underestimated the impact on wildness, which is identified in areas other than the montane. In terms of wildness which is discussed CD-Q-14 (Special Landscape Qualities of the CNP) the surrounding hills are acknowledged to contribute to wildness, see page 15. More importantly at page 21, last bullet point on page there is a recognition of wildness in areas even including managed grouse moors. CNPA 10 clearly identifies the Ladder Hills as the most wild part of the Park to the north east of the central massif (as agreed by Mr. Welch), see Fig 5.1 (also Fig 17 L3 but note overlay of ZTV diminishes impact of green area). As CD-1-2 (SNH Policy on Renewable Energy) states at paragraph 25 “Developments of any scale may not easily be accommodated within undeveloped landscapes valued for their wildness or other intrinsic qualities”.

35. The failure to assess this impact on wildness is a significant distinction between Mr. Welch and David Tyldesley, see CNPA 4 upon which he was not cross examined. (It is to be noted in CNPA 4 reference is made to the study on wildness as being in CNPA 7 whereas it should be CNPA 10, eg at 4.10 and 4.13.) The Ladder Hills (as in part accepted by Mr. Welch) score well against the physical attributes listed at page 10 of CNPA 10. (The “wild land” findings in the Kildrummy decision (CD-T-12) are quite different. There was peat cutting and the Reporter’s finding that the national park nearest to that site did not exhibit qualities of wild land is not relevant to this application. Whilst it is not clear whether she had CNPA 10 before her, it does not

appear that her finding is inconsistent with CNPA 10 and the figures at 5.1 of that report).

36. As to the proximity of other windfarms to National Parks or other designations throughout Scotland, Mr. Welch agreed that there was insufficient information to consider those, save as detailed in the cumulative impact assessment.

37. As to cumulative impact, CNPA relies upon the evidence of David Tyldesley who has assessed the cumulative impact in each of the areas he considered in CNPA 3. See also CNPA 5.46-5.54, and in particular the three points at 5.52.

38. Overall, it is submitted that the evidence of David Tyldesley should carry greater weight and that the impacts are severe, adverse and cannot be mitigated.

39. It is to be noted that both Mr. Bell (APP-P-2 paragraph 5.4.47 and 5.4.121-127) and Mr. Welch (APP-L2-section 9) appear to have considered SNH's position included a view on the National Park – there is not the slightest contrary indication - and placed great weight on it. Consider in particular Mr. Bell's 5.4.125. Given the agreement with CNPA (CNPA 20, and see very clear letter at CNPA 18) it should follow that considerable weight should be given to the Park's objection and that it is very significant that it has objected (cf paragraph 5.4.124). However, such recognition appears lacking in the Applicant's case! There is no indication whatsoever in this case that SNH disagrees or is concerned with the view espoused by CNPA. More importantly, in the context of the effect on the Park it is now accepted that SNH's view is simply not relevant.

#### Cross examination

40. The personal cross examination of David Tyldesley was misinformed (i.e. “are you a one man band”?) and to no effect. He was referred to various decisions in which his evidence had not been accepted, which is a far call from acting unreasonably. In the papers before this inquiry (APP P 37, 40, CD-T-4a, CD-T-15) there are example of appeals where David Tyldesley has been called as a landscape witness and his evidence has been accepted. He also mentioned others not in the papers. There are also examples where he has been on the losing side (CD-T-4B, 9, 10 & 14.) There are other decisions where reference is made to his advice, e.g. CD-T-7 (where he did not give evidence but the Council relied upon his report) and CD-T-1 (likewise). In CD-T-1 (Abercairny) at 12.54 there is reference to a report he provided to Perth and Kinross Council. It makes clear he identified areas where in principle windfarms could be accommodated – contrary to the impression Mr. Steele QC appears to have. Likewise at CD-T-7 (Drumderg) at 104 a further report is sited in the context that the Council did not object on landscape or visual amenity – see 103 – so it is not surprising David Tyldesley was not called (contrary to another question in cross examination).

41. As to Calliacher 2 (CD-T-4B) and the award of costs against the Council, David Tyldesley was not taken to any criticism of his evidence by the Reporter – for good reason in that there are none. There is disagreement noted, but that is all. Indeed, it appears that the Reporter accepted some of David Tyldesley’s evidence, e.g. in respect of the impact on Birnam Hill (12.78) but found that there were adverse effects but that the magnitude was not such to find the proposal environmentally unacceptable. There is no guilt by mere association with the Council’s case (as there is none for Mr. Sales who presented the Council’s case to that inquiry). It would

appear it may have been the Council's reasons for refusal which formed the basis of criticism. (It is also to be noted that the Reporter considered that for 100m turbines there could be significant effects up to 30km – 12.40.)

42. David Tyldesley may also be criticised, and was certainly cross examined, for failure to visit each viewpoint or to undertake an ES. His answer was that he was sufficiently experienced to rely upon the ES, having checked it was generally accurate. There is no need for him to reinvent the wheel. As to lack of visits to some viewpoints for the purposes of this inquiry, that is a matter of his professional judgement. Forming accurate assessments from photomontages and wirelines requires some expertise and a knowledge of the dangers – such representations need to be viewed with one eye open only at the specified distance with document duly curved at the right angle and even then there is a tendency to under-estimate height. But he is well aware of those matters. Likewise, given the case he was presenting, that he spent a short time only on the site is not important. CNPA's concern was views of the site, not the site itself.

43. At times, sometimes lengthy times, the Applicant's cross examinations appeared to focus more on personality (even including Mr. Tait) than merits. At times, that approach was adopted by its witnesses, e.g. Mr. Bell's unfortunate and ill-judged description of CNPA's position on benefits accruing outside the Park as "narrow minded and parochial" when he was responding to a comment solely related to the Park's aims - it did not rule out wider consideration. Such time was, in CNPA's submission, wasted time. There are real issues in this case, upon which it is quite proper to have different views.

Braes of Glenlivet

44. As to Braes of Glenlivet, viewpoint 14 is no longer representative of the views from the Braes of Glenlivet. If one considers the ZTVs, e.g Figs 9 and 10 of L3 it is clear that within the Braes of Glenlivet, let alone climbing a short distance up its sides hubs and blades will be visible over a large part of its area. The numbers visible are still limited in comparison with the total windfarm but the effect on the Braes and their sense of seclusion will be significant for the reasons given by David Tyldesley.

#### Statement of Agreed matters etc

45. CNPA sought to engage in the process to produce a meaningful statement (e.g. from the outset acknowledging the validity of the approach in the ES but disagreeing with its conclusions) but the result is disappointing. In part at least, the Applicant has not been prepared to identify areas of disagreement and/or give their reasons for them.

#### Conclusion

46. The impact of the development has to be assessed against the four aims of the Park.

47. The paper CNPA 5 prepared by David Tyldesley contains a detailed consideration of this issue. Of note, he points out that the ES has understated the importance of the National Park designation and further, in so far as it did seek to assess the special qualities of the Park they were not as expressed in the Park Plan (CD-F-4) and wholly lack the sophistication of CD-Q-14<sup>10</sup> and many of the conclusions are suspect, see 5.14a)-e). His assessment of the special qualities and the impact of the windfarm are

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<sup>10</sup> It is, of course, accepted that it was produced after the ES. However, the correct assessment is now against CD-Q-14.

at CNPA paragraphs 5.19-5.32, which was not effectively challenged in cross examination, is both fair and sensible.

48. In general terms, in the Park the higher one gets the less aware one is of human influence. The focal points in the Park are in the straths and glens – eg castles and bridges. A heavily engineered moving structure on ground of the same order of magnitude as the Ladder Hills will diminish those hills in scale (whereas their vastness of space, scale and height is an identified special quality) and extinguish in that location the dominance of natural landform and the harmony of the complicated curves of the receding views out eastwards from the Park viewpoints, both near and far (also recognised special qualities). The reward to the hill walker from the view of the top of the Ladder Hills will both be significantly diminished and at odds not only with what they might reasonably expect of a National Park summit but in particular that wild part of the National Park.

49. Mr. Bell's statement that the "effects on the National Park would be very limited" (APP-P-2, paragraph 5.4.29) is not only contrary to the Park's evidence but is not supported either by the ES or Mr. Welch. The Applicant's continued attempts, sometimes obvious, sometimes insidious to downplay the importance of the effects on the Park and the importance of the Park should be rejected and the application dismissed. Mr. Welch suggests that the proposed windfarm would assist in serving to illustrate the transitional change around the boundary of the Park (Welch APP-L2-10.2.1), which mirrors the transitional landscape character that underpins it. Not only is he wrong about the transitional landscape, see above, but this windfarm would not illustrate a transitional change. Instead it would provide an extremely abrupt full stop

to the National Park qualities right at the very boundary. It could not be more different, and only an even bigger windfarm more damaging.

50. Taking into account the aims of the Park and the impact on the Park the benefits the application may bring nationally or locally come at too high a price in terms of this nationally important asset. Consideration of the impact on the Ladder Hills is sufficient to justify such a conclusion. Added impacts reinforce that view, whether elsewhere in the Park or outwith its boundaries.

51. The application should be recommended for rejection.