

Electricity Act 1989

Dorenell Wind Farm, on land at Glenfiddich Estate, near Dufftown, Moray

Statement of Areas of Agreement or Disagreement

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1. INTRODUCTION

- 1.1. This Statement of Agreed Matters is made among the applicant, Dorenell Ltd, The Moray Council (hereinafter referred to as "TMC") and the Cairngorms National Park Authority (hereinafter referred to as "the CNPA") (the "Named Parties")
- 1.2. The purpose and scope of this Statement is to identify areas of agreement or reasons for disagreement between the parties in respect of the assessment of the proposal.
- 1.3. The CNPA does not comment on sections 5, 6, 8, 10 and 11.
- 1.4. TMC does not comment on sections 10 and 11.
- 1.5. The Applicant does not agree that the CNP development plan policies and commentary in section 9.3 are relevant to the proposal.

2. THE PROPOSAL AND DECISION

The Named Parties agree:

- 2.1. The application for the proposed development ("the application") is dated 6 May 2008 and was accompanied by an Environmental Statement (ES).
- 2.2. The application seeks consent under section 36 of the Electricity Act 1989 and deemed planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 for the construction of 59 wind turbines with a height from base to blade tip of 126 metres and a hub height of 85 metres. The associated infrastructure and services would include; the following: 59 wind turbine hardstandings, new and upgraded site tracks, fencing, an electrical substation, a control and maintenance building, "borrow pit"/quarry and associated underground power and control cabling, the full details of which are shown in the figures and table 7.1 in chapter 7 of the Environmental Statement. These developments are proposed at Glenfiddich Estate, Moray. Associated highways works also form part of the application at the junction with the A941. The application was accompanied by an ES which included detailed drawings indicating the layout of all of the components of the development. The final layout is illustrated in ES Figures 7.4 to 7.13.

The application was considered by the Moray Council on 13 October 2009 when the Council decided to object to the application. The reasons for their decision are recorded in the formal Minute of the Special Meeting of the Planning & Regulatory Services Committee for 13 October 2009.

The application was considered by the CNPA on 19th September 2008 when the Planning Committee (which comprises all Board Members) decided to "strongly object" to the application. The reasons for their decision are recorded in the formal Minute of the Meeting of the Planning Committee of that date.

The proposed development was considered at a Public Inquiry, which reconvened on 16 November 2010.

3. DESIGN

Site Selection

The Named Parties agree that:-

- 3.1. No wind farms will be developed, even in the most favourable and environmentally unconstrained locations, if the land is not available or wind speeds do not support commercially viable operation.

Neither TMC nor CNPA agree or disagree with the applicant that:-

- 3.2. The Dorenell site has some of the highest and most consistent wind speeds recorded in Scotland.

The Named Parties neither agree or disagree that:-

- 3.3. These high and consistent wind speeds would result in a very high output from the wind turbines, producing top tier levels of renewable energy per installed MW.

The applicant and the CNPA neither agree or disagree that:-

- 3.4. The Dorenell site is not located near residential properties, it is a very large tract of land, it has good site access, and good grid connection options.

The CNPA disagrees that:-

- 3.5. There would be limited effects on the amenity of any settlements or other residential receptors.

Design

The Named Parties agree that:-

- 3.6. The Dorenell site contains a wide range of environmental factors, visual impact issues and engineering constraints which needed to be considered and balanced during the overall design of the site, both for the turbine layout, as well as the track layout and design.
- 3.7. Good design of a wind farm does not result from consideration of visual elements alone.
- 3.8. Good technical design should optimise wind capture and achieve the best environmental fit.
- 3.9. It is inevitable that any commercial scale wind farm will have some effect on the landscape but the applicant disagrees that those effects are unacceptable in the case of Dorenell.

The applicant and TMC agree that:-

- 3.10. The River Fiddich, as part of the River Spey SAC is located immediately to the east of the site boundary. Atlantic Salmon are a qualifying species for the SAC. There is a need for high protection of the qualifying interests of the River Spey SAC due to its status as a European Natura 2000 site and the Habitats Regulations which apply to development which could affect the designation.

The applicant and TMC agree that:-

- 3.11. SEPA in managing the protection of the water environment, requires an applicant to demonstrate that the design of a project considers options and alternatives to minimise impacts on water bodies.

The applicant and TMC neither agree or disagree that:-

- 3.12. Adopting an express design hierarchy for design of the access tracks is appropriate to ensure prevention of sediment transport into the River Spey SAC.
- 3.13. The SPP (2010) provides: *If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development then the requirements of the species must be factored into the planning and design of the development. And.... this may affect the layout, designof works*

The CNPA and TMC neither agrees nor disagrees that:-

- 3.14. The Dorenell Wind Farm represents the best optimised design of a wind farm in this location.

4. LANDSCAPE AND VISUAL IMPACT ASSESSMENT

In so far as CNPA agreement is noted in this section it is on the following basis. The CNPA agree with this section in so far as it relates to the factual account of the methodology in the ES. The CNPA does not agree with the outcomes of the application of the methodology in terms on the sensitivity, magnitude of change or significance of the impacts recorded as far as concerns the impact on the CNP. This is dealt with more fully in the CNPA's evidence

4.1. Landscape and Visual Impact Assessment Methodology

- 4.1.1. Paragraphs 4.1.2 to 4.1.17 below describe the objectives and methodology of the LVIA carried out as part of the EIA.

Objectives

The Named Parties agree that:-

- 4.1.2. The landscape and visual impact assessment (LVIA) was undertaken as part of a broader assessment of environmental effects, the Environmental Impact Assessment (EIA). The methodology employed and findings of the LVIA were reported in the ES.
- 4.1.3. The intended purpose of the LVIA is to identify and evaluate the likely significant effects of the proposed development and inform mitigation of the likely effects of the proposal on the landscape and visual receptors.

The applicant and the CNPA agree that:-

- 4.1.4. The process was an iterative one, where effects were identified and evaluated as being significant, mitigation measures were developed to reduce impacts (primarily through layout design) and the revised proposals re-evaluated. At the end of the process the remaining (residual) impacts were evaluated as to their significance. The assessment of landscape and visual impacts was undertaken in a methodical manner to provide an assessment of effects, applied using professional judgement. In order to provide a level of consistency to the assessment, the prediction of magnitude and assessment of significance of the residual landscape and visual effects was based on pre-defined criteria which are set out in the Methodology.

Methodology

The applicant and TMC neither agree or disagree that:-

- 4.1.5. The assessment has been based on the following best practice guidance:
- *Guidelines for Landscape and Visual Assessment: Second Edition* (Landscape Institute and Institute of Environmental Management and Assessment);
 - *Visual Representation of Wind Farms: Good Practice Guidance: 2007* (SNH)
 - *Cumulative effect of Wind Farms: SNH.*

4.1.6. The methodology employed to assess landscape and visual impacts comprised the following stages:

- Identification of the key characteristics of the landscape character and visual amenity of the study area to establish the baseline conditions against which the changes brought about by the proposal can be assessed;
- Establish the sensitivity of the landscape and visual receptors to the changes associated with wind farm development;
- Predict the magnitude of change that would occur within the receiving landscape and at visual receptors; and
- Assess the significance of the landscape and visual impacts by reference to the magnitude of change and sensitivity of the landscape and visual receptors.

Identification of Baseline Conditions

The Named Parties agree that:-

4.1.7. The landscape and visual assessment is based upon a study area of 35km from the development boundary.

The applicant and TMC agree that:-

4.1.8. The baseline assessment comprised an examination of the following characteristics:

- *Regional and local context;*
- *Landform and hydrology;*
- *Land cover, land use and landscape elements;*
- *Settlement;*
- *Transport routes;*
- *Tourism and recreation;*
- *Existing and proposed wind farms;*
- *Landscape designations;*
- *Landscape character assessment based on –*
 - Cairngorms Landscape Assessment 1996 (SNH Review No.75);
 - Banff & Buchan LCA 1997 (SNH Review No. 37);
 - South & Central Aberdeenshire LCA1998 (SNH Review No. 102);
 - Moray & Nairn LCA 1998 (SNH Review No.101).

The Named Parties agree that:-

4.1.9. To assist in evaluating the potential landscape and visual effects associated with the proposed wind farm, Zones of Theoretical Visibility (ZTV) diagrams were prepared to identify the theoretical visibility of the wind farm over the study area. The ZTV diagrams were prepared to examine the theoretical visibility to blade tip and to hub.

4.1.10. The study area and viewpoint selection used in the LVIA was identified through consultation with The Moray Council, SNH and the Cairngorms National Park Authority in July 2007.

Sensitivity to Change

The Named Parties agree that:-

4.1.11. An assessment of the sensitivity of each landscape character type to those changes likely to result from the proposal was undertaken. This assessment has

examined the sensitivity to change of the landscape type within which the proposal is located and other landscape types with potential visibility of the proposal.

Predicting Magnitude of Change

The applicant and TMC agree that:-

4.1.12. The magnitude of change arising from the proposed development at any particular viewpoint is described in the ES as *substantial, moderate, slight* or *negligible* based on the interpretation of a combination of largely quantifiable parameters, as follows:

- Distance of the viewpoint from the development;
- Duration of effect;
- Extent of the development in the view;
- Angle of view in relation to main receptor activity;
- Proportion of the field of view occupied by the development;
- Background to the development;
- Extent of other built development visible, particularly vertical elements.

The applicant and the CNPA agree that:-

4.1.13. An analysis of the potential effects on both landscape character and visual amenity arising from the proposed wind farm at each of the selected viewpoints was carried out in the ES. This analysis involved the production of a baseline photograph and computer generated wireframe diagrams and in many cases photomontages to inform professional judgement in the prediction of changes in views from agreed viewpoints. Comparison of existing and predicted views were analysed to identify the magnitude of change on landscape character and on visual amenity.

Assessment of Significance

4.1.14. The significance of any identified landscape or visual effect has been assessed in terms of substantial, moderate, slight or none. These categories have been based on combining viewpoint or landscape sensitivity and predicted magnitude of change, to determine significance of effects. Those effects that are identified as being of 'Moderate' or 'Substantial' significance are regarded as being 'significant' in terms of the EIA Regulations.

4.2. Study Area

The Named Parties agree that:-

4.2.1. The study area of 35km radius from the boundary of the development proposal accords with SNH guidance and is appropriate to the assessment of landscape and visual effects.

4.3. Zone of Theoretical Visibility Mapping and photomontages

The applicant and the CNPA agree that:-

4.3.1. The ZTVs within the LVIA are accepted as being accurate for, for the purposes of landscape and visual impact assessment.

The Named Parties neither agree or disagree that:-

4.3.2. The Zone of Theoretical Visibility (ZTV) diagrams contained within volume 4 of the ES and in the SEI are appropriate to inform the assessment of visual and landscape effects. It is recognised by all parties that the ZTV diagrams represent worst case visibility as they are "bare ground" mapping and do not take account of the screening effect of micro-topography, woodland and buildings.

4.4. Viewpoint Selection

- 4.4.1. The Named Parties agree that: The location of viewpoints numbered 1 to 22 shown in Figure 9.4 of Volume 4 of the ES and in Figure 23 of the SEI, are appropriate as part of the assessment of landscape and visual impact of the proposals;

The applicant and TMC agree that:

- the viewpoints included within the LVIA and CLVIA are representative of the types and locations from which there may be views towards the proposed wind farm and with other wind farms; and

4.5. Landscape Designations

The applicant and the CNPA agree that:-

- 4.5.1. The Landscape Designations selected to be shown on Figures 9.1 and 9.30 in Volume 4 of the Environmental Statement and in Figure 5 of the SEI are the relevant landscape designations within the study area for the purposes of assessing impact on landscape character.

4.6. Landscape Character Types

The Named Parties neither agree or disagree that:-

- 4.6.1. The Landscape Character Types selected to be shown on Figure 9.7 in volume 4 of the Environmental Statement are extracted from SNH landscape Character Assessments and provided the relevant landscape baseline characterisation of the study area for the purposes of landscape assessment at the time of the preparation of the ES

The Named Parties agree that:-

- 4.7. The relevant landscape character baseline for the assessment of landscape and visual effects now includes:

- Cairngorms Landscape Assessment 1996 (SNH Review No.75);
- Cairngorms Landscape Character Assessment 2009 (CNPA)
- Banff & Buchan LCA 1997 (SNH Review No. 37);
- South & Central Aberdeenshire LCA1998 (SNH Review No. 102);
- Moray & Nairn LCA 1998 (SNH Review No.101).

The applicant and TMC neither agree or disagree that:-

- 4.8. The LVIA found that significant effects, in the terms of the EIA Regulations, would occur in relation to the following:

- Parts of two landscape character types;
- From 6 of the 22 representative viewpoints;
- Parts of 2 sequential routes; and
- Parts of 2 local designations (Areas of Landscape Significance/ Area of Great Landscape Value).

4.9. Cumulative Landscape and Visual Effects

The Named Parties agree that:-

- 4.9.1. As at June 2010 the relevant wind farms (within 37km of Dorenell) against which the potential cumulative impacts of the proposed scheme should be assessed

include:

Cumulative situation January 2011				
Name	Approximate distance from Dorenell km	Number of wind turbines	Height to blade tip m	Status
Dummuies	23	7	80	Operational
Glens of Foudland	27	20	78	Operational
Pauls Hill	21	28	104	Operational
Rothes	22	28	100	Operational
Cairnmore	17	4	80	Operational
Balnamoon Farm	29	1	70	Consented
Drummuir	14	21	100	Consented
Mains of Hatton	37	3	79	Consented
Berry Burn	25	29	104	Consented
Kildrummy	11	8	93	Consented
Myreton	31	1	74	Consented
Rothes Extension	22	18	110/125	Consented
Clashindarroch	7	18	110	Consented
Tillymorgan	31	3	79.6	Undetermined
Aultmore	29	13	110	Undetermined

4.9.2. The status of the different wind farm projects included within the cumulative assessment should be considered in accordance with the guidance in the SPP.

4.9.3. That the correct approach to assess cumulative landscape and visual effects is to assess Dorenell against a baseline of operational, and other consented wind farms and also the contribution that Dorenell would make in combination with permutations of other wind farms at application and appeal stage),. In other words, it is an assessment of the effect of adding Dorenell to the permutations not an assessment of the merits of the other wind farms.

4.9.4. it is the correct approach for the assessment of potential cumulative landscape and visual impacts to examine the combined and/or successive visibility of existing or proposed wind farms, as described above where the viewer can see more than two or more wind farms from one viewpoint location; and to assess sequential effects where a number of wind farms would not be seen simultaneously, but would be visible over a sequence of connected viewpoints, or along a route, for example along a road or footpath.

5. RENEWABLE ENERGY POLICY AND EMISSION REDUCTION AND RENEWABLE ENERGY GENERATION TARGETS

5.1. The proposed development relates to the generation of electricity from a renewable source. As such, relevant elements of the UK and EU Energy Policy are significant material considerations, including for instance, the EU Renewable Energy Directive and the UK Renewable Energy Strategy 2009.

5.2. In summary, the latest European and UK Government and Scottish policies establish a strategic need for renewable energy provision in the UK and Scotland to assist in tackling climate change and ensuring security of energy supply. The policies are generally permissive in respect of renewable energy proposals in appropriate locations.

5.3. A rapid and steep reduction in carbon emissions is a central component of a transition to a low carbon economy in Scotland. The Climate Change (Scotland) Act 2009 commits Scotland to reductions in Kyoto greenhouse gas emissions of at least 80% from 1990

levels by 2050, with an interim target of 42% by 2020.

- 5.4. The Scottish Government's Renewables Action Plan¹, (June 2009) set out Scotland's renewable energy targets and stated that Scotland is committed to achieve a headline target of 20% of total Scottish energy use coming from renewable sources by 2020. In terms of electricity, the target up until September 2010 was that 50% of gross electricity consumption should come from renewable sources by 2020, with an interim target of 31% by 2011. The 2020 target was increased from 50% to 80% on 23rd September 2010.
- 5.5. The Scottish Renewables Action Plan contains a vision² for onshore wind which is "continued expansion of portfolio of onshore wind farms to help meet renewables target, with robust planning framework supporting timely processing of consents applications and ensuring wind farms are consented where they are environmentally acceptable".
- 5.6. The Scottish Government regarded the 50% 2020 target as being the equivalent of 8.GWe of installed capacity. The revised 2020 target (80%) is 12.8 GWe. The 2011 milestone for renewable electricity generation equates to around 5 GWe³ of installed capacity.
- 5.7. As of July 2010, the Scottish Government's figures for installed and consented capacity of renewable electricity generation were as set down in Table 5.1 below.

Table 5.1: INSTALLED AND CONSENTED CAPACITY OF RENEWABLE ELECTRICITY GENERATION (MW) – source the Scottish Government

	A	B	C	D	E	Totals
	Existing (old plants)	S36 Installed including under construction	Local Planning Installed	S36 Consented (not built)	Local Planning Consented	
Hydro	1,400	114	24.03	30.6	2.15	1,571.05
Wind	0	1,112.6	1051.79	2013.9	833.65	5,011.94
Biom	0	0	40.17	0	6	46.17
Other	0	216	0.15	7	0.04	223.19
Totals	1,400	1,442.6	1,116.41	2,051.5	841.84	6,852.35

Total Installed Capacity for Scotland (Columns A, B + C above) = 3,959.01MW.

Installed and consented Capacity as announced to date i.e. excluding local authority cases (Columns A, B + D) = 4,894.1MW.

Local planning installed and consented (Columns C + E) = 1,958.25MW.

The total installed and consented capacity in Scotland is (A,B,C,D +E) = 6,852.35MW.

- 5.7.1. Current installed capacity is accounted for by a mixture of technologies including hydro, wind, energy from waste; biomass electricity; and wave.
- 5.7.2. In addition, according to the Scottish Renewables Forum Limited, 811.6MWe is currently at appeal (all of it wind) and 3,660MWe is in the planning system awaiting decision (3,563MWe of it being wind). The latter figures include the proposed Dorenell Wind Farm.
- 5.7.3. The figures for installed and consented renewable energy capacity amount to a total of 6,852 MWe. This would leave a further need for at least 1,148 MWe to be consented and built

¹² The Scottish Government, Renewables Action Plan, Renewable Energy Division, (June 2009).

¹² SG Renewables Action Plan (June 2009), page 77.

¹² The Scottish Government, 'Towards a Low carbon Economy for Scotland', page 10 (March 2010).

¹²

¹² SG Renewables Action Plan (June 2009), page 77.

¹² The Scottish Government, 'Towards a Low carbon Economy for Scotland', page 10 (March 2010).

(along with the implementation of all the currently consented projects) to meet the previous projected 8GWe figure for 2020. The shortfall against the revised 2020 target (80%) is approximately 5,948 MWe, which remains a minimum, not a maximum figure.

6. SCOTTISH NATIONAL ENERGY POLICY ISSUES

The applicant and TMC agree that:-

- 6.1. The public inquiry in respect of the current application is not an appropriate forum for debating the merits of national policy as it relates to energy, renewable energy and climate change issues.
- 6.2. The Scottish Ministers are taking a twin track approach to promoting reduced energy consumption and low carbon technologies, including hydro carbon, clean coal and carbon capture. There is a recognition that the Scottish Government's energy strategy must focus on both power and heat.
- 6.3. The Scottish Government is committed to ensuring that more technologies play a role: for example, marine energy and biomass energy.
- 6.4. There is now almost 6.8GWe of renewables capacity installed, consented or under construction around Scotland.
- 6.5. The SPP and PAN 45 with its Annexes set out the current planning policy and advice for renewable energy schemes in Scotland.

7. SCOTTISH PLANNING POLICY

The Named Parties agree that this is, for the most part, comprised in the SPP published in February 2010, in which the following paragraphs of both the SPP and its specific Subject Policies are relevant:

7.1. Scottish Planning Policy

7.1.1. SPP1 was superseded by the new Scottish Planning Policy statement first issued (in part) in October 2008. This retains the Scottish Government's approach to creating sustainable development, and sets out the framework for development plan preparation and decision-making under the new planning regime in Scotland. The aim of the sustainability concept is to help to provide for necessary development in ways which do not compromise the ability of future generations to meet their needs

7.2. Subject Policy on Economic Development

The policy provides at paragraph 45 that:

The planning system should support economic development in all areas by:

- *taking account of the economic benefits of proposed development in development plans and development management decisions,*
- *promoting development in sustainable locations, particularly in terms of accessibility,*
- *promoting regeneration and the full and appropriate use of land, buildings and infrastructure,*
- *supporting development which will provide new employment opportunities and enhance local competitiveness, and*
- *promoting the integration of employment generation opportunities with supporting infrastructure and housing development.*

The planning system should also be responsive and sufficiently flexible to accommodate the requirements of inward investment and growing indigenous firms.

7.3. Subject Policy on Rural development

This includes at paragraph 93 "*the overarching aim of supporting diversification and growth of the rural economy*".

But at paragraph 94 "all new development should respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards".

Advice in PAN 73 also states at paragraph 13 that:

"There are many activities that make a valuable contribution to the rural economy that are less immediately obvious such as.....wind turbines..."

7.4. Subject Policy on Landscape and Natural Heritage

7.4.1. Relevant elements of this policy include:

125. *Scotland's landscape and natural heritage are internationally renowned and important, underpinning significant industries such as the food,*

drink and tourism industries, and are a key component of the high environmental quality which makes Scotland an attractive place in which to live, do business and invest.

- 126 *Where possible, planning authorities should seek benefits for species and habitats from new development including the restoration of degraded habitats.*
- 127 *Landscape in both the countryside and urban areas is constantly changing and the aim is to facilitate positive change whilst maintaining and enhancing distinctive character. ... Different landscapes will have a different capacity to accommodate new development, and the siting and design of development should be informed by local landscape character.*
- 128 *The most sensitive landscapes may have little or no capacity to accept new development. Areas of wild land character in some of Scotland's remoter upland, mountain and coastal areas are very sensitive to any form of development or intrusive human activity and planning authorities should safeguard the character of these areas in the development plan.*
- 131 *Landscapes and the natural heritage are sensitive to inappropriate development and planning authorities should ensure that potential effects, including the cumulative effect of incremental changes, are considered when preparing development plans and deciding planning applications. While the protection of the landscape and natural heritage may sometimes impose constraints on development, with careful planning and design the potential for conflict can be minimised and the potential for enhancement maximised. However there will be occasions where the sensitivity of the site or the nature or scale of the proposed development is such that the development should not be permitted.*
- 132 *Planning authorities should apply the precautionary principle here the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there is sound evidence for believing that significant irreversible damage could occur. Where the precautionary principle is justified, modifications to the proposal which would eliminate the risk of irreversible damage should be considered.*
133. *The disturbance of some soils, particularly peat, may lead to the release of stored carbon, contributing to greenhouse gas emissions. Where peat and other carbon rich soils are present, applicants should assess the likely effects associated with any development work.*
134. *Sites classified as Special Protection Areas (SPA) under the Birds Directive¹⁹ and designated as Special Areas of Conservation (SAC) under the Habitats Directive²⁰ form an EU-wide network of protected areas known as Natura 2000. Any development plan or development proposal which is likely to have a significant effect on a Natura site and is not directly connected with or necessary to the conservation management of that site must be subject to an appropriate assessment by the planning authority of the implications for the site's conservation objectives.*
- 137 *A National Scenic Areas (NSA) is an area which is nationally important for its scenic quality. A Site of Special Scientific Interest (SSSI) is notified for the special interest of its flora, fauna, geology or*

geomorphological features. A National Nature Reserve (NNR) is an area considered to be of national importance for its nature conservation interests. Development that affects a NSA, SSSI, or NNR should only be permitted where:

- *it will not adversely affect the integrity of the area or the qualities for which it has been designated, or*
- *any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance.*

138. *National parks are designated under the National Parks (Scotland) Act 2000 because they are areas of national importance for their natural and cultural heritage. The four aims of national parks are to:*

- *conserve and enhance the natural and cultural heritage of the area,*
- *promote sustainable use of the natural resources of the area,*
- *promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public, and*
- *promote sustainable economic and social development of the area's communities.*

In circumstances where conflict between the objectives arises and cannot be resolved, the 2000 Act requires that the conservation of the natural and cultural heritage should take precedence. The management strategy for each park is set out in the National Park Plan. Development plans within park areas should be consistent with the National Park Plan.

139. *International and national designations can be complemented by local designations which protect, enhance and encourage the enjoyment and understanding of locally important landscapes and natural heritage. Local designations should be clearly identified and protected through the development plan. The reasons for designation should be clearly explained and the on-going relevance and function of local designations should be considered when development plans are prepared. Some local designations, such as Local Nature Reserves, are a statutory designation. Other local designations are non-statutory. Planning authorities are encouraged to limit non-statutory designations to two types - local landscape areas and local nature conservation sites. Both statutory and non-statutory local designations should be identified and protected in the development plan and the factors which will be taken into account in development management decision making should be set out. The level of protection given to local designations through the development plan should not be as high as the level of protection given to international or national designations.*

142. *Many species are legally protected and their presence or potential presence is an important consideration in decisions on planning applications. Although their presence rarely imposes an absolute block on development, mitigation measures are often needed and the layout, design and timing of works may be affected. If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, their presence must be established, the requirements of the species factored into the planning and design of the development and any likely impact on the species fully considered prior to the determination of the planning application.*

In relation to protected species, paragraphs 143 to 145 of this subject policy provide for the tests to be applied where there are likely to be significant effects on the species.

7.5. Subject Policy on Renewable Energy

The Named Parties agree that paragraphs 182 to 191 of this subject policy are, for the most part, relevant to the determination of the application.

7.6. PAN 45 Renewable Energy technology

- 7.6.1. The series of PANs supplements the SPP by providing more detailed information about specific topics. In this case, PAN 45 provides advice on landscape and visual impact issues. Paragraphs 70-83 are relevant in that regard.

It advises on the capacity of the landscape to accommodate wind farm developments, and the inevitable consequences of turbines being tall structures usually sited on open land and visible over long distances. Paragraph 75 advises that "A cautious approach is necessary in relation to particular landscapes which are rare or valued, such as National Scenic Areas and proposed National Parks and their wider settings. Here, it may be difficult to accommodate wind turbines without detriment to natural heritage interests".

On cumulative effects it states that it is not reasonable to go beyond those schemes that have been built, have consent or are the subject of unresolved applications.

Since the lodging of the application, the Scottish Government have published Annex 2 to PAN 45, which is the advice on the implementation of the Annex A provisions of the former SPP6 – i.e. the spatial approach to larger wind farm developments. It is expressly stated that Annex 2 to PAN 45 is not to be used to determine specific planning applications and is essentially a development plan framework.

- 7.6.2. Paragraph 84 states:

"Experience indicates that many bird species and their habitats are unaffected by wind turbine developments and the impact of an appropriately designed and located wind farm on the local bird life should, in many cases, be minimal. To date, the most common concern has been the risk of "bird strike" i.e. birds flying through the area swept by the blades and being hit, causing injury or death. This will depend on a number of considerations such as, the particular species and numbers, the nature of the bird flight and any relevant seasonal patterns. Most birds in flight can be expected to take action to avoid obstacles but different species will vary in their reaction (see Fig.9). However, some areas in Scotland are important for a variety of bird species protected under the EU and UK legislation (SPAs, SACs and SSSIs) These could represent potential constraints to wind farm development. As indicated in NPPG 6 the importance of complying with international and national conservation obligations must be recognised and wind farms should not adversely affect the integrity of designated sites. Protected species, such as eagles and hen harriers, occupy many areas outwith designated sites and are protected across Scotland. These factors have to be considered against the positioning and size of turbines, including the size of the area swept by the blades in relation to the air space used by the birds in the vicinity of the development.

("European Protected Species, Development Sites and the Planning System - Interim Guidance for Local Authorities on Licensing Arrangements". Scottish Executive Environment Group Oct 2001)"

8. THE MORAY COUNCIL: DEVELOPMENT PLANNING POLICY AND SPG

The applicant and TMC agree that paragraphs 8.1.1 to 8.2.1 below outline the relevant Development Plan policies.

TMC comment that the Public Inquiry is not the appropriate forum to challenge the policies contained in The Moray Structure and Local Plans both of which have been adopted in accordance with appropriate legislation. Challenge will be limited to the implementation of the Development Plan and the application of policies to this proposal.

8.1. Development Plan Policies

8.1.1. The Development Plan for the wider area of the application site comprises the Moray Structure Plan (MSP) approved by the Scottish Ministers in April 2007 and two Moray Local Plans. The Moray Local Plan 2000, adopted on 26 April 2000, operates in the southern part of the Council area, which lies within the boundary of the Cairngorms National Park. The Park Board is in the process of preparing its own Local Plan, but until it does, the Moray Local Plan 2000 remains in force for that area. The rest of Moray, including the application site, is specifically covered by the Moray Local Plan 2008, adopted December 2008 (MLP).

8.1.2. The policy of most relevance to this proposal in the MSP is Environment and Resources Policy 2. Only certain aspects of the policy are relevant and these are listed in the Table 7.1 below.

Table 8.1: Relevant statutory Development Plan Policies

Moray Structure Plan 2007	Moray Local Plan 2008
E&R 2(a): 'Protecting international, national and local nature conservation and scenic designations from inappropriate development'.	Policy ER1: 'Renewable Energy Proposals'
E&R 2(b): 'Protecting the wider natural environment and biodiversity from inappropriate development and promote opportunities for environmental enhancement and restoration where possible'.	Policy ED8: 'Rural Business Proposals'
E&R 2(f): 'Conserving and enhancing the areas built heritage resources and their settings'.	Policy E1: 'Natura 2000 Sites and National Conservation Sites'
E&R 2(l): 'Promoting opportunities for the sensitive development of renewable energy...'	Policy E2: 'Local Nature Conservation Sites and Biodiversity'
	Policy E6: 'National Parks and national Scenic Areas' (NSA)
	Policy E7 – 'Areas of Great Landscape Value' (AGLV)
	Policy BE1: 'Scheduled Ancient Monuments and National Designations'

	Policy BE2: 'Listed Buildings'
	Policy BE4: Gardens and Designed Landscapes
	Policy EP 6: Waterbodies
	Policy EP5: 'Surface Water Drainage: Sustainable Urban Drainage Systems' (SUDS)
	Policy IMP1 – Development Requirements
	Policy IMP2: 'Development Impact Assessments'

- 8.1.3. The relevance of an individual policy and the weight to be given to them in the determination of this application is a matter for evidence at the inquiry.
- 8.1.4. It is agreed that the commercial viability of the proposed development, including available wind speed is a matter for the Appellant and is not a land use consideration.
- 8.1.5. It is agreed that there is no policy or statutory requirement for the Appellant to demonstrate this proposal constitutes the best available location for the proposed development, which is either available to the Appellant or more generally possible within the immediate or wider area.
- 8.1.6. There are no emerging Development Plan documents of relevance to this inquiry. A Main Issues Report is expected to be published around July 2011. Publication of a proposed new Development Plan is not expected until July 2012.

8.2. Wind Energy Planning Guidance

- 8.2.1. In addition to the policies in the Structure and Local Plan, the provisions contained within The Moray Council's Supplementary Planning Guidance (SPG) for Wind Energy Proposals (December 2005) are relevant. The SPG is due to be revised.

9. CNPA: REVELANT LEGISLATION AND POLICIES

The Named Parties agree that paragraph 9.1 contains relevant legislation

9.1. Cairngorms National Park

9.1.1. The Cairngorms National Park was designated under Section 2(2) of the National Parks (Scotland) Act 2000. The National Park is an area of outstanding national importance because of its natural heritage or the combination of its natural and cultural heritage.

9.1.2. Section 1 of the 2000 Act sets out the aims of the Cairngorms National Park:

- (a) to conserve and enhance the natural and cultural heritage of the area;
- (b) to promote the sustainable use of natural resources of the area;
- (c) to promote understand and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- (d) to promote sustainable economic and social development of the area's communities.

9.1.3 Section 9(1) of the 2000 Act states that the general purpose of a National Park Authority is to ensure that the aims are collectively achieved in a co-ordinated way. Furthermore, section 9(6) states that if, in relation to any matter, it appears to the Authority that there is conflict between the National Park aim set out in section 1(a) and other National Park aims, the Authority must give greater weight to the first aim.

9.2. The applicant does not agree with the CNPA that the following are of relevance in respect of the Dorenell proposal.

9.2.1. Cairngorms National Park Local Plan

9.2.1.1. The Cairngorms National Park Authority has produced a Local Plan was adopted on [29 October] 2010. [While the Local Plan is a relevant consideration until it is formerly adopted the Moray Local Plan 2000 remains in force for that area].

9.2.1.2. Although the application site lies outside the National Park area, Policy 6 Landscape is potentially of some relevance to this proposal. To the extent that it is applicable, tThe policy considers provides that there will be a presumption against any development that does not complement and enhance the landscape character of the National Park and in particular the setting of the proposed development. Proposed development that does not complement and enhance the landscape character of the National Park and the setting of the proposed development will be permitted only where significant adverse effects on the landscape character are clearly outweighed by social or economic benefits of national importance; and all the adverse effects on the setting of the proposed development have been minimised and mitigated.

To the extent that it is applicable, Policy 15 Renewable Energy Generation considers provides that developments for small scale renewable energy schemes which support the aims of the National Park and the National Park strategic objectives regarding energy production will be favourably considered where they contribute positively to the minimization of climate change.

Development will be sited and designed to have no significant adverse landscape or visual impact. It is agreed that the proposal is not "small scale".

9.2.2. Cairngorms National Park Plan 2007

- 9.2.2.1. The Cairngorms National Park Plan was adopted in 2007 after receiving the approval of Ministers. To the extent that it is applicable, There is a duty on all public bodies and office holders under Section 14 of the national Parks (Scotland) Act 2000 to have regard to it when exercising functions **affecting** the national Park. The National Park Plan has the support of all the major public agencies and the four local authorities sharing the National Park's boundaries. In December 2004 the Scottish Executive (as it then was) confirmed that the National Park Plan has materiality in planning decisions.
- 9.2.2.2. The National Park Plan sets out the strategic context for the assessment of the application **with respect to the National Park**. Section 5.1 of the National Park Plan 'conserving and enhancing strategic objectives for landscape, built and historic environment' includes strategic objective a) which seeks to maintain and enhance the distinctive landscapes across the National Park. Strategic objective a) confirms that the designation of the National Park has highlighted the national importance and coherence of the landscape qualities throughout its area. It also confirms that the national Park contains two National Scenic Areas and an equivalent level of consideration will be given to landscape throughout the whole Park. Objective b) seeks to conserve and enhance the sense of wildness in the montane area and other parts of the National Park.
- 9.2.2.3. The National Park Plan applies both within and outside the National Park. Objective c) seeks to ensure that development complements and enhances the landscape of the National Park. The potential impact of public and private roads, masts, utilities, renewable energy developments (**in and where relevant beyond the National Park**) road signs and all other man made artefacts require to meet the needs of those living and working the National Park will be assessed to ensure that designs and locations do not detract from the landscape character.
- 9.2.2.4. Strategic Objective a) in the 'Energy' section of the National Park Plan seeks a contribution to national targets for greater renewable energy production through increasing community, business and domestic-scale renewable energy schemes. At page 49 the National Park Plan states that large-scale wind farms are not appropriate in the National Park due to landscape and natural heritage impacts.

10. ECOLOGY AND ORNITHOLOGY

Neither TMC nor the CNPA considered they could agree or disagree the draft paragraphs, which have been deleted.

11. SOCIO-ECONOMIC IMPACT AND TOURISM

The applicant and TMC agree that paragraphs 11.1 to 11.8 below accurately reflect the relevant data for an assessment of the socio-economic and tourism impacts of the proposals. Neither TMC nor the CNPA considered they could agree or disagree draft paragraphs on the potential impact of wind farms on tourism and the economic value of the Dorenell proposal, which have therefore been deleted.

- 11.1. The population of Moray was 87,800 in 2008 of which 60.6% (53,200) people were of working age, below the average for Scotland as a whole (62.6%). 86.4% (46,500) of the working-age population is economically active, 4.8% higher than the Scottish average⁴.
- 11.2. Unemployment is lower than the national average in Moray with 2.6% of the working age population in Moray claiming Job Seekers Allowance in June 2010, compared with 4.1% for Scotland⁵. However, average wages in Moray (£331.20) are lower than the Scottish average of £385.40⁶.
- 11.3. Manufacturing is an important part of the Moray level (16.2% of the workforce) compared with 8.7% for the Scottish economy as a whole. This is attributable to the food and drink sector, which employs 11.5% of the Moray workforce. Therefore, manufacture of food and drink accounts for 61.8% of total manufacturing employment, compared with 2.3% for Scotland⁷.
- 11.4. Tourism makes an important contribution to the Moray economy, contributing 9% of employment⁸. Tourism is no more important to the Moray economy than to the Scottish economy as a whole (to which the sector contributes 9% of employment⁹).
- 11.5. An economic impact assessment of the volume and value of tourism in Moray was published in 2008 and the findings reported by the Moray Tourism Development Group¹⁰. This assessment reported that the value of tourism to the Moray economy is an estimated at £106,450 million and that this helped sustain over 3,750 jobs directly and indirectly.
- 11.6. The drivers of tourism in Moray relate to its key competitive advantages, including its association with whisky and premium tourism products such as angling on the Spey. When View Stevens undertook the Moray Tourism Audit¹¹ in 2007, the four issues that were considered to be most important "to give a deeper insight into the current situation and market trends affecting the future of tourism in Moray" were Scotch whisky, well-being, corporate social responsibility and climate change.
- 11.7. As set out in the in the Stevens and Associates report submitted by <>(2.9 p12) the agreed vision for tourism in Moray is based on it being "*internationally renowned as the home of malt whisky combining a rich, traditional heritage with modernity and innovation to deliver unique high value lifestyle experiences in a destination with a strong sense of place.*"
- 11.8. There are 11 whisky related visitor attractions in the Moray area, and these lie along an established whisky trail which runs through Moray. The Moray Tourism Audit¹²

¹²

¹² The Scottish Government, Renewables Action Plan, Renewable Energy Division, (June 2009).

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estimated that in 2006 there were 239,700 visitors to these attractions. An estimated 211,000 visits were made to distilleries where visitors spent approximately £3.85 million.

For and on behalf of Dorenell Limited


Signature

MARTIN SAZES,
Full name of above (print)

14 January 2011
Date

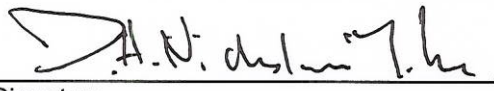
For and on behalf of The Moray Council


Signature

AILEEN SCOTT
Full name of above (print)

19 January 2011
Date

For and on behalf of The Cairngorms National Park Authority


Signature

DONALD NICHOLASS-MCKEE
Full name of above (print)

26 January 2011
Date

¹² The Scottish Government, Renewables Action Plan, Renewable Energy Division, (June 2009).

¹² SG Renewables Action Plan (June 2009), page 77.

¹² The Scottish Government, 'Towards a Low carbon Economy for Scotland', page 10 (March 2010).

¹²