

GS/808/IK

Electricity Act 1989

Town and Country Planning (Scotland) Act 1997

PROPOSED LINFAIRN WIND FARM

OBJECTION

On behalf of

SAVE STRAITON FOR SCOTLAND – SSforS (Objectors)

Submitted: 11th November 2013

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Background

1. This objection to the proposed Linfairn wind farm has been prepared on behalf of a local objector group. The group is known as the Save Straiton for Scotland Group. In this objection they will be referred to as SSforS. The group comprises local residents who live in and around Straiton, and the other nearby small communities, and who would be directly impacted by this proposed wind farm on the hills above and next to where they live and work.
2. Unfortunately this is only the first of several proposed wind farms which will cause concern to this local community. The proposed Linfairn wind farm, which actually has the clear appearance of two separate wind farms with a link road, would occupy the high ground to the south and south west of Straiton providing a dominant presence at the head of the valley. As indicated the group is aware of a range of wind farm proposals including Knockskae (between the two arms of Linfairn), Dersalloch, Keirs Hill and Glenmount. There are further schemes to the south in the area of Dumfries and Galloway Council and to the east in East Ayrshire Council's area. Therefore, the objectors are concerned about both scheme specific and cumulative impacts. Indeed the "local" cumulative impact, as addressed later in this objection, would be very significant and very adverse. The ECDU is asked to take full account of the cumulative impacts identified in this objection alongside the related planning policy conclusions.
3. The assessment of the s.36 Linfairn application and the resultant objection has been managed by Ian Kelly MRTPI, Head of Planning at Graham and Sibbald, a chartered town planner with thirty six years' experience in the public and private sectors, mainly in Scotland but also involving work south of the Border, and in Europe, mainly in Scandinavia. He has worked on more than a dozen wind farm cases at various stages in the s36 consent/deemed planning permission process. He has also assessed a greater number of wind farm planning applications and has recent experience in assessing small scale renewable energy proposals. He is involved in working groups and a study group looking at the s.36 consent process, the related

Inquiry process and the comparison of predicted and actual environmental effects. All of that experience is brought to bear on projects such as this.

4. The instructions in this case have been issued by SSforS directly.
5. The assessment and objection has been fully informed by and takes full account of two detailed pieces of work as below:
 - a. A Noise Assessment and Report by Mr Dick Bowdler
 - b. An LVIA Review and Report by Mark Steele Consultants (including a visualisations appendix)
6. These reports are summarised later in this report and full copies of the reports, which confirm the qualifications and experience of the authors, are submitted alongside this objection.
7. The SSforS group is of the view that the South Ayrshire Council should object to the application and thus trigger a Public Inquiry. However, the Council has yet to actually apply its new landscape capacity study (see later) in the determination of a s.36 wind farm application. Therefore, whilst SSforS is very hopeful indeed of a Council objection, in the event that the Council does not object, the ECDU is requested to have careful regard to:
 - a. The terms of this objection
 - b. The significant and adverse landscape and visual effects on receptors including local residents and locally designated landscape resources and viewpoints
 - c. The likely position of SNH, and
 - d. The complexity of the planning policy position and the cumulative landscape and visual impact issues (and the associated landscape capacity issues) applicable in this case

8. These factors should lead the ECDU to recommend to Scottish Ministers that they refuse this application. However, it is understood that such an outcome can only flow from an Inquiry (PLI). If that is the case then an Inquiry should be held irrespective of the stance adopted by the South Ayrshire Council. As the ECDU will realise from the recent experience of the Dunbeath, Wester Dod, Druim Ba and Harelaw wind farms, it is only at a PLI that the fullest possible assessment of any s.36 wind farm application takes place.
9. The objection has been informed by site visits, including site visits to the area around the application site and a drive/walk over accessible areas of the adjoining parts of the areas around the application site.

The Statutory Tests

10. The text set out below needs to be read in the context of the Dorenell Court of Session case (*Wm. Grant & Son v The Scottish Ministers and Another*) where one of the grounds for seeking the reduction of the relevant decision was that the Reporter erred in law by not applying the s.25 test and affording primacy to the Development Plan's policies.
11. This application is one that will be considered by the South Ayrshire Council as Planning Authority following a consultation by the Scottish Government in respect of an application under s.36 of the Electricity Act 1989. An objection from the Council will trigger a Public Inquiry, as a matter of law. The Electricity Act was passed in 1989 to re-organise the Electricity industry and to govern the connection of large thermal power stations to the National Grid. Given its date, it was not of course designed to deal with the detailed assessment of onshore wind farms generally in remoter rural areas. Therefore, it is considered that this form of application gives rise to two sets of tests as follows.
12. Paragraph 3 of Schedule 9 of the 1989 Act provides a specific requirement on the Scottish Ministers (who are the nominated decision makers under the 1989 Act) to have regard to:

- a. *The desirability of preserving natural beauty, of conserving flora and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeology interest: and*
- b. *The extent to which the developer has complied with its duty to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites buildings or objects.*

13. These provisions apply to Licence Holders or exempt persons. The current applicants are neither. Having regard to the recent decision of Lady Clark of Calton in the Petition of *Sustainable Shetland*, reported at [2-13] CSOH 158, the same principle would make the current application an unlawful one. The Scottish Ministers have appealed that decision and have indicated that the s.36 process should carry on irrespective of the Court's decision. That intention is, to say the least, controversial as Governments must operate within the rule of law. The issues that arise might be resolved in Spring/Summer 2014, but if they are not then this will have been an unlawful application and all of the time and money spent on assessing it and objecting to it will have been an unnecessary and unreasonable expense.

14. Whilst views can vary on the Schedule 9 tests set out above, the precise language used means that it is almost impossible not to comply with these so-called tests. Indeed there is nothing in them that would actually prohibit or prevent the destruction of key natural assets as a developer could "*have regard to the desirability of preserving*" and then not preserve. These requirements do not set out specific criteria or thresholds against which to assess a project, but at their simplest, they clearly indicate that there is a balance to be struck between the claimed policy and technical justification for any project and the directly associated environmental and other impacts (whether capable of mitigation or not).

15. However, given the deemed planning permission aspect of the process (see s.57 of the 1997 Act), it is well established in practice that the application should be assessed in order to consider whether the proposed development complies with the Development

Plan. As a minimum, the 1997 Act planning criteria are an important material consideration in any s.36 application decision. That will, in turn, necessitate a consideration of whether, and to what extent, there are any other material considerations which may affect the conclusion that flows from a Development Plan assessment. .

16. Those material considerations will include Government renewable energy and climate change policies (to the extent that they have any additional effect beyond the positive, supportive and up to date Development Plan, SPG and SPP policies). However, the generalised policy making on these two topics does not, in any way, overrule the Development Plan, or call for the Development Plan to be set aside in the determination of an application such as this one.
17. In this case although the Development Plan is not very up to date the Council does have a very recently adopted landscape capacity study for wind energy. **There is, therefore, a full and up to date policy basis for the detailed assessment of the s.36 application for the proposed Linfairn wind farm.**
18. As indicated it is necessary to have clear regard to the detail of the outcome of the *Wm Grant & Sons* case – where Lord Malcolm described the s36 procedure as a “self contained code” and rejected the primacy of s25. That needs to be set alongside the recent Spittal wind farm Ministerial decision letter – disagreeing with the Reporter on the applicability of s.25 and ruling that the schedule 9 duties/tests had been met, but still refusing consent *inter alia* on the basis of damage to residential amenity.
19. In order to take a pragmatic approach to the processes described above this objection proceeds on the basis that the Linfairn application requires to be tested against **both** the Electricity Act tests and the Development Plan with the bulk of the detailed assessment being in respect of the Development Plan (and related material considerations).

National Climate Change and Energy Policy

20. It is not normally appropriate to challenge Government Policy in an objection to a s.36 wind farm application. However, as the applicants seek to draw considerable

support from this (energy and climate change) policy, as can be seen from their submitted Planning Statement, it is certainly appropriate to consider how such Government Policy translates through to the land use planning system including assessing the outcome of s.36 wind farm applications in the light of the breadth of policy. The correct route, in a transparent, Plan led system, is via the determination of acceptability in accordance with the Development Plan, and having regard to material considerations (including any relevant SPG/SG).

21. The Scottish Government’s renewables policy, which sits within UK National Energy Policy, is now well known. Ministers are fully committed to promoting the increased use of renewable energy sources where it is environmentally appropriate, and so long as impacts can be satisfactorily addressed. According to Ministers, this commitment recognises renewables’ potential to tackle the causes of climate change and harmful pollution, as well as their potential to support economic growth. Scottish Ministers have set clear targets for renewable electricity, announcing a series of increasing targets. The current target is for 100% of consumption to be met by renewables by 2020 with an interim target of 50% by 2015. However, this political aspiration was not accompanied by any Strategic Environmental Assessment (SEA) until the publication of a draft SEA addressing the “Routemap 2020” which, in turn, has been followed by an updated (2013) Electricity Generation Policy Statement (EGPS) and a recent post adoption SEA statement.
22. The draft SEA was subject to criticism but, in that the Scottish Government has made specifically clear that neither the Routemap nor the EGPS are promoted as a plan, programme or framework for other consents, it is not considered necessary to take the time to analyse those documents in detail in an objection to a s.36 proposal where there is very up to date guidance available to assess the acceptability of the proposal.
23. Therefore, at this point in time, the Scottish Government’s renewable energy target is simply one of a number of key considerations for Planning Authorities when updating their Development Plans and when preparing SPG/SG, and for Ministers when considering those Development Plan documents. But a politically driven target by itself does not presume that consents/permissions must follow for any particular site.

The existence of a target does not define the outcome of this or any other s.36 consent application.

24. The Planning System has already played its full part in ensuring that the 2011 interim target of 31% of electricity consumption was met. There is very considerable consented or approved capacity that has not yet been built or commissioned, meaning that there is already significant progress towards the 2015 interim target and the 2020 target.
25. At the time of writing, there is no indication of any fundamental change to current national planning policy as set out in SPP. The consultative NPF3 and SPP2 (considered later under material considerations) look to strengthen spatial planning and guidance for onshore wind energy but the basic position remains – Scottish Government's policy direction generally favours onshore wind farm developments on appropriate sites, but it does not do so unquestioningly. They are only to be permitted where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. In short only suitable sites should be approved.
26. In terms of planning policy on renewable energy, the basis for the Scottish Government Policy, SPP, refers at paragraph 182 to the commitment to increase of the amount of electricity from all renewable sources as having three drivers, namely:
 - a. A vital part of the response to climate change
 - b. As part of a drive for more secure and diverse energy supplies, and
 - c. As support for and contribution towards sustainable economic growth.
27. Since s.36 applications, are considered in the context of the wider public interest, as encapsulated in the Development Plans, it is worth asking what these drivers mean when considering any form of onshore wind projects such as the current proposed Linfairn wind farm.
28. The "vital part of the response to climate change" seems to mean that an increase in wind turbines will have a material effect on the key parameters of future climate

patterns and on the perceived adverse effects of climate change, which (in Scotland) are generally taken to be more intense wet periods, more variable summers, some colder winters within a series of milder winters, and increased flood risk, all with associated environmental effects, and all sitting within changing global climate patterns. There are many known views on climate change. Some views are based on what seems to be sound science, others are speculative. The subject has enormous political dimensions, and is hedged about with theory, political drivers, imagination, research money and with many aspects stated as facts, whether or not they are.

29. The only point in stating all of this is that the present s.36 application for the Linfairn wind farm should be viewed in its proper policy and factual context. The climate change debate is a large one, and a review of that debate is not a matter for inclusion in this objection. Whether climate change is taking place quickly or slowly, finally, temporarily, fatally, not at all, or simply as part of long term natural cycles should not be a material consideration in the determination of applications such as this.
30. However, the SSforS group notes that there is no published evidence that clearly verifies that increases in the numbers of renewable generation sources in Scotland, such as wind farms/turbines, have, or can, make the slightest difference to climate. It would be more honest to say that the argument is that any environmentally acceptable electricity source which is properly classed as renewable, and based on Scotland's assets, is preferable, output for output, to a source which is a *cause* of harmful pollution. Scottish Government policy really goes no further than that, and in particular lacks evidence that renewables actually achieve any reduction in such pollution output. It is considered and submitted that that this is the thrust of SPP's planning policy when it speaks of "environmental impacts being satisfactorily addressed".
31. Secondly, "diversity and security of supply" simply means a range of available resources. It is unarguable that a range of electricity supply sources is a desirable objective, other things being equal. But the diverse sources have to be reliable. The wind does not blow all the time, and, again, it is beyond argument that a reliance on

wind power would mean that dependable and instantly available backup, generating power by other means, is always needed.

32. Thirdly, the criterion of support for "sustainable economic growth" seems a much more difficult proposition. The language is not explained other than by an apparent desire to foster an indigenous manufacturing industry (along with R&D for future technologies), which is a legitimate aim of every Government. In fact wind farms generate very little permanent employment, unless one counts the turbine and blade makers in other parts of the world. During construction, the balance of civils contracts can provide short term and limited local employment. But these jobs are neither sustainable nor 'growth' in any real sense, since they go as quickly as they come. Longer term maintenance of turbines is usually carried out by specialist technicians moving from site to site rather than by locally employed people.
33. It would be more accurate to say that Scotland's Government wishes to assist, where it can, the growth of Scottish based manufacturing in the renewables industry. That is a legitimate aim. There is no indigenous large scale wind turbine or blade manufacturing plant in the UK. Towers though are fabricated in Burntisland and at Campbeltown (according to Government publicity for these operations), both heavily subsidised and with Campbeltown having a long and complex ownership history. This work is obviously beneficial to these areas, so long as subsidy continues and the market demands wind turbine towers. But if neither situation prevails, is the work sustainable? It is to be noted that Vestas (Danish) and Siemens (German), both large manufacturers, have laid off thousands of wind turbine component manufacturing staff recently in their plants across the world. Siemens' projected arrival in Scotland, Mitsubishi's plans for Dundee, and Gamesa's projected arrival in Leith all depend on central Government subsidy and inducement.
34. Subsidy for such activity comes from taxation, either taxation in the conventional sense, or by way of enhanced charges for consumers of electricity i.e. bigger electricity bills. Renewable Obligation Certificates and Feed in Tariffs are paid to generators by funds drawn from consumers, resulting in substantial earnings to

generators, backed by Government. It is doubtful if these income transfers amount to any form of sustainable economic development.

35. In relation to this objection to the proposed Linfairm wind farm there is no criticism of efforts towards encouraging manufacturing and exports through targeted, time bound subsidies. But the current economic approach to renewables, based on permanent subsidy, that induces market distortion, is simply not sustainable economic development, in any accepted meaning of those words, it is not economic, except that work generates wages for as long as the work lasts, and it is not economic growth.
36. It is instructive to think about this in an historic context. In Scotland, over the last 50 years or so, there have been various efforts to stimulate manufacturing and export by way of subsidies and Government involvement. This has included steel, shipbuilding, car manufacturing, computer manufacturing, TV monitors and semi conductors. The outcomes have not been successful. They have certainly not led to sustainable economic growth. In the light of this economic development history lesson, there is, regrettably, no evidence that the current subsidies for renewables are likely to break the trend and lead to sustainable economic growth unless new off shore technologies are developed, patented and then built in Scotland for local and export use.
37. Finally, Scottish Government Policy is what it is. However, this brief look at the so-called drivers for the renewables policy, as set out in SPP, to some extent demonstrates that the drivers themselves are simply vague aspirations and hopes. If that is what they are, then the operation of a sound planning system, operated in the wider public interest, would suggest that planning decision makers should not be giving any special consideration whatsoever to wind turbines in terms of citing so called “*benefits*” as a justification for setting aside significant adverse effects.
38. Therefore, drawing all of this together in short, and despite the claims of support from policy, it is clear that only environmentally acceptable (as well as operationally effective) schemes should be approved. There is nothing in the weight of Government climate change or energy policy to justify approving projects that are unacceptable in terms of adverse environmental and other impacts and that are, as a result, contrary to Development Plan policy. There is nothing in any of the Government’s Renewable

Energy Policy that explicitly, or by implication, changes the law or the operation of the planning system or that provides any priority or advantage to renewables projects within that system.

The Proposal

39. The full details of the proposed development are as set out in the submitted Environmental Statement (ES), chapter 3 Project Description. The proposed development is to consist of 25 turbines each 126.5m high (hub height of 80m and rotor diameter of 93m). There would be 13.3km of tracks. The design specification for these tracks is only preliminary as a site investigation has not been carried out. There will be numerous ancillary buildings that will all have visual impacts.
40. Paragraph 3.2.2 of the ES advises that the applicant is seeking a **micrositing** allowance of 50m. This simply reflects the fact that a proper site investigation has not been carried out. It is impossible to imagine a scenario of say a house builder applying for detailed planning permission for a residential development but asking that the houses can all be located up to 50m away from where they are shown on the detailed drawing without any need to apply for a variation of the planning permission. In a location such as Straiton the relocation of turbines or any of the other key components by up to 50m will change what are already significant adverse effects. Given that, should the proposal be consented despite the objections, any proposed variation to the layout should require to be the subject of a further submission to the Planning Authority.
41. In terms of **site restoration** paragraph 3.5 in the ES only envisages the control of this stage by way of a planning condition. However, having regard to the recent experiences with the Scottish opencast coal industry, it is considered that site decommissioning and restoration requires to be controlled by a combination of a section 75 agreement binding in title as well as by a fully enforceable bond of a suitable value. Without such clear legal safeguards the costs of decommissioning could easily end up falling on the public purse.

The Submitted Environmental Statement (ES)

42. The applicants have prepared and submitted an ES. That was accompanied by a series of other papers. It is clearly for the Council (having regard to its planning, transportation and environmental health functions), SNH and SEPA, to assess in detail the validity of the various assessments in the ES and advise Scottish Ministers. This objection comments on various aspects of the development and its impacts. In particular, the noise and the LVIA aspects of the ES have been the subject of specialist reports that are summarised in this overall objection and which have been fully considered in the policy evaluation of the proposal.
43. However, the fact that any other particular aspect is not mentioned does not mean that the SSforS group has accepted the findings of the ES. It simply means that either a final view cannot be formed on that impact until further information is seen or it has been concluded that the issue is not of primary importance to the objection.
44. In addition to the noise and LVIA aspects there are some other matters arising from the ES for which some initial comments can be made.
45. In this case, as can be seen from Chapter 2 in the ES, the consideration of **alternatives** has been part of a generic site investigation, selection and assessment process. It is accepted that there is no legal requirement to consider alternatives but, in the case of a project of this scale in such a sensitive landscape, it is reasonable to at least raise the question as to whether the host landowners and the developers had the opportunity of less damaging ways to achieve their objectives. Other sites clearly were considered but, in the ES, the main information supplied on the consideration of alternatives has been in the form of design iterations. Therefore, it is not possible, from the ES, to understand the key reasons why Linfairn was selected over any other possible site.
46. The road improvements, new track construction and track upgrading works are all extensive. There is a tendency for the environmental effects of these to be underplayed in wind farm ESs. In this case, with the layout of the site, the tacks will

be a significant feature and the proposed access arrangements will have a significant impact on a number of residential receptors.

47. Chapter 5 of the ES sets out the Planning Policy Framework. That aspect is addressed later in this objection in the section dealing with the Development Plan and no further comment is offered at this stage in terms of what the applicant is saying on policy.
48. In terms of the landscape and visual effects of the proposed turbines, chapter 6 of the ES addresses these aspects. A full review has been undertaken by MSC and his findings are considered later in the submission.
49. Whilst it is accepted that the 35km study area for cumulative effects is a standard approach it is considered that it is so obvious that there is a “local” cumulative impact (and landscape capacity) issue, that there should have been a specific and detailed “local area” assessment of the cumulative effects of the various wind farms proposed around Straiton.
50. Noise is addressed in Chapter 11 of the ES. This aspect is fully assessed in the report by Dick Bowdler whose findings are summarised later in this objection.
51. It is understood that various local objectors as well as the SSforS group have detailed concerns about the assessments and conclusions in some of the other chapters in the ES. Those concerns will be set out in separate objection submissions. The ECDU (and the Council) are requested to take full account of those concerns.
52. Beyond the generation of electricity, the output of which will be restricted by a number of constraints, the range of claimed **benefits** of the proposal are limited. The ES sets out a potential set of economic impact figures. Overall, these are likely to be minor positive. That assessment is broadly accepted although the income redistribution effect of the renewable energy policy and the pricing of externalities are not included in the assessment. The environmental benefits are basically the assumed greenhouse gas emissions savings that are already built into the favourable policy framework.

53. It is considered vital to be specific about what the claimed benefits of a wind farm development actually are. This is because some decision makers, including Scottish Ministers (for example in the Strathy North wind farm decision in Sutherland, and in other cases and in the report on the first and second Fallago Inquiries), sometimes proceed on the basis of making sweeping claims, not directly correlated to evidence in any precise way. These amount to assertions that clearly identified actual adverse impacts and precisely specified environmental objections to a particular wind farm are outweighed by the assumed, but unspecified, benefits that the proposal will bring. Whether the adverse effects are just outweighed and no more, or are overwhelmingly outweighed, or whether there is a tipping point somewhere in between, has not been made clear.
54. In this case the benefits of the scheme are simply the limited economic benefits set out in the ES, and the environmental benefits (by and large the predicted greenhouse gas emissions reductions and climate change benefits), that are **assumed** by existing policy and are already factored into the favourable policy environment. There are no other significant claimed scheme specific economic or environmental benefits. These assumed benefits should, therefore, not be double counted in the planning balancing exercise.

The Position of SNH

55. The SNH consultation response on the application was not available during the statutory consultation period available to SSforS. However, it is hoped that SNH will, in due course, submit an objection. At that stage SSforS would intend to make a further submission commenting on what SNH says in its response.
56. There is one further factor to be considered in terms of the likely SNH response. It is likely that any consent would have a condition requiring the provision of a Habitat Management Plan (HMP). It is relatively easy to anticipate that a range of typical HMP measures have the potential to have significant environmental effects. It follows, therefore, that these effects should be assessed at the primary decision making point. That, in turn, would require a fully detailed HMP to be worked up for assessment at this stage. In some recent cases Planning Authorities, Reporters and

Scottish Ministers have not taken up any of these aspects even when the proposed HMPs affect considerable areas of land extending, sometimes, beyond the application site. It is not really understood why they do not wish to address these clearly identifiable issues when the law (on assessing significant environmental effects) requires that they should do.

Additional Evidence affecting the Planning Policy Assessment and Objection

57. This objection has taken into account the two full reports prepared by Mr Dick Bowdler and by MSC (including a visualisations appendix). These are summarised below and the full reports are lodged as an integral part of this objection.

58. The Noise Report by Mr Dick Bowdler sets out its summary as below:

- a. *The Government's preferred assessment methodology for wind farms is 'The Assessment and Rating of Noise from Wind Farms' (ETSU-R-97). This is supplemented by an Institute of Acoustics Good Practice Guide. However, ETSU-R-97 does not fulfil the requirements of the EU Directive on Environmental Assessment and other methods may be necessary to describe the impact of turbine noise.*
- b. *I find the background noise levels used in the applicant's assessment to be much higher than is normal in a typical rural area such as this. There are some identifiable reasons for this including the wind speed measurement being made in an inappropriate place, three of the four measurement positions being on working farms, and a peculiarity in the behaviour of the sound level meter at one location.*
- c. *With an exception at two properties I find the turbine noise has been calculated correctly.*
- d. *By the applicant's admission, the application fails to meet the ETSU-R-97 day time noise limits. Mitigation by reducing turbine noise under certain conditions is proposed. Turbines will be run near the limits and this means that complaints are more likely and compliance testing more difficult.*

- e. *If I carry out an assessment using realistic background noise measurements carried out for Assel Valley, ten properties exceed the ETSU-R-97 day time and night time limits by as much as 5dB.*
- f. *During the day 12 properties will suffer a major loss of amenity and others a significant loss. At night 27 properties will suffer a major loss of amenity and all the others on my list a significant loss.*

59. In terms of the ES LVIA review and assessment and the independent LVIA, all by MSC, the salient points that arise are as below:

- *The applicant presents the proposed development as a single windfarm rather than two discrete developments. However the two groups of turbines are geographically separate and are different in scale and layout;*
- *The landscape in the vicinity of Straiton is a 'highly valuable local resource' that is made accessible through Core Paths as well as a number of locally promoted paths;*
- *The selection and positioning of ES viewpoints does not accord with GLVIA or SNH guidance (effects on users of the road to the south of Straiton, as illustrated by ES Viewpoint 1 should be contrasted with the effects illustrated by MSC Viewpoint 1);*
- *The ES methodology for visual sensitivity does not accord with the GLVIA 2nd Edition guidance;*
- *The ES does not set out a methodology for the assessment of residential visual amenity and the ES assessment describes assumed rather than actual views from within properties. This inherent weakness undermines its reliability;*
- *The MSC assessment finds that direct landscape character / landscape designation effects will vary but will be significant and adverse for up to 10km from the proposed development, rather than the 5km identified in the ES;*
- *The 'contribution to the local scenery' by local Gardens and Designed Landscapes may be compromised by the proposed development;*

- *The ES wild land assessment does not accord with the SNH methodology. Therefore it is reasonable to place greater weight on the most recent SNH Core Areas of Wild Land mapping exercise;*
- *The ES assessment of cumulative landscape effects has now been superseded, as the ‘Landscape Capacity Study for Wind Turbine Development in Ayrshire’ concludes that the affected LCTs are of high sensitivity to the proposed scale of windfarm and that there is no capacity;*
- *A similar finding would apply to designated landscapes;*
- *The ‘Landscape Capacity Study for Wind Turbine Development in Ayrshire’ identifies Glenalla Fell and Genoch Inner Hill as key landscape and visual features. The proposed northern turbine group is situated on the northeastern flank of Glenalla Fell and the proposed southern turbine group is situated between Glenalla Fell and Genoch Inner Hill;*
- *The ES assessment is not a true reflection of the extent and nature of significant visual effects, as it results from the poor selection of viewpoints, as well as the consistent understatement of receptor sensitivity and consequential significance of visual effects;*
- *The ES assessment finds significant visual effects at only ES Viewpoints 3, 5 and 9 (with only Viewpoint 3 subject to ‘substantial’ effects);*
- *The MSC finds significant adverse visual effects at ES Viewpoints 1, 2, 3, 5, 6, 7 and 9. In addition the MSC assessment finds significant adverse visual effects at all four MSC viewpoints;*
- *The ES finds no significant cumulative effects with operational, consented or planning stage windfarms. However this is largely due to the selection of ES cumulative viewpoints;*
- *It is unclear how ES viewpoint 4 gives rise to significant additional cumulative effects when the ES individual assessment for this viewpoint is ‘slight’ and not significant;*
- *The MSC assessment of cumulative visual effects finds significant combined effects with scoping stage windfarms at ES Cumulative Viewpoints 1, 3, 4, 5,*

6, 7 and 9 as well as combined sequential cumulative effects on routes CR 4, CF6 and CF8;

- *The MSC assessment of cumulative visual effects finds significant additional effects with scoping stage windfarms at ES Cumulative Viewpoints 1, 3, 5, 6, and 9 (potential significant additional effects at ES Cumulative Viewpoint 7) as well as additional sequential cumulative effects on routes CR 4, CF6 and CF8;*
- *The omission of the residential property most directly affected by the development is a further factor that undermines the credibility of the ES assessment of visual effects on residential amenity;*
- *The credibility of the ES residential amenity assessment is further undermined by inaccuracies and mistakes;*
- *Visual residential amenity effects are particularly substantial on residents of Knockskae as well as residents of the two properties at Tairlaw Tollhouse; and*
- *Visual residential amenity effects are substantial on the wider community within the Water of Girvan valley, as well as residents of properties to the north of the development.*

The MSC review concludes that the ES LVIA is inadequate (as it has not been undertaken in accordance with GLVIA or SNH guidance) and that its findings cannot be relied upon, whilst the detailed MSC assessment (which does accord with current guidance) concludes that the proposed Linfairn Windfarm:

- *would cause significant adverse landscape character effects for up to 10km from the proposed development;*
- *would compromise the South Ayrshire Scenic Area and Ayrshire Sensitive Landscape Character Area;*
- *is contrary to the recently adopted ‘Landscape Capacity Study for Wind Turbine Development in Ayrshire’;*
- *would compromise the SNH draft Core Areas of Wild Land designation;*

- *would cause significant adverse visual effects for up to 10km from the proposed development (on promoted local walks and viewpoints in particular); and*
- *would cause substantial effects on the residential amenity of Knockskae, in addition to the wider community.*

Each of these points provides sufficient reason, in LVIA terms, for an objection to the proposed development by South Ayrshire Council.

60. The above findings and conclusions, for both of the assessment reports, have been fully taken into account when the proposal has been assessed in terms of both the Electricity Act tests and in terms of compliance with the Development Plan.

Consideration in terms of the Development Plan

61. The assessment of the application against the Development Plan has full regard to the preceding text in this objection submission. The Development Plan consists of the approved Ayrshire Joint Structure Plan (AJSP) and the Adopted South Ayrshire Local Plan (SALP).
62. In terms of the **Approved Joint Structure Plan (2007)** the key policies are Policies ECON 6, ECON 7 and ENV2 (reference will also be made to ENV1 and STRAT 1).
63. ECON 6 is a general, supportive renewable energy policy of the type sought by SPP (see later). However, that general support is conditional on there being no significant adverse impacts. Having regard to the available information about the proposal it is considered that the proposed Linfairn wind farm development will lead to significant adverse impacts, including cumulative impacts, and that the design of the development is not sensitive to landscape character (and possibly biodiversity and cultural heritage). Many of these adverse landscape and visual effects are fully recognised in the ES, in the detailed assessments by Mr Dick Bowdler and MSC, and in the new LVIA material lodged with this objection. Therefore, the proposal does not accord with ECON 6.

64. ECON 7 specifically addresses wind farms. The application site for this wind farm is outwith the defined Areas of Search. Considering the relevant subsections within the policy, and having regard to the available information all as set out above, it is considered that:

- a. As can be concluded from the Council’s new landscape capacity study the limit of acceptable cumulative impact has been reached in this Sensitive Landscape Area (SLA) of South Ayrshire and the remaining area should now be afforded significant protection, including the refusal of this application (subsection D). The outcome of the new landscape capacity study is, indeed, to provide significant protection to this area and that, alone, must lead to the rejection of the proposal
- b. In terms of cumulative impact a unique feature of Linfairn, given its clear appearance as two separate wind farms (with a link road) is that each part of the proposal will have cumulative impacts with the other part as well as having wider cumulative impacts within the defined study area
- c. Being a site outwith the areas of search (subsection E of the policy then applies), it is considered that the Linfairn proposal has adverse effects that cannot be overcome or minimised in terms of the following “constraints” as set out in the policy:
 - i. An area designated for its regional and local natural heritage value – the South Ayrshire Scenic Area
 - ii. Tourism and recreation interests – it is noted that the local objectors have particular concerns in this regard and that this issue has acquired greater prominence in the recent consideration of wind farm applications by both South Ayrshire Council and by Dumfries and Galloway Council
 - iii. Communities, particularly Straiton and the adjoining and nearby individual houses (with the submitted ES recognising that there are a

considerable number of residencies “identified as potentially experiencing a significant impact as a result of the Project”).

iv. Buffer zones around those communities

- d.* There are adverse effects on a sensitive landscape character that are not satisfactorily addressed and refusal of this application would not unreasonably restrict the overall ability of the Plan area to contribute to national targets (subsection F)
- e.* In terms of the criteria that are to be applied in all cases there are adverse effects on landscape, communities and the noise environment (subsection G) with the individual local objectors also raising other issues of concern

65. The proposal is therefore not in accord with Structure Plan Policy ECON 7 which is the key Development Plan policy that is to be applied in relation to wind farms. In terms of the impacts on communities, it should be noted that with the proposed Spittal s.36 wind farm in Caithness similar predicted significant adverse effects, but on a much smaller number of residencies, formed one of the main reasons for rejection of the proposal following a Public Inquiry.

66. Structure Plan Policy ENV 2: Landscape seeks to protect and enhance the landscape of Sensitive Landscape Areas (Part B of the Policy). Based on both the ES LVIA and the review of that LVIA by MSC, the proposal is not considered to comply at all with the “protect and enhance” aims of the policy and, therefore, the proposal does not accord with ENV2. In reaching the policy conclusion for this policy it is essential to take into full account that the test is to “protect **and** enhance”.

67. In terms of Structure Plan Policy ENV1 this specifically seeks to maintain and enhance (again the specified test, as in ENV2, is clearly to maintain **and** enhance) the quality of Ayrshire’s landscape and its distinctive local characteristics. In that regard the proposed Linfairn wind farm will not conserve:

- a.* The setting of the community of Straiton within the landscape
- b.* The current pattern of the landscape

c. Local skylines and hill features including prominent views

68. The proposal is, therefore, not in accord with Structure Plan Policy ENV1.

69. In terms of Structure Plan Policy STRAT1 the guiding principles of sustainable development are to be applied to planning applications as appropriate. In terms of those principles and the proposed Linfairn wind farm:

a. The natural heritage will not be conserved and enhanced (and it is important to stress, once again, that the policy test is clearly to conserve **and** enhance)

b. The development will not respect the landscape character and it will result in visual damage and intrusion

c. The development will have an adverse effect in terms of light (and may also affect water resources)

d. The significant adverse effects of the proposed development are not mitigated and the external environmental costs from the proposed development will be borne locally, contrary to the principles of the policy

70. The proposal is, therefore, not in accord with Policy STRAT1.

71. Therefore, overall, the proposal is not in accordance with the relevant key policies in the Approved Joint Structure Plan.

72. In terms of the **Adopted South Ayrshire Local Plan (2007)**, the key policies are Policy ENV8 and Policy SERV3.

73. Policy ENV8 addresses Scenic Areas. The application proposal lies wholly within a defined Scenic Area. In terms of that policy, and having regard to all of the information considered in this objection, the proposal will:

a. Have significant impact, and significant cumulative impacts, in terms of landscape and visual effects (as well as noise effects)

b. Only provide very limited economic benefit which will not outweigh the adverse effects of the proposal

c. Not be supported by any justified requirement for this rural location.

74. The proposal is therefore not in accord with Local Plan Policy ENV8.

75. Policy SERV3 is the key Local Plan policy in respect of wind farms. It has a supportive policy approach in accord with the requirement of SPP. However, the policy support is conditional. In terms of that conditional policy the proposed Linfairn wind farm, having regard to the ES and the review of the ES set out in this objection, is considered to be not acceptable in terms of its environmental and community impacts including cumulative impacts.

76. The proposal is therefore not in accord with Local Plan Policy SERV3 (with much of the detailed consideration being the same as for the Structure Plan Policy ECON7).

77. There are a range of other, secondary, Local Plan policies that could be considered that cover a range of matters addressed in the ES and the reports enclosed with this objection. However, in that there is a breach of the key Local Plan renewable energy and landscape policies it is not considered necessary, at this stage, to spend time on those other policies.

78. Therefore, in terms of the overall conclusions in respect of the Local Plan, the proposal is not in accord with the Local Plan as set out above.

79. Finally, in terms of addressing the cumulative impact assessment of this proposal, there is already in the South Ayrshire, East Ayrshire and Dumfries and Galloway Council areas a considerable provision of renewable energy installations and proposals within a limited geographical area. Given this situation there is a clear need for a wide ranging cross Council boundary approach and a cross boundary landscape capacity assessment (to supplement the recent individual studies) as a key aspect in the consideration of the cumulative impact aspects of individual wind farm proposals in this area. The SSforS group hopes that such an approach will be undertaken by SNH and the Council.

80. In terms of the **overall Development Plan conclusions**, the proposed development is considered to be in breach of the relevant South Ayrshire Council Development Plan

Policies. This conclusion arises on account of the wind farm's failure to protect **and** enhance the landscape and its distinctive features, the significant adverse landscape and visual impacts, including cumulative impacts, of the proposal and the loss of amenity at a considerable number of residencies on account of the noise impact. These significant adverse effects are not outweighed by the generic benefits of the scheme which are already built into the positive policy environment which is supportive of renewables. The scheme is also likely to have other significant adverse impacts, including potential impacts on a range of aspects raised in the local objections (see later in material considerations).

81. The presumption should therefore be for a refusal of deemed planning permission for the proposed Linfairm wind farm.

Material Considerations

82. **National climate change and energy policy** is often cited as a key consideration of some weight in the determination of wind farm proposals. It is accepted that it is an important factor. However, this Government policy "green card" cannot simply trump all other considerations.
83. Rather, the Government's political policy imperative should be delivered through the proper operation of an up to date Plan led system, and decisions should be transparently taken within the operational processes of the Planning Acts which were designed to properly, openly and fully assess the *acceptability* of proposed developments. National climate change and energy policy do not call for the Planning system to be set aside. All renewables policy, at every level, while stressing the policy importance of renewable generation, is subject to the express caveat that generating plant, including wind power stations, should only be approved in appropriate and environmentally acceptable locations. In real terms it is the Planning System that forms the basis of deciding whether or not a site is environmentally acceptable and whether significant impacts have been satisfactorily addressed.
84. In terms of the **benefits** of the proposal, the potential economic benefits, which are limited, require to be considered having regard to what has been set out earlier.

85. In the absence of any patented onshore wind turbine technologies being held locally and with the current limited turbine manufacturing, fabrication and assembly capability in Scotland, the local and regional economic benefits of the proposal will be relatively minor. They may be concentrated on any local fabrication and assembly works and on the civil engineering works at the construction stage. The applicant accepts that these benefits will be limited. Indeed, most decision letters on wind farm appeals/Inquiries now accept that the economic benefits of any particular wind farm will be limited when it comes to local effects.
86. Furthermore, no balanced, overall economic impact assessment is presented by the applicants – for example the income transfer effects of the ROCs system and the pricing of environmental externalities are not factored into the assessment in the ES.
87. The detail of any local community benefit fund would be a matter to be addressed by the applicants, the local community, and the Council, out with the s.36 consenting/permission process. This form of benefit is not a material consideration in the determination of the current proposal. That position is accepted by the applicants (Linfairn Wind Farm: Planning Statement, paragraph 2.5.3)
88. Therefore, overall, the scheme specific economic benefits, beyond the production of electricity, are likely to be very limited indeed. It follows that the potential limited economic benefits of the scheme should be given little weight. In this particular case, as set out in this objection, various constraints would result in reduced power outputs from the wind farm (if it were to be consented and built). Therefore, even that “benefit” of electricity production would be less than predicted.
89. That leaves the environmental benefits to be addressed, again picking up on the earlier review under the ES section of this objection.
90. The potential greenhouse gas savings and the associated climate change impacts are often the principal claimed environmental benefits of wind farm proposals and that is the case for this proposal. However, these assumed generic benefits are already built into a favourable policy environment. Therefore, are in reality **no** additional, scheme specific and verifiable environmental benefits claimed for the Linfairn wind farm.

91. **The National Planning Framework NPF2, 2009** sets out the key planning issues and high level spatial planning guidance for Scotland. Section/paragraph 99 stresses the importance of landscape and visual impacts in decision making. This aspect has been taken into account in this objection.
92. There is nothing in the remainder of the NPF which changes the normal approach, for wind farm applications (whether s.36 applications or planning applications), of a balanced assessment of benefits and disbenefits in the light of the Development Plan policy.
93. The consolidated **Scottish Planning Policy 2010 (SPP)** provides planning policy guidance, indeed the only such Scottish Government planning policy guidance, on wind farms in paragraphs 187 to 191. The key guidance is that planning authorities should support the development of wind farms in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed.
94. In this case the technology is unlikely to be able to operate efficiently. The assessment of the noise impacts by Mr Dick Bowdler clearly shows that, if consented, the wind farm would need to operate at reduced power on many occasions in order to meet the likely noise limits. There would still be complaints given the likely significant effects on residential amenity. In addition, it is understood that mitigation will be required in relation to bats and that this will involve turning off some turbines at set times of the year. These requirements would significantly affect the efficiency of the proposed wind farm. The recent Harelaw s.36 wind farm Public Local Inquiry report and subsequent decision to refuse (where there were also noise impact issues), confirmed that consenting a wind farm that could not be operated efficiently because of constraints would not be in accord with policy. That same situation applies with Linfairn.
95. Landscape and visual impact and cumulative impact are listed as criteria that Development Plans should refer to. In this case the landscape and visual impacts including cumulative impacts are not satisfactorily addressed by the scheme, which has been assessed as having significant adverse effects. There is nothing else in the

SPP section on wind farms that would lead to a view that the Development Plan assessment conclusions, or the conventional approach to such assessments, should be set aside when considering the acceptability of this proposal.

96. Key sections of this part of the SPP are directed at the development of a positive policy framework, including SPG, by Planning Authorities. That is exactly what we have in this case and, therefore, both Development Plan policy and especially the very up to date Landscape Capacity Study should be given considerable weight.
97. Landscape is considered in paragraphs 125 to 141 of the SPP. These paragraphs set out the importance that is attached to all landscapes and not just designated landscapes. Paragraph 128 confirms that the most sensitive landscapes may have little or no capacity to absorb new development. Paragraph 131 confirms that landscapes are sensitive to inappropriate development and that planning authorities should ensure that potential effects, including cumulative effects, are considered in planning decision making. Whilst the role of planning and design is recognised, it is also stated that 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. Having regard to both paragraphs, that “should not be permitted” scenario is the situation that arises with the proposed Linfairn wind farm on account of its significant adverse landscape and visual impacts including cumulative impacts.
98. The Scottish Government has been consulting on proposed updates in respect of **NPF3 and SPP2**. In short these revisions to national planning policy give greater weight to landscape protection and strengthen the approach to spatial guidance/planning for onshore wind energy developments. As addressed in the MSC review the consultative updates propose the use of the SNH new Core Areas of Wild Land in the planning decisions on wind farms. This aspect has been taken into account in the MSC assessments. Otherwise the two consultations do not materially add to the factors that are already being addressed in the determination of the proposed Linfairn wind farm.
99. South Ayrshire Council has been progressing its proposed **Local Development Plan**. The Plan (LDP) is at the stage of examination with a view to adoption in 2014. The

LDP contains a specific policy on wind energy – Proposed LDP Policy: Wind Energy. Again that is a conditionally supportive type of policy as required by SPP. Having regard to the criteria set out in the proposed policy, and taking full account of this objection and the reports that accompany the objection, it is considered that:

- a.* The landscape is not capable of accommodating the proposed wind farm
- b.* The proposed wind farm does not respect the main features and character of the landscape and the effects are not kept to a minimum
- c.* There would be a significant detrimental effect on the amenity of nearby residents (visual effects, noise and transportation/access effects)
- d.* The cumulative impact would not be acceptable

100. Therefore, the proposal would not be in accord with the key topic specific policy in the emerging LDP.

101. South Ayrshire Council has produced and adopted the very up to date (July 2013) **Landscape Wind Capacity Study**. The detail of the guidance in this up to date document has been fully taken into account by MSC in the review and assessment summarised earlier in the objection submission. It is absolutely clear that there is no landscape capacity in this area for a development of the scale – turbine height and turbine numbers – proposed by the applicants. This is fully set out in the MSC report and that detail is not repeated in this paragraph of the objection. It is the view of SSforS that the Council should be giving considerable weight to their own very up to date landscape capacity study by agreeing to object to the proposed Linfairn wind farm.

102. SSforS are aware that there will be many **local and individual objections** lodged with both the ECDU and South Ayrshire Council in respect of this proposed wind farm. These objections are likely to address issues such as:

- a.* Effects on tourism – an aspect that has been of growing concern and significance in the determination of wind farm applications in South Ayrshire and in Dumfries and Galloway

- b.* Effects on recorded and unrecorded archaeological sites
- c.* Adverse effects on local wildlife
- d.* The physical impacts of the access proposals and the associated improvements
- e.* Legal concerns about the effects of the access proposals on existing access rights
- f.* Adverse effects on the local water environment
- g.* The significant concerns of individual property owners and occupiers about the significant adverse effects on amenity that will arise for them

SSforS considers that these local objections are well founded and raise serious issues of concern. The ECDU and the Council are respectfully urged to give detailed consideration to these objections.

103. In summary, the material considerations assessed above do not change the conclusions arising from the Development Plan assessment that this Linfairn wind farm application should be refused s.36 consent and deemed planning permission on account of failure to meet the Electricity Act tests and on account of non compliance with the Development Plan.

Overall Planning Policy Assessment and Conclusions

104. This objection submission is of direct relevance to the consideration of the application by the South Ayrshire Council. It is only an objection by the Council that will trigger a full Public Local Inquiry. Experience to date has shown that it is only at a full Public Inquiry that all aspects of proposed major wind farms are fully assessed. The Council will consider the consultation on the application as Planning Authority. In that respect the application is clearly contrary to the Development Plan and the very up to date landscape capacity study. Therefore, the objectors fully anticipate that the Council will properly apply its own policy framework and object to this proposal. For all of these reasons a copy of this objection has been lodged with the Council.

105. In reaching the overall conclusions in this objection, the approach has been to consider both the benefits of the scheme and the likely adverse impacts, or disbenefits of the scheme (the planning balance). For the reasons set out in above, it is considered that the material benefits of the proposed Linfairn scheme are only the limited economic benefits and those generic, assumed environmental benefits associated with wind energy generation and these generic benefits (which are now known to be only assumed benefits) are already factored into the favourable policy environment for this type of development and should not be counted twice.
106. Whilst the substantive means for the detailed assessment of the Linfairn proposal is the assessment against the Development Plan, the Electricity Act must also be considered. In relation to the tests in the Electricity Act, it is not considered that these provide any valid basis for the *detailed* assessment of the acceptability of the scheme. However, they must be considered and they require a balance of benefits with adverse effects. Given the significant adverse landscape and visual impacts, including cumulative impacts, given the likely adverse impacts on valued local landscapes and viewpoints which cannot be mitigated, and given the potential adverse effects on a range of other interests (as set out in the individual objections), it is concluded that the applicant has neither preserved natural beauty and flora, nor secured reasonable mitigation. The Electricity Act Schedule 9 tests are not therefore met.
107. In terms of the deemed planning permission aspects of the Linfairn wind farm, the proposals have been assessed against the Development Plan, having regard to the material set out in this objection, taking into account the matters set out in the ES (and related documents), having regard to the assessments by Mr Dick Bowdler and MSC. In doing so the overall assessment has always sought to balance the identifiable scheme specific benefits in the equation.
108. Based on the above it is concluded that the proposed Linfairn wind farm development is contrary to the Development Plan principally on account of its significant adverse landscape and visual impacts, including adverse impacts on valued landscapes and viewpoints that cannot be mitigated, and also cumulative landscape

and visual impacts. There are potential adverse significant effects in terms of noise that cannot be reasonably avoided or mitigated without running the wind farm at artificially reduced outputs. This range of significant adverse effects is not offset by the limited economic benefits of the scheme or by the assumed generic environmental benefits of the scheme.

109. Therefore, the overall conclusion of this objection is that the proposal is not in accordance with the Development Plan and that, therefore, the presumption is for the refusal of deemed planning permission for this Linfairn wind farm s36 application.

110. As set out in this objection a range of material considerations have been taken into account. The conclusions on all of these matters are set out above. In summary, it is concluded that there are no material considerations that would change the conclusion that arises from the Development Plan assessment.

Objection Submission

111. It is, therefore, respectfully submitted that Scottish Ministers should conclude, following a Public Local Inquiry if that is necessary, that the Linfairn wind farm application should be refused s.36 consent as the Electricity Act tests are not met and that, in terms of the deemed planning permission aspect, deemed planning permission should be refused on the grounds that the proposal is not in accordance with the Development Plan.

[END]

Ian Kelly MRTPI,

Head of Planning, Graham and Sibbald for Save Straiton for Scotland

11th November 2013