

**WIN-270-10 PROPOSED GOLTICLAY WINDFARM
NOTE OF PRE-INQUIRY MEETING, 27 MARCH 2018
Clyth Village Hall, Clyth, Caithness, KW3 6BA**

1. Attendance at the meeting:

E.On, the applicant, was represented by Vincent Fraser QC and Gary McGovern, solicitor (Pinsent Masons), accompanied by Pippa Godwin (Pinsent Masons), and Paul Hunt and Victoria Harrison (E.On).

The Highland Council, the planning authority, was represented by James Findlay QC and Karen Lyons (solicitor), accompanied by Councillor Matthew Reiss and Councillor Andrew Sinclair.

Roster Against the Windfarm (RAW), a group formed to represent objectors to the proposed development, was represented by Caroline Window

Forestry Commission Scotland was represented by John Risby

A number of others were in attendance. An attendance list was circulated to which attendees were requested to add their names and contact details.

2. Introduction

The reporter, Robert Seaton, has been appointed by the Scottish Ministers to conduct an inquiry and report to them on an application under section 36 of the Electricity Act 1989 by E.On for a windfarm at Golticlay, near Lybster. The proposal is for the construction of 19 turbines with a height to blade tip of up to 130 metres, together with associated infrastructure.

Ministers will determine the application once they have received a report from the reporter. The purpose of the meeting was to discuss what further procedure, if any, was required in order for the reporter to report to Ministers on the application.

In addition to the application for consent under the Electricity Act, the applicants have requested Ministers to grant deemed planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997.

The Highland Council, as planning authority, has objected to the application. Therefore the holding of an inquiry is a statutory requirement.

3. Law and practice relating to inquiries into applications under section 36 of the Electricity Act 1989

The reporter explained that the application and procedure relating to its handling is subject not only to section 36 of the Electricity Act 1989, but also to section 62 and schedule 9 of that Act, to the Electricity Act (Applications for Consent) Regulations 1990 and to the Electricity Works (Environmental Impact Assessment) Regulations 2017.

Reporters also use the [Code of Practice](#) for Handling Inquiries under section 62 and Schedule 9 to the Electricity Act.

4. Requirement for an appropriate assessment

The reporter confirmed it was his understanding that appropriate assessment of the proposed development was required under the Conservation (Natural Habitats etc.) Regulations 1994 in respect of likely significant effects upon the Caithness and Sutherland Peatlands Special Protection Area. The requirement to carry out appropriate assessment is a matter for Ministers. Nevertheless, the reporter intends to set out findings in his report to support Ministers' assessment.

5. Clarifications / updates on parties' positions

The reporter sought clarifications from parties on the following three matters:

- **Aviation lighting:** The applicant confirmed that it considered visible aviation lighting (steady red omnidirectional warning lights of a minimum of 32 candelas) as requested by Highlands and Islands Airports Limited would be required on cardinal turbines within the proposed development. In separate correspondence, the reporter has requested from the applicant further environmental information on landscape and visual effects of the visible aviation lighting.
- **Replacement forestry planting:** Mr John Risby confirmed that Forestry Commission Scotland (FCS) continued to object to the proposed development. FCS indicated that it had continuing concerns about the practicality of provision of the area of replacement planting it considered was required by Scottish Government policy and that there was not yet agreement between FCS, the applicant and the council on the legal mechanism by which such replacement planting should be secured. FCS was willing to discuss with the applicant and council in advance of the inquiry whether such an agreement could be reached.
- **Aviation radar:** The reporter had received correspondence from NATS indicating it was willing to withdraw its objection subject to certain conditions being imposed upon consent if Ministers decided to grant the application. The applicant confirmed it was content with the form of conditions proposed by NATS and did not feel it required to respond further to the NATS letter.

The matters at paragraphs 6 to 9 of this letter were also raised by parties in discussion at the pre-inquiry meeting.

6. Osprey and wildcat

The council indicated that it was reviewing its position in respect of its objection in respect of the proposed development's effects on osprey and wildcat and was not yet ready to say whether it would lead expert evidence in respect of either topic. It undertook to clarify its position within 14 days from the date of the meeting (**by 10 April 2018**).

RAW indicated that it did intend to lead expert evidence in respect of the proposed development's effects on osprey and wildcat.

7. Existing permission for three turbines at Rumster

The reporter understands that there is existing planning permission for three turbines on land owned by the Latheron, Lybster and Clyth Community Development Company at Rumster Forest.

The applicant's position was that, if consent was granted to the application, the development permitted under the existing permission would not be carried out, and that it had reached an agreement with the community development company to this effect. It has carried out the landscape and visual assessment on the basis that the permitted three turbines would not be erected if consent was granted under the current application.

Objectors raised the issue of whether any agreement on this matter had properly been made between the applicant and the community development company.

Given that an issue had been raised as to whether any agreement between the community development company and the applicant had properly been made, the reporter requested the applicant to provide further information to confirm its arrangements with the community development company. This should provide assurance that the three-turbine development for which the existing planning permission was granted would not be carried out if the consent sought was granted. The applicant undertook to do so within four weeks after the pre-inquiry meeting (by **24 April 2018**).

The reporter also requests the applicant to provide details of the existing permission granted to the community development company, including a plan and decision notice.

8. The effects of enabling works on the C1053 Road

The reporter noted that works were proposed to the C1053 Road to enable access for delivery of wind turbine parts to the proposed development. He noted that the works were to be the subject of a separate planning application. The effects of the widening works were not dealt with in the environmental information before him. He asked parties whether Ministers would be required in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 to take account of the effects of proposed works to the road and, if so, how they should do so.

Counsel for the applicant and council undertook to provide submissions in response to the reporter's question within four weeks from the date of the meeting (by **24 April 2018**).

9. Notice of the pre-inquiry meeting for third parties: RAW and a number of individual attendees at the meeting drew to the reporter's attention that they knew of

people who had objected to the proposed development but had not received notice of the pre-inquiry meeting.

The reporter notes that all objectors should have received a [letter](#) in November 2017 asking whether they wished to take part in further procedure on the application. If objectors replied to say that they did not wish to take part or did not reply to this letter, they would not have been notified of the pre-inquiry meeting.

In order to ensure that all objectors who wish to take part in further procedure have the opportunity to do so, the reporter will ask his office to write again to objectors, asking them whether they wish to have such an opportunity. The reporter also notes that he intends to give all objectors, whether they have opted to take part in further procedure or not, the opportunity to speak to their objections in an open hearing session to be held in the course of the inquiry (see paragraph 11 of this note).

10. Need for and options for further inquiry procedure

The reporter will take account of the written submissions that are before him, including all written objections, before reaching his recommendations to Ministers. The reporter is required by the [Code of Practice](#) on Handling Inquiries to identify, on the basis of these submissions, the main issues in the case and any additional evidence that is required on them.

The objections before the reporter are available in the [online case file](#) on the DPEA's website. The reporter noted that the applicant had provided a response to the objections in its [position statement](#) of October 2017.

Where a reporter considers additional evidence is required on a particular aspect of an application, there are three procedural options by which such evidence can be obtained. These are:

- further written submissions
- an inquiry session. This is a formal process in which parties lead witnesses, who may be cross-examined by other parties' advocates.
- a hearing session. This is a structured, round-table discussion led by the reporter.

A different procedure for obtaining additional evidence may be adopted for different topics.

Where the information provided by the applicant or responses to the application by objectors or consultees is sufficient, there is no need for any further procedure on that topic. However, the reporter's views as to the need (or not) for further procedure on any particular topic should not be interpreted as a judgement on the relative importance of one topic over another.

11. Topics upon which further procedure is required

On the basis of discussion, the reporter determined the topics upon which further procedure is required to be as shown in the left-hand column of the table below. The type of procedure is set out in the middle column. The parties the reporter

understands at this stage are likely to take part in the procedure are shown in the right-hand column.

Table: further inquiry procedure

Topic	Type of procedure	Participants
The policy basis upon which the application should be determined.	<p>Hearing session (if required). It may be that this topic can be dealt with by agreement between the parties. It is also possible that when parties submit hearing statements there will only be a limited degree of disagreement. In either case, it may be possible to forego a hearing on policy.</p> <p>The reporter invites parties to focus particularly on any changes in relevant policy since their most recent written submissions on that subject made in 2017.</p>	Applicant; Highland Council; RAW
Landscape and visual effects of the proposed development	Inquiry session	Applicant; Highland Council; RAW
Effects on osprey	<p>The reporter will determine further procedure once the council has clarified its position on these matters. If either the council or RAW intend to lead expert evidence, he considers some type of oral procedure is likely to be necessary. Parties should therefore, for the present, make their preparations on the basis that these matters will be dealt with in an inquiry session.</p>	Applicant; Highland Council; RAW
Effects on wildcat		
Peatland restoration proposals and any related requirement for forestry replacement	Further written submissions	Applicant; Forestry Commission Scotland

Topic	Type of procedure	Participants
Residential visual amenity	Hearing.	Applicant; RAW
Conditions to be imposed should consent and deemed planning permission be granted	Hearing	Applicant; Highland Council; RAW; Forestry Commission Scotland

If any person wishes to take part in any further procedure and is not shown in the right-hand column, the reporter would ask that they write to his office as soon as possible to say so.

In addition, the reporter proposes to hold an open hearing session, in which he would invite objectors, whether or not they have said they wish to take part in further procedure, to speak to their objections to the proposed development.

The reporter had originally proposed to hold a hearing session on the recreational use of the appeal site at the Rumster Forest. Following discussion at the pre-inquiry meeting, he considers that it is likely any issue relating to recreation can be dealt with in the open session.

12. Dates and location of inquiry and hearing sessions

The inquiry will commence on Monday 8 October 2018. The reporter would aim to complete it within five working days (by Friday 12 October). However, parties should also keep free 29 and 30 October in case those dates are required to complete the inquiry.

The inquiry venue is to be determined. Several suggestions were made for inquiry venues, including Lybster Community Centre and the Portland Arms Hotel in Lybster. The hotel is presently closed. Nonetheless the reporter's office will investigate whether it or the community centre is suitable as a venue for the inquiry.

13. Prior disclosure of cases

The inquiry process is based on the principle of prior disclosure – every party is required to disclose their case to the other parties, well in advance of the inquiry, in accordance with a strict timetable. There is no scope for 'ambushing', whereby someone introduces a new point at the inquiry which other participants have not had the chance to consider.

Procedure for inquiry sessions:

Parties taking part in inquiry sessions must lodge inquiry statements within 8 weeks of the meeting (by **22 May 2018**), setting out

- the particulars of the case the party proposes to make on the matters specified for the inquiry sessions,
- the documents to be relied upon,
- a list of witnesses for the inquiry sessions, including the matters to be covered by each witness and their relevant qualifications, and
- who is to be the party's advocate (if parties are not representing themselves).

Any documents to be referred to at the inquiry session should be submitted at least 28 days before the start of the inquiry (by **10 September 2018**). Documents may be submitted electronically. The reporter would request that any scaled plans or visualisations are also provided in hard copy. Upon submission, documents should be copied to other parties participating in the inquiry session. The reporter requests that a printed copy of inquiry documents is provided for inspection by the public at the deposit location.

Any witness giving evidence at the inquiry session must submit a precognition (written statement of evidence) at least 14 days before the start of the inquiry (by **24 September 2018**). All precognitions should be a maximum of 2000 words. Witnesses should not attach as appendices to their precognitions documents which other parties have not seen. All documents should be lodged in the normal manner.

Procedure for hearing sessions

Anyone taking part in a hearing session should lodge a hearing statement – a written statement which fully sets out the case on the topics under discussion, together with a list of who is to speak at the hearing session and on which matter, and their relevant qualifications. This should be submitted 28 days before the start of the inquiry (by **10 September 2018**). Any documents the party intends to rely upon in the hearing session should be submitted by the same date.

As regards conditions, the [council's report](#) includes a list of conditions starting at page 31. The reporter intends, as a matter of convenience, to use this list as a basis for discussion of conditions. He requests parties, if making a submission that different conditions should apply, to provide the proposed amendment to the council's list of conditions together with the reasoning for such an amendment.

Agreed statements

In preparing evidence for the inquiry and hearing sessions, parties should consider the scope for agreed statements, so that the sessions can focus on the matters in dispute which are relevant to the proposals before Scottish Ministers.

Any agreed statements should be lodged as documents at least 28 days before the inquiry (by **10 September 2018**).

14. Site inspections

The reporter proposes to carry out his own unaccompanied site inspections before the inquiry.

He would then make an accompanied site inspection after the inquiry. He would be grateful if parties could work together to provide an itinerary for the accompanied site visit, including locations that they consider it is important the reporter should visit. This itinerary can be discussed at the start of the inquiry.

15. Venue for deposit of inquiry documents

The environmental statement and further environmental information is presently available for inspection at the council's Wick planning office.

The venue for deposit of a hard copy of inquiry documents is to be determined. Venues proposed were either the Wick planning office or a location in Lybster, if available. Mrs Window undertook to investigate whether documents might be deposited at the Portland Arms Hotel in Lybster itself.

The council requested that parties should send any hard-copy documents for deposit directly to the venue for document deposit (therefore any venue should be prepared to accept delivery of such documents).

16. DPEA website and contacts

All documents will be made available electronically on the website of the Planning and Environmental Appeals Division of the Scottish Government (DPEA), www.dpea.scotland.gov.uk. The case reference is [WIN-270-10](#). Case documents can be found on the DPEA website under that reference. The reference should be quoted in correspondence with the DPEA on the application.

The DPEA case officer is Mandy McComiskie. Her telephone number is 0131 244 6982 and email is mandy.mccomiskie@gov.scot. All inquiries to the DPEA regarding the case should be directed to her.

17. Webcasting

The DPEA has started webcasting some of its inquiries. The inquiry in this case may be webcast. Generally the public seating areas would not be directly filmed. However by entering the meeting venue and using the public seating area, individuals consent to being filmed and to the use and storage of those images and sound recordings and any information pertaining to them for webcasting and training purposes and for the purpose of keeping historical records and making those records available to the public.

18. Comments on this note

The reporter would be grateful if any comments on the record of the meeting or the procedure for the inquiry set out in this note could be provided as soon as possible, and within 14 days at the latest.