

ANNEX B – Draft Decision Letter

Energy and Climate Change Directorate

Energy Consents Unit



Scottish Government  
Riaghaltas na h-Alba  
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NLEI Limited  
Ground Floor West Suite  
Prospect House  
5 Thistle Street  
Edinburgh  
EH2 1DF

(date) 2020

Dear Sirs,

**REFUSAL OF THE APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF NORTH LOWTHER ENERGY INITIATIVE WIND FARM IN DUMFRIES AND GALLOWAY.**

**Application**

I refer to the application made on 12 June 2017 (“the Application”) submitted by North Lowther Energy Initiative Limited (NLEI) (“the Company”) incorporated under the Companies Act with the company number SC511747 having its registered office at Ground Floor West Suite, Prospect House, 5 Thistle Street, Edinburgh EH2 1DF, for consent under Section 36 of the Electricity Act 1989 (“the Act”) for the construction and operation of North Lowther Energy Initiative Wind Farm (“the proposed Development”) located on land approximately 5km south of Crawfordjohn, 2km north-east of Sanquhar and 2km west of Wanlockhead, within the planning authority area of Dumfries & Galloway Council.

The Application proposed a wind powered electricity generating station with an expected installed generating capacity over 50 megawatts (expected to be around 147 megawatts) comprising of 35 wind turbines with a maximum blade to tip height of 149 metres. On 28 April 2018 the Application was amended to comprise 30 wind turbines with a maximum blade to tip height of 149 metres.

**This letter contains the Scottish Ministers’ decision to refuse the Application.**

## **Consultation**

On 12 June 2017, in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 Regulations”) the Company submitted an Environmental Statement (the “ES”) describing the proposed Development and giving an analysis of its environmental effects. The Application also included an ES non-technical summary, pre-application consultation report, planning statement and design and access statement as supporting documents.

The 2017 Regulations came into force on the 16 May 2017. These 2017 Regulations revoked the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”) although certain transitional provisions (set out in regulation 40(2)) are applied to applications for which a scoping opinion was sought or an environmental statement submitted before 16 May 2017. Those transitional provisions therefore apply in this case. Amongst other arrangements, they allow the environmental statement to be treated as an EIA report for the purposes of the 2017 Regulations.

Under paragraph 2(1) of Schedule 8 to the Act, the Electricity (Applications for Consent) Regulations 1990 (“the Consents Regulations”) made under the Act, and the 2017 Regulations, the relevant planning authority is required to be notified in respect of a section 36 consent application. In terms of the 2017 Regulations, notifications were sent to the Dumfries & Galloway Council as the relevant planning authority, NatureScot (formally known as Scottish Natural Heritage), Scottish Environment Protection Agency (“SEPA”) and Historic Environment Scotland (“HES”). A wide range of relevant organisations were also consulted as bodies likely to be affected by the proposed Development.

## **Further Environmental Information**

Following formal consultation, on 28 April 2018, in order to address issues raised by consultees and other stakeholders, primarily in relation to landscape and visual matters, the Company submitted additional information called Further Environmental Information (“FEI”) amending the Application. Five turbines were deleted (turbines 10-14) with the position of the remaining 30 turbines being amended to produce a revised layout and site boundary together with other revisions including; an updated landscape and visual impact assessment; updated cultural heritage impact visualisations; an updated cumulative ornithology assessment; updated peat slide risk assessment; revised hydrological figures; updated outline conservation management plan and additional visualisations of the Menzies Pass. The provision of assessment on climate change, human health, major accidents and disasters was also included. The Application as amended comprises:

- Installation of 30 turbines (including external transformers) of up to 149m (to blade tip) retaining an installed capacity of around 147MW;
- Crane hardstandings for each turbine;
- Two site access points;
- Onsite underground electrical cables;
- Substation control building (incorporating transformers/electrical equipment);
- the creation of up to five temporary on-site borrow pits

- Vehicle turning heads;
- Approximately 29 kilometres of permanent access tracks comprising 3km of upgraded tracks, and 26km of new tracks including passing places and watercourse crossings;
- Three kilometres of existing forestry track (which does not require upgrade) for transport of material taken from borrow pits;
- Up to four temporary site construction compounds/laydown areas;
- Two potential concrete batching plants (to be located within the excavated borrow pits)
- Felling of 69.11 hectares of forestry;
- Replanting of 32.50 hectares of forestry;
- Site signage;
- Outline conservation management plan (excluding riparian planting).

The Company advertised the FEI in the local and national press providing another opportunity for the public and interested parties to make representations if they so wished.

The Scottish Ministers are satisfied that the ES and the FEI have been produced in accordance with the 2000 Regulations and the 2017 Regulations respectively. Having had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and the 2017 Regulations the Scottish Ministers are also satisfied that the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representations on the proposed Development.

### **Public Inquiry**

In terms of paragraph 2 of Schedule 8 to the Act if the relevant planning authority makes an objection, and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority.

Dumfries and Galloway Council (the “Planning Authority”) objected to the Application on 19 October 2018. The Scottish Ministers did not consider it possible to accede to the application subject to modifications or conditions as to give effect to the Planning Authority’s objection, and consequently caused a public inquiry to be held.

The Reporter’s recommendation and inquiry report (“the Report”) was submitted to the Scottish Ministers on 21 October 2020.

### **Summary of Consultation Responses**

#### **Statutory Consultees**

**Dumfries & Galloway Council**, object to the proposed Development on the basis that, by virtue of its location, siting, scale of turbines and general design, would:



- give rise to an unacceptable strategic cumulative landscape effects extending development into an undeveloped area of the Lowther Hills and have an unacceptable direct impact on the Lowthers Unit of the Southern Uplands Landscape Character Type (LCT 19) and an unacceptable indirect impact on the Upper Nithsdale unit of the Upper Dale LCT (LCT 9);
- adversely influence the northern section of the Thornhill Uplands Regional Scenic Area, sufficient to compromise the special qualities of the designated area; and
- appear as a visually dominant and incongruous development which would result in significant adverse visual and cumulative visual effects in itself and in combination with other approved or built wind farms from a number of sensitive visual receptors.

The Planning Authority concluded, as a consequence of the aforementioned impacts, that the proposed Development is contrary to Dumfries and Galloway Local Development Plan Policies, Dumfries and Galloway LDP Supplementary Guidance-Part 1 Wind Energy Development: Development Management Considerations, the Dumfries and Galloway Wind Farm Landscape Capacity Study (DGWLCS) and national policy contained in the Scottish Planning Policy which states that planning permission should be refused where the nature or scale of the proposed development would have an unacceptable impact on the natural environment.

**NatureScot** having considered the reduction to the proposed Development, primarily object as a consequence of significant adverse landscape and visual impacts on a key part of the Lowther Hills, which makes an important contribution to the distinctiveness and identity of Scotland's landscapes which is a matter of national interest. NatureScot also object due to the significant effects on landscape character and designations, including cumulative effects.

**SEPA** have no objection.

**HES** have no objection. HES consider that the proposed Development would have an adverse effect on the setting of two scheduled monuments, but not to the extent that the integrity of the setting of these monuments would be significantly adversely impacted.

#### Scottish Government Internal Advisors

**AM Geomorphology Limited** (Scottish Government advisor on peat matters) advise that the Peat Landslide Hazard Risk Assessment is satisfactory.

**Marine Scotland** (Scottish Government internal advisor) provided advice on requirements for pre-construction and pre-decommissioning monitoring.

**Transport Scotland** (Scottish Government internal advisor) advise that conditions are required to secure a traffic management plan; details of abnormal loads; a trial-run for abnormal loads; and additional signage and traffic control during delivery of construction materials.

The following consultees have no objection, with some non-objections being subject to conditions.

**British Telecom** have no objection subject to a condition requiring turbines number 2 and 18 being micro-sited a minimum distances of 65 metres from link paths.

**Defence Infrastructure Organisation** have no objection.

**East Ayrshire Council** (a neighbouring Planning Authority) have no objection but raise a number of concerns in relation to landscape and visual impacts.

**Fisheries Management Scotland** have no objection.

**Forestry and Land Scotland** (consulted when known as Forestry Commission Scotland) have no objection subject to a condition requiring compensatory planting.

**Glasgow Prestwick Airport** have no objection.

**Joint Radio Company** have no objection subject to a condition requiring mitigation measures for turbines 8 and 9 to avoid telecommunication interference.

**Nith District Salmon Fishery Board** have no objection.

**Royal Burgh of Sanquhar and District Community Council** support the application.

**RSPB** have no objection.

**Scottish Water** have no objection subject to conditions to secure water quality monitoring and further engagement in respect of nearby Scottish Water assets.

**The Coal Authority** have no objection.

**Visit Scotland** have no objection subject to any potential detrimental impact on tourism being identified and considered in full.

The following consultees object to the proposed development:

**Lowther Hills Ski Club** object on the grounds of the proposal's cumulative impact, and impact on the Community Empowerment.

**National Air Traffic Safeguarding (NATS)** object as a consequence of the unacceptable impact on Prestwick Centre ATC, Lowther Hill Radar and Cumbernauld Radar.

**Scottish Rights of Way Society (Scotways)** object as a consequence of the insufficient buffering of the Southern Upland Way (SUW), a nationally important walking route, resulting in significant visual effects upon the SUW, and cumulative impacts on recreational amenity along the length of the SUW.

**South Lanarkshire Council** (a neighbouring Planning Authority) object on the grounds the proposals would introduce a dominant feature on the existing landscape and impact on the setting of Leadhills, and harm the remoteness of the area. The proposed Development would have significant adverse landscape and visual effects, and cumulative impacts with existing Clyde Wind Farm. South Lanarkshire Council also consider there would be a significant impact on the Southern Upland Way and the experience of wilderness.

**Leadhills Community Council** object on the grounds that the proposed development, either on its own or in combination with the proposed Harryburn Wind Farm, would have a serious and unacceptable impact upon the landscape and ecology of the North Lowther Hills.

**Wanlockhead Village Council** object on the grounds of the detrimental landscape and visual impacts there would be on the surrounding area affecting the setting of Wanlockhead. The detrimental impacts on the economy and tourism, the potential for increased contamination risk, the damage to peat and impact on health and wellbeing.

**Kirkconnel & Kelloholm Community Council** did not respond to the consultations.

#### Community Council Representation

**Crawford & Elvanfoot Community Council**, although not formally consulted, wrote to object on the grounds that the proposed development will impact on the Southern Upland Way, will add to cumulative effect and saturation of windfarms, impact on the Mennock pass and exacerbate the mission creep of wind farm extensions.

The Reporter references the consultation responses at paragraphs 1.11 – 1.16 and 1.27 of the Report. Full details of the consultation responses are available on the Energy Consents website at [www.energyconsents.scot](http://www.energyconsents.scot)

#### **Public Representations**

Representations made by members of the public have been taken into account by the Reporter and summarised at paragraphs 1.17 through to 1.26 of the Report. 414 representations in objection were made to Scottish Ministers through the course of the application (either directly from individuals or made by individuals through petition) which cite the following reasons for objecting: adverse impacts on the landscape of the North Lowther Hills; impacts on the Mennock pass; cumulative visual impacts; impacts on birds, bats and rare birds; impacts on the Southern Upland Way and walking in North Lowther Hills; impacts on the Setting of Wanlockhead and Lead hills; impacts on peat; impact of traffic and noise disturbance; the potential to exacerbate pollution from old mines; contamination and flooding; the detrimental impacts on tourism; impacts on health; impacts on ecology and habitats; impact of operational noise; and impact on cultural heritage.

A further 106 public representations have been made in support of the development (either directly from individuals or made by individuals through petition) which raise support for the following reasons: investment to the local area; employment opportunities; combat climate change; net environmental benefit in the area; an



appropriate use of the site which would allow existing farming to continue in harmony with the scheme, safeguarding the continued employment of the farmers and the jobs they support; and helping to deliver Scotland's ambitious renewable energy targets.

All consultation responses and representations sent to Scottish Ministers have been taken into account in the determination of the Application.

### **Public Inquiry**

The inquiry sessions were held in Sanquhar Community Centre on Tuesday 1 October 2019 to Thursday 3 October 2019 and Monday 7 October 2019 to Thursday 10 October 2019. The single hearing session was held in the late afternoon on Thursday 10 October 2019. Closing submissions were exchanged in writing, with the final closing submission (on behalf of the Company) being lodged on 16 December 2019. The Reporter made unaccompanied inspections of the proposed Development site, its surroundings and other locations referred to in evidence on 23, 25 and 30 September 2019, 4, 6, 7 and 11 October 2019 and on 5 February 2020.

Supplementary information (requested by the Reporter appointed by Scottish Ministers to hold the public inquiry) was further provided by the Company comprising an updated cumulative landscape and visual impact assessment and an aviation lighting appraisal with associated figures for both studies.

### **Public Inquiry Report**

In each chapter of the Report, the Reporter summarises the case for each party, taking account of the precognitions, hearing statements, hearing sessions, the discussion at the inquiry and the closing submissions. The Reporter also takes into account the environmental information included in the ES, FEI, and Supplementary Information as well as the written representations and all of the other information supplied for the inquiry and hearing sessions. The chapters of the Report provide the following:

Chapter 1	Background
Chapter 2	Policy Context
Chapter 3	Landscape and visual matters
Chapter 4	Other relevant matters
Chapter 5	Proposed conditions and legal agreements
Chapter 6	Overall conclusions and recommendations

In Chapter 6, Para 6.25 the Reporter recommends that consent under Section 36 of the Electricity Act 1989 should be **refused**.

### **Environmental Matters**

The Scottish Ministers are satisfied that the ES, FEI and Supplementary Information, has been produced in accordance with the 2000 Regulations and 2017 Regulations respectively and that the applicable procedures regarding publicity and consultation laid down in 2017 Regulations have been followed.

The Scottish Ministers have considered fully and carefully the Application, including the Environmental Statement, the FEI, the Supplementary Information, consultation responses, the findings, conclusions and recommendation of the inquiry Report and all other material information and, are satisfied that the environmental impacts of the proposed Development have been assessed and have taken the environmental information into account when reaching their decision.

In accordance with paragraph 3 of Schedule 9 to the Electricity Act, the Scottish Ministers have also had regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. The Scottish Ministers have also had regard to the extent to which the Company has done what it reasonably can to mitigate any effect the proposed Development would have on those matters.

### **Main Determining Issues**

Having considered the Application, the ES, FEI, Supplementary Information, responses from consultees and third parties, the inquiry Report and all other material information, the Scottish Ministers find that the main determining issues are:

- the environmental impacts, including the landscape and visual impacts, including cumulative effects, likely to occur as a consequence of the proposed Development;
- the benefits of the proposed Development, including its renewable energy generation, greenhouse gas emissions savings and net economic impact; and
- the degree to which it would be in conformity with national planning policy, the local development plan and other relevant guidance.

### **The Scottish Ministers' Considerations**

At Chapter 3 of the Report the Reporter considers the landscape and visual effects of the proposed Development. The Reporter's findings are set out at paragraphs 3.178 – 3.331 of the Report. A summary of the findings can be found at paragraphs 3.332 – 3.343 of the Report. The Reporter concludes in Chapter 6 of the Report at paragraph 6.21:

*“The proposal would have significant landscape and visual effects, including cumulative effects, which would be unacceptable based on the scale and distinct landscape features and scenic quality of the area in which the proposed turbines would be sited, viewed from and impact upon. This conclusion is supported by the fact that the proposal would have a significant impact on both the Thornhill Uplands Regional Scenic Area and the Leadhills and Lowther Hills Special Landscape Area. There would also be an impact on the landscape and historic setting of Wanlockhead.”*

As a consequence the Reporter advises:

*“the proposal would gain no favour from Scottish Planning Policy as a development that contributes to sustainable development; that the proposal would not accord overall with the provisions of the development plan; and in consideration of the National*



*Planning Framework 3, that it would not overall promote Scotland as ‘a natural resilient place’ affecting a landscape that significantly contributes to Scotland’s identity.”*

At Chapter 4 of the Report the Reporter considers other relevant matters including national energy policy, summarising findings at paragraphs 4.125 – 4.127. The Reporter concludes in Chapter 6 of the Report at paragraph 6.20:

*“The proposed development would provide some substantial benefits in relation to meeting emission reduction targets; reducing greenhouse gases; habitat creation and hen harrier conservation; and contributing to the economy through construction, operation and maintenance and, if secured, community ownership.*

The Reporter draws together the conclusions on the determinative factors at paragraph 6.24 of the Report stating:

*“Overall, I find that in balancing the factors for and against the proposal the significant adverse effects on the natural beauty of the area outweigh the benefits envisaged. I have considered all other matters but find none that would lead me to conclude otherwise.”*

The Scottish Ministers agree with the Reporter that the proposed Development would provide benefits in relation to helping meet renewable energy targets and that the *“early predicted connection to the grid would also mean that this contribution could occur timeously in reaction to net zero targets and the emergency declared”*. The Scottish Ministers also acknowledge that *“the net economic impact, including local and community socio-economic benefits would be substantial and positive”*.

However, the Scottish Ministers consider the proposed Development would give rise to unacceptable significant adverse landscape and visual impacts as well as adversely impact on the historic setting of Wanlockhead. Therefore, the Scottish Ministers agree with the Reporter’s findings, reasoning and conclusions and adopt them for the purposes of their own decision.

### **The Scottish Ministers’ Determination**

Having agreed with the Reporter’s findings, reasoning and conclusions and adopted them for the purposes of their own decision, the Scottish Ministers refuse the application for consent under Section 36 of the Electricity Act 1989 for the construction and operation of North Lowther Energy Initiative Wind Farm on land approximately 5km south of Crawfordjohn, 2km north–east of Sanquhar and 2km west of Wanlockhead, wholly within the planning authority area of Dumfries & Galloway Council.


In accordance with regulation 23(4) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the applicant must publicise their determination on a website maintained for the purpose of making information publicly available, in the Edinburgh Gazette and in a newspaper circulating in the locality in which the land to which the Application relates is situated.

Copies of this letter have been sent to the public bodies consulted on the application including the Planning Authority, NatureScot, SEPA and HES. This letter has also been published on the Scottish Government Energy Consents website at [www.energyconsents.scot](http://www.energyconsents.scot)

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts – <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

  
A member of staff of the Scottish Ministers

From: [REDACTED]  
Energy Consents Unit  
Energy and Climate Change Directorate  
16 December 2020

Cabinet Secretary for Transport, Infrastructure and Connectivity

**APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF NORTH LOWTHER ENERGY INITIATIVE WIND FARM IN DUMFRIES & GALLOWAY.**

**Purpose**

1. To seek your determination of an application from North Lowther Energy Initiative Limited Ltd (NLEI Ltd) (“the Company”) for consent under Section 36 of the Electricity Act 1989 and deemed planning permission under Section 57(2) of the Town & Country Planning (Scotland) Act 1997 to construct and operate North Lowther Energy Initiative Wind Farm (“the proposed Development”).
2. The recommendation for the proposed development is **refusal**.

**Priority**

3. Routine

**Background**

Application

4. On 12 June 2017, the Company, applied for consent (the “Application”) under section 36 of the Electricity Act 1989 (“the Act”) and a direction under section 57 of the Town and Country Planning (Scotland) Act 1997 that planning permission be deemed to be granted to construct and operate the North Lowther Energy Initiative wind farm (“the proposed Development”) situated within the Queensberry Estate, approximately 5km south of Crawfordjohn, 2km north–east of Sanquhar and 2km west of Wanlockhead, wholly within Dumfries & Galloway planning authority area.
5. The proposed Development comprised of 35 turbines wind farm with maximum tip height of 149 metres and its associated infrastructure. The proposed Development was anticipated to generate around 147 megawatts.
6. On 27 April 2018 the Company submitted additional information called Further Environmental Information (“FEI”) to address issues raised by consultees in response to the proposed Development, which included amending their proposal by deleting 5 turbines (No: T10 – T14) and their associated infrastructure thereby reducing the proposed Development from 35 to 30 turbines.



### **Publication of the Application and Consultations**

7. In accordance with regulatory requirements, the Application and the FEI was subject to a wide ranging consultation, the details of which have been advertised to allow the public to make representations.
8. Details of the consultations carried out and summaries of all responses received are set out in page 2 to page 7 of the draft decision letter in **Annex B** to this submission.
9. Officials are satisfied that there are no outstanding issues that remain to be considered before determination of the Application.

### **Summary of Statutory Consultee Responses**

10. **Dumfries & Galloway Council** (the “Planning Authority”) object to the proposed Development on the basis that, by virtue of its location, siting, scale of turbines and general design, would:
  - give rise to an unacceptable strategic cumulative landscape effects extending development into an undeveloped area of the Lowther Hills and have an unacceptable direct impact on the Lowthers Unit of the Southern Uplands Landscape Character Type (LCT 19) and an unacceptable indirect impact on the Upper Nithsdale unit of the Upper Dale LCT (LCT 9);
  - adversely influence the northern section of the Thornhill Uplands Regional Scenic Area, sufficient to compromise the special qualities of the designated area; and
  - appear as a visually dominant and incongruous development which would result in significant adverse visual and cumulative visual effects in itself and in combination with other approved or built wind farms from a number of sensitive visual receptors.
11. **NatureScot** (formally known as Scottish Natural Heritage) object as a consequence of significant adverse landscape and visual impacts on a key part of the Lowther Hills, which makes an important contribution to the distinctiveness and identity of Scotland’s landscapes which is a matter of national interest. NatureScot also object due to the significant effects on landscape character and designations, including cumulative effects.
12. **Scottish Environment Protection Agency** (“SEPA”) have no objection.
13. **Historic Environment Scotland** (“HES”) have no objection. HES consider that the proposed Development would have an adverse effect on the setting of two scheduled monuments, but not to the extent that the integrity of the setting of these monuments would be significantly adversely impacted.

## Public Representations

14. **414** representations in objection were made to Scottish Ministers through the course of the application (either directly from individuals or made by individuals through petition) which cite the following reasons for objecting: adverse impacts on the landscape of the North Lowther Hills; impacts on the Mennock pass; cumulative visual impacts; impacts on rare birds; impacts on the Southern Upland Way; impacts on the Setting of Wanlockhead; impacts on peat; traffic and noise disturbance; the potential to exacerbate pollution from old mines and the detrimental impacts on tourism. A further **106** public representations have been made in support of the development (either directly from individuals or made by individuals through petition) which raise support for the following reasons: investment to the local area; employment opportunities; combat climate change; net environmental benefit in the area; an appropriate use of the site which would allow existing farming to continue in harmony with the scheme, safeguarding the continued employment of the farmers and the jobs they support; and helping to deliver Scotland's ambitious renewable energy targets.

## Public Inquiry

15. The Planning Authority notified Scottish Ministers of their objection to the proposal on 19 October 2018.
16. As a consequence of the Planning Authority's objection to the proposed Development the Scottish Ministers were required to have a public inquiry held in accordance with paragraph 2(2) of Schedule 8 to the Electricity Act 1989.
17. A reporter, J Alasdair Edwards (the "Reporter") was appointed by Scottish Ministers on 12 February 2019 to conduct a public inquiry into the Application.
18. Inquiry sessions were held in Sanquhar Community Centre on Tuesday 1 October 2019 to Thursday 3 October 2019 and Monday 7 October 2019 to Thursday 10 October 2019. The single hearing session was held in the late afternoon on Thursday 10 October 2019. Closing submissions were exchanged in writing, with the final closing submission (on behalf of the Company) being lodged on 16 December 2019.
19. The Reporter made unaccompanied inspections of the proposed Development site, its surroundings and other locations referred to in evidence on 23, 25 and 30 September 2019, 4, 6, 7 and 11 October 2019 and on 5 February 2020.
20. The Reporter's recommendation and inquiry report ("the Report") was received by the Scottish Government on 21 October 2020. **The Reporter recommends the application for Section 36 consent should be refused.**

## Ministerial Code

21. The North Lowther Energy Initiative Wind Farm is sited within the South Scotland parliamentary region represented by the Minister for Energy, Connectivity and the Islands. Paragraph 8.3 of the Scottish Ministerial Code: 2018 edition indicates that

taking a decision, or being part of the decision making process, in respect of an application which falls within the constituency or region represented by the Minister might be viewed as prejudicial to the planning process. On this basis, Officials recommend that the Minister for Energy, Connectivity and the Islands does not take part in the decision-making process.

### **Recommendation**

22. Officials have taken into account the Application, the consultation responses, public representations and considered fully the Reporters' findings, reasoned conclusions and recommendations, and are of the view that the Scottish Ministers should accept them and adopt them for the purposes of their own decision and:

**Refuse** the application for consent under Section 36 of the Electricity act 1989.

### **Publicity**

23. Subject to your agreement, the decision letter will be copied to the Planning Authority and the other consultation bodies, and will be made available to the public on the Scottish Government's website and at the library at Victoria Quay, Edinburgh. A public notice of the decision will be placed on the Scottish Government's website.

### **List of Annexes**

24. The following annexes are attached to assist you in making your decision:

<b>Annex A</b>	Regulatory Requirements and Advice to Ministers
<b>Annex B</b>	Draft Decision letter

25. A copy of the Report is attached.

Energy Consents  
M: [REDACTED]



OFFICIAL SENSITIVE - ADVICE TO MINISTERS

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
<b>Cabinet Secretary for Transport, Infrastructure and Connectivity</b>	X				
<b>Minister for Energy Connectivity and the Islands</b>			X		
<b>Cabinet Secretary for Environment, Climate Change and Land Reform</b>					X
<b>Cabinet Secretary for Rural Economy and Tourism</b>					X
<b>Cabinet Secretary for Economy, Fair Work and Culture</b>					X
<b>Cabinet Secretary for Finance</b>					X
<b>Minister for Rural Affairs and the Natural Environment</b>					X
<b>Minister for Business, Fair Work and Skills</b>			X		
<b>Minister for Local Government, Housing and Planning</b>					X
DG Economy DG Scottish Exchequer Mailbox BMU - DECC Andy Hogg - Energy [REDACTED] - Energy [REDACTED] - Energy [REDACTED] - Energy [REDACTED] - Energy [REDACTED] - SGLD [REDACTED] - SGLD [REDACTED] - PAD Callum McCaig – Special Advisor Communications Economy Scott Ferrie - DPEA [REDACTED] – DPEA					

## REGULATORY REQUIREMENTS AND ADVICE TO MINISTERS

### APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF NORTH LOWTHER ENERGY INITIATIVE WIND FARM IN DUMFRIES AND GALLOWAY.

#### Legislation

##### **The Electricity Act 1989**

1. Any proposal to construct, extend or operate a wind farm with a generation capacity in excess of 50MW requires consent under Section 36 of the Electricity Act 1989 (“the Act”). On granting consent under Section 36 for a development, the Scottish Ministers may also direct that planning permission for the development shall be deemed to be granted in terms of Section 27 (2) of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). The Section 36 consent and deemed planning permission may each be subject to conditions.
2. Under paragraph 3(2) of Schedule 9 to the Act the Scottish Ministers must have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. Under paragraph 3(3) of Schedule 9 to the Act the Scottish Ministers must avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.
3. Under Schedule 8 of the Act and the Electricity (Applications for Consent) Regulations 1990, the Scottish Ministers are required to consult the relevant Planning Authority (in this case Dumfries & Galloway Council) and any other interested parties.

##### **EIA Regulations**

4. In addition, to comply with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 Regulations”), the Scottish Ministers had to consult the Planning Authority, Scottish Natural Heritage (now referred to as NatureScot), the Scottish Environment Protection Agency (SEPA), Historic Environment Scotland (“HES”) and such other persons that were in the opinion of the Scottish Ministers likely to be concerned by the proposed Development by reason of their specific environmental responsibilities.
5. On 16 May 2017, the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. These 2017 regulations revoked the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”) although certain transitional provisions set out in regulation 40(2) are applied to applications for which a scoping opinion was sought

or an environmental statement submitted before 16 May 2017. Those transitional provisions therefore apply in this case. They allow the environmental statement to be treated as an environmental impacts assessment report for the purposes of the 2017 regulations.

6. The applicable environmental impact assessment Regulations and associated requirements that Scottish Ministers must meet are detailed in pages 1 to 2 and page 7 of the draft decision letter in **Annex B** to this submission.
7. Officials consider that the Scottish Ministers can be satisfied that these requirements have been met.

### **Notification and Publicity Requirements**

8. Officials have had regard to the requirements regarding publicity and consultation laid down in the both the Consents Regulations and the applicable environmental impact assessment regulations. Officials advise that the Scottish Ministers can be satisfied that advertisement of the Application, the Environmental Statement and the Further Environmental Information was made in the local and in the national press and that copies were placed in the public domain, and the opportunity given for those wishing to make representations to do so.

### **Environment**

9. Officials are of the view that the Scottish Ministers can be satisfied that the Company, when formulating its proposal to construct the proposed Development had regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.
10. Officials have had regard to the desirability of the matters mentioned in the previous paragraph and the extent to which the Company has done what it reasonably can to mitigate the effects of the proposed Development on those features, and are satisfied that the Scottish Ministers can be satisfied that the Company has done what it reasonably can with regard to mitigation.

### **Public Inquiry**

11. The Planning Authority objected and did not withdraw their objection, causing a public inquiry to be held in accordance with paragraph 2(2) of Schedule 8 to the Act. The inquiry sessions were held in Sanquhar Community Centre on Tuesday 1 October 2019 to Thursday 3 October 2019 and Monday 7 October 2019 to Thursday 10 October 2019. The single hearing session was held in the late afternoon on Thursday 10 October 2019. Closing submissions were exchanged in writing, with the final closing submission (on behalf of the Company) being lodged on 16 December 2019. The Reporter made unaccompanied inspections of the proposed Development site, its surroundings and other locations referred to in evidence on 23, 25 and 30 September 2019, 4, 6, 7 and 11 October 2019 and on 5 February 2020.



12. In addition to Dumfries & Galloway Council, other parties represented at the public inquiry were:
  - North Lowther Energy Initiative Limited
  - NatureScot;
  - Leadhills Community Council
  - Wanlockhead Village Council
  - Scottish Rights of Way and Access Society (Scotways)
  - Lowther Hills Ski Club
  - Oliver Mundell MSP
  - David Mundell MP
13. Cases made by these parties are considered throughout the Reporter's final report. A link to their respective closing submissions (where made) is included under the headings for each party on page 1 of the Report.
14. Other parties, not represented at the public inquiry, who responded to the original statutory consultation exercises conducted by the Energy Consents Unit were considered by the Reporter and their responses are summarised at paragraphs 1.11 to 1.16 of the Report. Issue specific comments from the consultees were dealt with in the relevant chapters of the Report.
15. The Reporter's recommendation and inquiry report was received by the Scottish Government on 21 October 2020.

### **Main issues, findings and recommendations of the Inquiry Report**

16. In each chapter of the Report, the Reporter summarises the case for each party, taking account of the precognitions, hearing statements, hearing sessions, the discussion at the inquiry and the closing submissions. The Reporter also takes into account the environmental information included in the ES, FEI, and Supplementary Information as well as the written representations and all of the other information supplied for the inquiry and hearing sessions. The chapters of the Report provide the following:

Chapter 1	Background
Chapter 2	Policy Context
Chapter 3	Landscape and visual matters
Chapter 4	Other relevant matters
Chapter 5	Proposed conditions and legal agreements
Chapter 6	Overall conclusions and recommendations

17. In Chapter 6, at para 6.25 the Reporter takes account of all his conclusions **recommends that consent under Section 36 of the Electricity Act 1989 should be refused** for the following reasons;

*“The proposal would have significant landscape and visual effects, including cumulative effects, which would be unacceptable based on the scale and distinct landscape features and scenic quality of the area in which the proposed turbines would be sited, viewed from and impact upon. This conclusion is supported by*

*the fact that the proposal would have a significant impact on both the Thornhill Uplands Regional Scenic Area and the Leadhills and Lowther Hills Special Landscape Area. There would also be an impact on the landscape and historic setting of Wanlockhead.”; and*

*“in balancing the factors for and against the proposal the significant adverse effects on the natural beauty of the area outweigh the benefits envisaged.”*

**Advice to Ministers**

18. Officials have considered fully and carefully the application, including the Environmental Statement, Further Environmental Information, consultation responses, public representations, the findings, conclusions and recommendation of the Reporter and all other material information.
19. Officials invite Ministers to consider the Report and accept and adopt the Reporter’s conclusions.

**Recommendation**

20. Officials recommend that consent is refused. A draft decision letter is attached at Annex B to that effect.

██████████  
Energy Consents  
M: ██████████

**From:** [REDACTED]  
**To:** [Cabinet Secretary for Transport, Infrastructure and Connectivity](#)  
**Cc:** [Minister for Energy, Connectivity and the Islands](#); [Cabinet Secretary for the Environment, Climate Change and Land Reform](#); [Cabinet Secretary for Rural Economy and Tourism](#); [Minister for Rural Affairs and the Natural Environment](#); [Minister for Business, Fair Work and Skills](#); [Minister for Local Government, Housing and Planning](#); [DG Economy](#); [DG Scottish Exchequer Mailbox](#); [Energy and Climate Change - Business Management](#); [Hoag A \(Andrew\)](#); [REDACTED]; [REDACTED]; [REDACTED]; [McCaig C \(Callum\)](#); [Communications Economy](#); [Cabinet Secretary for Finance](#); [Cabinet Secretary for Economy, Fair Work and Culture](#); [Ferrie S \(Scott\)](#); [REDACTED]  
**Subject:** Determination under s36 of the Electricity Act for North Lowther Energy Initiative Wind Farm  
**Date:** 16 December 2020 16:10:36  
**Attachments:** [00 - Determination - Submission and Annex A - North Lowther Energy Initiative.docx](#)  
[00 - Determination - Annex B- North Lowther Energy Initiative - Decision Letter.docx](#)  
[00 - Determination - PLI Report - North Lowther Energy Initiative - dated 21 October 2020.docx](#)

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## PO/Cabinet Secretary for Transport, Infrastructure and Connectivity

### APPLICATION FOR CONSENT AND DEEMED PLANNING PERMISSION FOR THE CONSTRUCTION AND OPERATION OF NORTH LOWTHER ENERGY INITIATIVE WIND FARM

Please see attached for your consideration, a submission and draft decision letter in relation to an application made by North Lowther Energy Initiative Limited for section 36 consent for the proposed North Lowther Initiative Wind Farm.

The Application proposed a wind powered electricity generating station with an expected installed generating capacity over 50 megawatts (expected to be around 147 megawatts) comprising of 35 wind turbines with a maximum blade to tip height of 149 metres. On 28 April 2018 the Application was amended to comprise 30 wind turbines with a maximum blade to tip height of 149 metres. The proposed development was to be located on land approximately 5km south of Crawfordjohn, 2km north-east of Sanquhar and 2km west of Wanlockhead, within the planning authority area of Dumfries & Galloway Council.

The development is sited within the South Scotland parliamentary region. On this basis, officials recommend that the Minister for Energy, Connectivity and the Islands does not take part in the decision-making process.

The application was subject to a Public Local Inquiry, the final Report from which is also attached. The recommendation is to **refuse** consent for the application.

If you have queries regarding this email or any of the attachments please do not hesitate to contact me.

Kind regards,

[REDACTED]

[REDACTED] | [REDACTED] | **Energy Consents Unit**

Scottish Government | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED]

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