

ELECTRICITY ACT 1989

TOWN AND COUNTRY PLANNING SCOTLAND ACT 1997

SUBMISSION FOR SKYE WIND and OTHERS

This submission to Members of The Highland Council is made on behalf of Skye Wind; Campbell Stewart MacLennan & Co., CA, Portree; Faye Macleod CA, Park Bernisdale; and Charles Macdonald, Skeabost, Isle of Skye.

EXECUTIVE SUMMARY

- The OHL is not supported by National Planning Framework 4.
- Any large scale OHL must be considered alongside the generation it serves.
- There is no pressing need for this OHL.
- Dissected, unconnected decision making is contrary to the interests of the populations of Skye and Scotland.
- If decisions are made in silos, apart from one another, cumulative impacts will inevitably be considered to have a lesser importance than they deserve.
- Decision making which depends on developer progress with individual applications is inefficient, which will inevitably lead to poor quality disaggregated results for the Isle of Skye.
- A Public Inquiry to consider the OHL and the windfarms proposed for Skye is the solution.

This document deals with five issues. Two are combined.

- The Need for this development and the application of NPF 4.
- The correctness of an EIA assessment for only part of a project which has interdependent components, with
- The failure to provide a complete assessment of cumulative impacts.
- The consequences of poor and disconnected decision making.
- The right way to make decisions.

1 NEED for the OHL

The proposed Skye Reinforcement Project (the OHL) involves the construction of about 110km of double circuit steel OHL between Fort Augustus and Edinbane; about 27km of Trident pole and cable line between Edinbane and Ardmore; and about 750m of temporary diversion at Inchlaggan. The Project also involves about 24km of underground cable as it travels past the Cuillins. When completed, the existing 132kvOHL will be removed. Other associated works are proposed at Broadford and Edinbane substations and are not assessed as part of the Project. By any standards the project is of a massive scale, unprecedented in the Isle of Skye.

As matters stand in October 2023, Skye has 30 x 100m turbines at Edinbane and Ben Aketil. Between them, they produce about ten times the amount of power that the Isle of Skye needs as a whole. The existing 132kv line crosses the island.

Skye has a unique environment and a flourishing economy, which is heavily tourism dependent. It has a special place in the hearts of millions across the world, and is unique in many ways. It is no exaggeration to say that its success depends on the way it looks and functions. As at October 2023, there are 10 windfarm projects “in planning” on Skye. They are listed in detail in the Appendix.

The size of all of them is known. They amount, in total, to at least 131 turbines ranging in height from 150 to 200 metres. As a reference point, the Skye Bridge is 35m high at its highest point. All of these proposals are intended to connect to, and are dependent on, the OHL.

The application is accompanied by an Environmental Statement and Additional Environmental Information, covering a range of topics.

The need for the project is said to be to “replace existing assets...approaching the end of their operational life, and (to) **provide additional capacity on the transmission network for new renewable generation.**”

It is therefore clear that the OHL and the windfarms are closely linked. The premise that the OHL can stand apart from new renewable generation is a false one. There is no need for the OHL.

2 THE APPLICATION OF NATIONAL PLANNING FRAMEWORK 4

The Fourth National Planning Framework (NPF4) was adopted in February 2023, and replaces the previous National Planning Framework 3 (NPF3) and Scottish Planning Policy (SPP), both adopted in 2014. NPF4 represents a change in legal status and since being adopted, has become “*part of the statutory development plan*”¹ in every local planning authority area.

NPF4 sets out a spatial strategy for Scotland to 2045, together with National Planning Policy and regional spatial priorities for all of Scotland. In all there are thirty-three National Planning Policies which cover all aspects of activity.

The NPF4 is therefore central to the Scottish planning system which relies on a ‘Plan-led Approach’, that requires decisions on development to “*have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations*”.

NPF4 sits at the top of a hierarchy consisting of the National Planning Framework, Regional Spatial Strategies (RSS), Local Development Plans (LDP) and Local Place Plans (LPP). It is crucial to this decision.

Underpinning this is the Spatial Strategy, articulating six principles of: ‘just transition’, ‘conserving and recycling assets’, ‘local living’, ‘compact urban growth’, ‘rebalanced development’, and ‘rural revitalisation’. NPF4 identifies eighteen National Developments that are developments of national importance.

NPF4 does not grant permission; rather it sets out the ‘*matters to be considered*’ and sets criteria for making decisions on development proposals.

The most relevant policy in NPF4 for this Proposal is **Policy 11-Energy**, while all Policies within NPF4 need to be taken into account as the document is to be “*read as a whole*”.

Many of the prior policies in national guidance have been carried forward into NPF4. There is thus considerable similarity between NPF3 and SPP, and the terms of Policy 11-Energy.

Policy 11 - Energy sets out the terms and criteria for assessing renewable energy developments, *including the OHL*. Policy 11(e) identifies thirteen factors, or potential impacts against which each energy proposal is to be assessed. These are:

- impact on **communities** and dwellings,
- **landscape** and visual amenity,
- public access,
- aviation and defence interests,
- **communications**,
- **road traffic**,
- historic environment,
- hydrology,
- **biodiversity**,
- woodlands,
- decommissioning,
- restoration, and
- **cumulative impacts**.

These impacts are to be weighed against a proposal's *contribution* to renewable energy and emission reduction targets. But Policy 11 - Energy only supports energy proposals where they *maximise net economic impact on local employment*, community benefits, local business and the supply chain. In the Isle of Skye, this is very important. The OHL comprehensively fails this criterion.

Policy 11(d) requires energy proposals to be assessed against Policy 4 - Natural places. This says that any proposal will not be supported where it will have an '*unacceptable impact on the natural environment*'. This sets protective criteria for designated areas.

The broad perpetuation of policy relevant to wind farm proposals is evident through the continuation of the listed *nineteen* factors to be considered. In some form or other **all of these nineteen factors** are restated from SPP §169 to NPF4.

NPF4 introduces several shifts of emphasis in overall national policy. Since NPF4 now forms part of every Development Plan, these compelling shifts in policy must affect individual decisions. They occur at several levels.

There is adjustment of the scope of wind farms. Policy 11(a)(i) distinguishes "*wind farms including repowering, expanding and extending the life of existing wind farms*". Repowering, extending and life-extension were not mentioned in NPF3. It is clear, from the definition of development for wind farms in 11(a)(i), that NPF4

recognises a maturing of the spread of wind energy developments across Scotland. In short, we have enough onshore wind.

New sites are not excluded, but NPF4 does *not include* them in the working definition of wind farms. Where wind farm proposals are made for new sites, such as eight of the ten windfarms now proposed in Skye, there are far stronger grounds for questioning the suitability of chosen locations.

The best sites have been found. The industry is now seeking to gain consents in less favourable locations.

Next, the emphasis is on the role of wind farms as part of the overall provision of **energy facilities**. Policy formerly placed a considerable stress on the importance of onshore wind. It was the dominant technology. For over twenty years it has been the principal delivery mechanism. It was the only form of renewable energy production to be given lengthy dedicated coverage.

NPF4 has now materially changed this. Policy 11(a) now treats onshore wind energy merely *as one of the six available low carbon energy sources*. As well as wind farms NPF4 now seeks delivery of low-carbon energy via:

- energy storage of batteries and pumped hydro,
- small scale nascent technologies,
- solar arrays,
- negative emissions technologies such as carbon capture and storage, and
- offshore wind.

NPF4 explicitly recognises the coming contribution from *“the scale of offshore renewable energy resources”*. Onshore wind has clearly lost its pre-eminence. Given the circumstances of low carbon energy production in Scotland, other technologies now offer a far more important contribution to meeting Scotland’s future needs than onshore wind farms. The *Policy Principle* for Policy 11 - Energy now makes clear the desired ‘Policy Outcome’ is the *“expansion of ... technologies”* requiring a *diversification* of energy sources, rather than simply more and more of the same.

In terms of reducing Scotland’s greenhouse gas emissions (against which proposals are to be judged) NPF4 provides another important shift in policy. In 2014, it was clear that *“the energy sector accounts for a significant share of our greenhouse gas*

emissions". At that time Scotland's main sources of electricity generation was coal-fired.

Since then, all but one of the former fossil fuel power stations have closed. Low-carbon power generation has risen substantially to a position of pre-eminence. The need to remove carbon emissions from the electricity generation sector has been dealt with as much as possible. In practical terms there is no more to be done by deploying yet more of the existing technologies, since they are not needed. Renewables have removed as much carbon emission from electricity generation in Scotland as is possible. There is no definable need for further intermittent onshore wind power generation in Scotland. **Put another way, electricity generation in Scotland has been effectively decarbonised.** This can be seen as *a success for Scottish planning policies* in delivering low-carbon power generation to the point that further onshore low carbon generation is simply not needed.

In NPF4 the policy focus has now moved on from a complete reliance on renewable energy development to including it merely as only one of **25** policies for addressing climate change. The weight in planning policy of addressing climate change has now shifted from removing carbon emissions from the power sector to removing them across **all forms of development**, and from transport.

With this advance, the policies on addressing climate change in NPF4 are concerned with decarbonising wider societal activity – heat and transport in particular - and protecting the environment. The priority now, given the crosscutting policy in NPF 4 on '*reducing greenhouse gas emissions*' is a whole raft of policies covering every aspect of development activity. Accordingly, policy on energy generation has slipped well down the priority list.

The final and most significant shift in Policy, provided by NPF4, relates to the priority given to addressing climate change itself. **NPF4 now identifies and stresses the paramount gravity not just of climate change, but also the nature crisis.** NPF4's very first Policy and the stated key for sustainable places is that "*significant weight will be given to the global climate and nature crises*" when considering all development proposals.

NPF4 says, in terms that "*development proposals for national, major or EIA development will **only be supported** where it can be demonstrated that the proposal will **conserve, restore and enhance biodiversity**, including nature networks, so they are in a demonstrably better state than without intervention*" (p09).

These shifts in policy demonstrate that onshore wind developments have lost their priority value and importance. This is important on Skye, because of the interdependence of the OHL, and the windfarm projects which have arrived in its wake. NPF 4 is far seeing - energy developments themselves are a much lower priority in terms of addressing climate change. Wind energy is now seen in adopted binding policy as just another, rather than the primary, energy source because the electricity system itself is now effectively decarbonised.

New technologies are required for future energy challenge. **None are promised for Skye.** Today, if no more new sites for onshore wind farms were developed it would not handicap the drive for net zero by one iota.

3 ASSESSMENT AGAINST NPF 4

It is now possible to assess the proposed Skye OHL against NPF 4.

The adjustment of wording in NPF4 now gives greater emphasis to “**maximising net economic impact**” (11(c)) and “*contribution of the proposal to renewable energy generation targets and on greenhouse gas emission reduction targets*” (11(e)). NPF4 stresses that “*proposals will **only** be supported where they **maximise net economic impact including local community socio-economic benefits such as employment, associated business and supply chain opportunities***” (11(c)).

It is very difficult to see how the OHL maximises net economic impact. A consideration is the issue of any community benefit arising from the OHL. The OHL does not comply with the Scottish Government’s guidance of £5,000/pa per MW of capacity (for windfarms) which was in any event set ten years ago. **None is offered.**

Policy 11(c) now requires “*community socio-economic benefits*” to be maximised. Yet in this case, it is clear that the OHL does not begin to achieve that objective.

In recent years the poor record of wind developers making a limited to £NIL contribution to the local economy has been highlighted. The track record shows that onshore wind has a generally poor record on providing local economic benefits. There is no sign that the OHL will do better.

Targets. NPF4 highlights the need for renewables proposals to be assessed on the balance of their local environmental effects *against* their **contribution to renewable energy and emissions targets**. Due to the accumulated capacity of

onshore wind farms across Scotland, the excess of generation above indigenous demand and the finite limits of electricity export transmission, the OHL will not make contributions to these targets. **It does not actually generate anything.**

Accordingly, the **adverse local environmental factors** outweigh any merit in the OHL Application.

It therefore follows that the OHL Proposal does not derive any support from NPF4, Policy 11(e).

Addressing the **nature crisis** is now a **policy priority**. Policy 3 – Biodiversity sees a *“critical role in ensuring that development will secure positive effects for biodiversity”*. NPF4 states, even *“national or major or environmental impact assessment developments”*, such as this Proposal, *“will **only be supported** where it can be demonstrated the proposal will conserve, restore and enhance biodiversity”*.

It has emphatically not been demonstrated that the OHL will *‘conserve, restore or enhance biodiversity’*. Accordingly, **the OHL does not abide by NPF4’s policies on biodiversity.**

Overall, the criteria set out in Policy 11(e) and Policy 3 are the appropriate bases for assessing the OHL. Done correctly, it fails.

4 EIAR DEVELOPMENT and CUMULATIVE ASSESSMENT

The OHL is an ‘EIAR (Environmental Impact Assessment Report) development’ within the terms of the Electricity Works (Scotland) Regulations 2017 (Regulations) and the EU Directive of 2014/52/EU. The first question to be asked is **“What is the definition of an EIAR development?”**

As expected, there is extensive caselaw as to the correct definition of “a project”. The question is one for judgment. Acting realistically, an authority should consider the extent of connection between the parts of any development and its effects, and whether a particular link or consequence is part of a larger whole.

The identity of the "project" for these purposes is not necessarily confined by the specific application. The objective of EIAR is to provide a holistic and realistic assessment. That aim cannot be avoided by dividing what is in reality a single

project into separate parts, and treating each of them as an individual "project" – a process sometimes referred to as "salami-slicing".

As an example, an Appeal Court held that an application for a biomass plant and one for a CHP plant linked by an underground gas pipe were a "single project," on the basis that they were "*functionally interdependent and [could] only be regarded as an "integral part" of the same development.*" In the same way, a wind farm must be connected to an OHL, otherwise it is of no use.

APPLYING THOSE CONCLUSIONS TO SKYE

The same principle applies as between the OHL and the windfarms that it would serve. An OHL, as proposed, is useless without the power it is designed to carry. Ageing assets can be replaced if that is needed. In the same way, a windfarm is useless if it cannot export the power it makes. One part cannot function without the other. It is self-evident that the two are '*functionally interdependent*'.

There is therefore a strong case that the OHL and the Skye windfarms should be assessed and determined simultaneously on the basis of a common scheme of assessment. Their significant environmental effects should be considered together, as part of the "Skye Project" for this unique location.

That's the law, and the Applicants have ignored it.

If that conclusion is accepted, the EIAR is incomplete and therefore unlawful. The application should therefore be recommended for refusal.

5 WOULD IT MAKE A DIFFERENCE?

The response might be that a large scale EIA of the OHL and the wind farms would make no difference. That is a fair question. But would it? The answer is YES. Combining the assessment of the OHL and Skye's windfarms would undoubtedly change the outcome of the assessment.

To take one example, in its EIAR the Applicant considers only the Cumulative Landscape impacts of the OHL. It summarises the 'significant' landscape and visual amenity effects of the OHL.

Yet it has made no assessment of the landscape effects of any of the windfarms despite the fact that they feed into the OHL. Both elements are functionally

interdependent and provide for different types of *connected* tall industrial structures in a wholly rural and very distinctive landscape. The OHL and the windfarms will inescapably create *cumulative effects* which would obviously generate a cumulative significant impact when they interact.

Members of this Council have no assessment of that obvious effect.

Given that the nine windfarms have only appeared because the OHL is proposed, the interdependence of the two is unarguable.

Scottish Guidance on the assessment of the cumulative effects of onshore wind development broadens the scope of 'other developments' to "*proposals awaiting determination*". It says that "*it may be appropriate to include proposals in an assessment which are at an earlier stage of development*" and "*a degree of pragmatism is required ... to cater for proposals which may not yet be in the public domain*". It cannot therefore be argued that because proposals are at different stages, they should not be considered alongside others. The decision making system is flexible enough to accommodate such variances.

It is self-evident that the windfarms are closely dependent on SSEN, and *vice versa*. Each depends on the other. The information is all in the public domain. **It is therefore appropriate, not to say essential**, for the EIAR for the OHL to have considered the cumulative effects of the windfarms alongside those of the OHL. It has failed to do so.

The Regulations provide a broad scope of the 'effects or factors' which require to be considered in an EIAR. These include "*direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development*". The windfarms arise on Skye as a willing and inevitable consequence of the OHL proposal, rather than as a 'secondary' effect of it. As stated, for the OHL to be fully operational and to work as intended, the wind farms must also be consented and built.

Since the OHL and the windfarms cannot stand apart from one another to be considered as stand alone projects, and given their interdependence, any lawful EIAR should assess the potential cumulative environmental effects of both as a 'single project'. To do otherwise is an attempt to 'salami slice' the environmental assessment. That is unlawful.

6 HOW SHOULD PROPER DECISIONS BE MADE?

The Isle of Skye is a unique environment. Without labouring the point, recent years have generated a successful tourism driven economy which shows no sign of slowing up. Large scale industrialisation for little or no local or national benefit will not only change the character of Skye, but will also have immense potential to damage the ambitious and successful businesses which characterise Skye today. This is therefore very important for this unique place.

Holistic and intelligent decision making is in the interests of not only those who live in the Isle of Skye and depend on its characteristics for their living, but also in the interests of the remainder of Scotland, which has no use for the electric power generated and potentially exported from Skye. Grid augmentation or reinforcement south of the Constraint Boundaries is impossible, and likely to remain so for a decade at least.

Public Inquiries are generated because there is a public interest in an important issue. Where a Council recommends refusal, or when an Applicant appeals, or when Ministers say so.

Schedule 8 of the Electricity Act 1989 allows Ministers to order an inquiry. The Town & Country Planning (Scotland) Act s. 265 provides a similar power. Section 69 of the same Act empowers the convening of a Planning Inquiry Commission. There is a choice to be made. There are perfectly good reasons and adequate powers to lift these difficult questions from the routine to the exceptional, and to show Scotland and the UK that the decisionmaker is interested in considering the wide ranging impacts and effects of this vital decision for Skye.

It is obviously in the interests of everyone involved that the matters discussed here are very carefully and thoroughly considered. An Inquiry is the right place for that to happen.

7 OVERALL CONCLUSIONS

- There is no need for the OHL.
- The OHL is not supported by National Planning Framework 4.
- Dissected decision making is contrary to the interests of the populations of Skye and Scotland.

- If decisions are made in silos, apart from one another, cumulative impacts will inevitably be given a lesser importance than they deserve.
- Decision making which depends on developers' progress with individual applications is poor practice, which will inevitably lead to sub standard and inferior results for the Isle of Skye.
- Safe and tried mechanisms exist to inquire into and secure the future of Skye as part of the nation's transition to Net Zero.

RESPECTFULLY SUBMITTED

John Campbell,

*for Skye Wind, Campbell Stewart Maclellan & Co CA, Faye Macleod and
Charles Macdonald*

Summary of Proposed and Existing Windfarms on the Isle of Skye

PROPOSED WINDFARMS

Development	Status	Turbines (No.)	Turbine height	Capacity	Developer
Ben Aketil Repowering	In planning	9	200m	59.4MW	Renantis SpA, ITALY (ultimate parent company is IIF Int'l Holding L.P, an investment vehicle raised by JP Morgan Investment Management, UNITED STATES) See note below**
Edinbane Repowering	Scoping	19	200m	90MW	Vattenfall Wind Power Ltd (ultimate owner Vattenfall AB, SWEDEN)
Ben Sca	Consented	7	135m	29.4MW	Ocean Winds UK Ltd (ultimately owned by OW Offshore SL, SPAIN)
Ben Sca extension	Consented	2	150m	8.4MW	Ocean Winds UK Ltd (ultimately owned by OW Offshore SL, SPAIN)
Beinn Mheadhonach	Consented	4	120m	12.2MW	Wind Harvest Ltd, SCOTLAND
Beinn Mheadhonach (alteration)	In planning	5	150m	21MW	Wind Harvest Ltd, SCOTLAND
Glen Ullinish I	Consented	11	150m	49.9MW	Muirhall Energy Ltd, SCOTLAND
Glen Ullinish II*	In planning	47	200m	310.2MW	Muirhall Energy Ltd, SCOTLAND
Balmeanach Wind Farm	In planning	10	150m	45MW	Balmeanach Wind Farm Ltd (ultimately owned by EDP Renovaveis SA, SPAIN)
Waternish Wind Farm	Scoping - Pre-application complete	15	200m	67.5MW	Wind Development Holdings Ltd (ultimately owned by Brookfield Corporation, CANADA)
Breakish Wind Farm	Scoping - Pre-application complete	20	180m	120MW	Arise AB, SWEDEN
Total		149		813MW	

*Note that Glen Ullinish 1 wind farm is consented for 11 turbines at up to 149.9m height although not included on this list as Muirhall Energy has stated that this project will only proceed in the event that Glen Ullinish 2 is not built.

**Renantis UK Ltd (formerly known as Falck Renewables Wind Ltd) has a 51% shareholding in Ben Aketil Wind Energy Ltd. Renantis UK Ltd is a subsidiary of the Italian based Renantis SpA, who in February 2022 were bought by institutional investors with 60% of the shareholding being bought by IIF Int'l Holding L.P, an investment vehicle raised by the United States based JP Morgan Investment Management.

NB: information taken from public records recognising that subsequent changes may not yet be updated publicly due to the timing delay in publishing accounting data.

EXISTING WINDFARMS

The existing wind farms on Skye have the capacity to produce the following renewable wind output:

Development	Status	Turbines (No.)	Turbine height	Capacity	Developer
Ben Aketil	Operational	12 x 2.3MW	100m	27.6MW	Renantis SpA, ITALY (ultimate parent company is IIF Int'l Holding L.P, an investment vehicle raised by JP Morgan Investment Management, UNITED STATES) See note below **
Edinbane	Operational	18 x 2.3MW	100m	41.4MW	Vattenfall Wind Power Ltd (ultimate owner Vattenfall AB, SWEDEN)
Total				69MW	

**Renantis UK Ltd (formerly known as Falck Renewables Wind Ltd) has a 51% shareholding in Ben Aketil Wind Energy Ltd. Renantis UK Ltd is a subsidiary of the Italian based Renantis SpA, who in February 2022 were bought by institutional investors with 60% of the shareholding being bought by IIF Int'l Holding L.P, an investment vehicle raised by the United States based JP Morgan Investment Management.