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Dear Ms Smagadi,

**AARHUS CONVENTION COMMITTEE ACCC/C/2012/68: CONTRIBUTION TO DRAFT
REPLY TO FURTHER QUESTIONS DATED 8 JANUARY 2013**

1. Please demonstrate how the comments submitted by the communicant in the decision-making for (a) the Carraig Gheal wind farm, and (b) the West Loch Awe Timber Haul, were considered during the decision-making.

1. a) The Scottish Government can confirm that, under its consenting process for energy schemes over 50 MW installed capacity, comments submitted by Mrs Metcalfe and separately by Avich & Kilchrenan Community Council on the Carraig Gheal windfarm proposal were recorded, and included in the quantitative summary of representations considered by Scottish Ministers prior to making a decision. Reference is made to the letter from the Party Concerned dated 20 December 2012 on the status of the communicant. The Party Concerned has nothing to add to the letter in response to that.
2. Generally, Ministers would prefer not to release the submissions on which such decisions are based, in order not to constrain future policy advice. But in this particular case, in order to help the Committee appreciate how local views were indeed taken into account, **the full submission is attached for information.** Annex E of the submission provides a quantitative summary of representations from members of the public and non-governmental organisations (NGOs) including Avich

& Kilchrenan Community Council (AKCC), of which Mrs Metcalfe is of course a member.

3. You may also wish to take into account that, in general Consenting terms, issues raised by members of the public and NGO's usually also feature in some way in the responses made by statutory consultees, and thus are likely to be highlighted for consideration in the main body of the official submission to Ministers. In the case of Carraig Gheal, the issues raised by AKCC can be cross-referred to the official submission to the Minister as follows:

Topic raised by AKCC	Consultee Remit	Mentioned Directly in Submission?
Landscape and Visual Impact	Scottish Natural Heritage (SNH)	Yes
Ecology	SNH/Scottish Executive Ecological Advisors Unit (EAU)	Yes
Species (birds)	SNH/ EAU/Royal Society for the Protection of Birds (RSPB)	Yes
Archaeology and SSSIs	Argyll and Bute Council	Yes. Related <u>condition</u> imposed on consent
Noise	Argyll and Bute Council	Yes. Related <u>condition</u> imposed on consent
Biodiversity	SNH/EAU/RSPB	Yes
Tourism	None	No
Telecommunications	None	Yes. Related <u>condition</u> imposed on consent
Transport	None	Yes. Related <u>condition</u> imposed on consent

Hydrology (peat)	Scottish Environmental Protection Agency (SEPA) and official Consents contractor for peat/hydrology advice	Yes
Private Water Supply	SEPA	Yes
Planning Policy	Argyll and Bute Council	Yes
Health	Health and Safety Executive (HSE) consulted but did not respond	No
Birds	SNH/RSPB/EAU	Yes
Fishing	In SEPA remit but not raised by SEPA	No
Access Track	Not relevant as not part of consent	N/A
Wind energy claimed not to be a reliable source of power	Not relevant as not site specific	N/A
Cumulative effect	In SNH and Argyll & Bute Council remit but not raised by them	No
Photomontage ES inaccurate	In SNH and Argyll & Bute Council remit but not raised by them	No
Peat Slide	SEPA/official Consents contractor for peat/hydrology advice	Yes
House Prices	None	No

4. In conclusion, it is clear that the views of AKCC, where relevant, were taken into account in the Consenting process both as part of the quantitative summary of representations attached to the official submission to Ministers, and, in addition, in the case of 14 of the 19 relevant issues raised, indirectly, through the specific analysis of similar issues raised by statutory and other consultees.
5. b) The original Environmental Statement was submitted in December 2008 and in March 2009 Forestry Commission Scotland expressed concerns regarding the lack of involvement with consultees and stakeholders.

6. The Community Council (and other consultees) submitted a number of comments on the original Environmental Statement and the developer responded to these. In April 2009 FCS met with the Community Council (including Mrs Metcalfe) to discuss issues regarding the Environmental Statement and the timber haul route.
7. The follow up correspondence from this meeting explains that as the route is primarily a timber haul route it is being considered under the EIA (Forestry) (Scotland) Regulations 1999.
8. A meeting on site was also held with Mrs Metcalfe and the FCS civil engineer to discuss concerns regarding the borrow pits required for the road.
9. In September 2009 Greenpower agreed to submit a new Environmental Statement that would include the original ES with an additional impact assessment regarding the borrow pits and information on consultation responses and additional reports (eg lichens).
10. The section on the Consultation responses in the new EIA was to bring together the comments received up to that point and highlight where in the documentation further information requested / questions asked could be found. It also showed how Greenpower had responded to issues raised.
11. A new application was then submitted on 24 September 2009. The non technical summary includes mitigation measures to address concerns relating to potential environmental impacts for the route and borrow pits.
12. Avich and Kilchrenan Community Council responded to the new Environmental Statement on 20 October. This response raised a number of issues not related directly to the Environmental Statement including why it was being considered by FCS, and concerns about the line that the route is following and the partial funding of the route by the windfarm company. Information on these issues had already been provided to the Community Council and further information has since been provided on why alternative road lines would not be suitable.
13. The main issues relating to the actual Environmental Statement relate to the potential impact on breeding birds particularly Golden Eagles and potential impacts on other aspects of natural heritage interest such as butterflies and lichens.
14. RSPB's response noted that they had no objection to the windfarm as long as specific measures were adopted to ensure that the impact of the development on breeding birds was negligible.
15. SNH also responded to the consultation and did not object following agreement that conditions would be drafted on the basis of their response.
16. The Consent was issued on 24 September 2009 and specific conditions were included to take account of concerns raised during the consultation. These include

conditions 15 – 22 which specifically relate to minimising disturbance to golden eagles. Schedule 3 of the consent details reasons and considerations and demonstrates that the views of respondents to the consultation were taken into account.

17. The Community Council continued to express concerns about the golden eagles however as both SNH and RSPB were content with the final outcome and the conditions FCS believes that these concerns have been addressed.

2. What was the basis document (policy document, strategy, programme, plan etc) for the decisions on (a) the Carraig Gheal windfarm and (b) the linked access West Loch Awe Timber Haul route?

18. a) In determining an application under The Electricity Act, Scottish Ministers must have comfort that the requirements of the related regulations relevant to the specifics of the application have been met. In Scotland, proposals for windfarms over 50 MW installed capacity are determined under **section 36 of the Electricity Act 1989**. Additional regulations usually applied include The Electricity Works (Environmental Impact Assessment)(Scotland) Regulations 2000 and The Electricity (Applications for Consent) Regulations 1990. Depending on the nature of the site, a determination may also require the application of certain requirements under Conservation (Natural Habitats, &c.) Regulations 1994 and under Directive 2009/147/EC on the conservation of wild birds.
19. In terms of the **high-level policy** applying on energy and renewables at the time of the Carraig Gheal consenting decision (June 2008), the Committee may wish to note that this pre-dated both the development of the Scottish Renewables Action Plan (2009) and the draft Scottish Renewables Routemap (2011). In June 2008, the Ministerial policy focus on renewables in Scotland had been in place since 2003 with the publication: “Securing a Renewable Future: Scotland’s Renewable Energy” which set out a target of 40% of electricity to be generated from renewables by 2020 and emphasised the importance of a diverse range of renewables – offshore as well as onshore. This was further informed in March 2007 with the publication of new guidance on spatial planning for wind schemes over 20 MW ([Scottish Planning Policy SPP 6 Renewable Energy](#)), which was designed to encourage appropriate siting and to encourage public participation. This was closely followed by a new Scottish target of 50% of electricity demand to be met from renewables proposed by the new Scottish National Party (SNP) government in 2007. The higher target was underpinned by a funding programme to encourage a diverse renewables supply through support for biomass, marine energy and green hydrogen/fuel cells.
20. **In summary**, at the time of the Carraig Gheal consenting decision, high level policy and specific regulations were in place to guide appropriate development of onshore wind as one technology among several, to assess and mitigate environmental impacts, and to encourage public participation in decision-making.

21. b) In relation to West Loch Awe Timber Haul route (WLTHR), there is no overarching policy document relating to timber haul routes in Scotland however the Scottish Forestry Strategy (2006) sets out the Scottish Government's framework for forestry forward through the first half of this century. It includes an objective aimed at facilitating projects that reduce the cost and environmental impacts of timber transport including developing the timber transport infrastructure.
22. In addition the Argyll and Bute Woodland and Forestry Strategy, produced by Argyll and Bute Council, includes a strategic priority aimed at addressing the major timber transport challenges facing the area through continued public/private sector partnership in the forestry sector through the Argyll Timber Transport group.
23. The timber transport group provides a mechanism for sharing ideas and best practice on timber haulage issues and it brings together representatives from local government, FCS and the timber industry. Its objectives include the exploration of possibilities for extending the forest road network to keep heavy traffic off public roads.
24. Within FCS forest road planning is carried out at a local District level and there is always a strategic road plan for significant forest area with outline plans for future harvesting roads. However given the timescale that forestry operates over and the fact that many things can change in the intervening periods between planting and harvesting, road haulage plans are not firmed up on until harvesting plans are being fully considered. This was the case for this area on West Loch Awe.
25. In considering the best options for West Loch Awe there was a strong desire to move to in-forest haulage to remove pressure from the public road system. However the high cost of building an in-forest haul route had been prohibitive. The approval of the Carraig Gheal wind farm offered an opportunity to combine resources to develop a route which would access the windfarm and serve as a timber haul route, removing a large volume of timber traffic from several long sections of minor public roads.
26. The WLTHR also received funding from the Strategic Timber Transport Fund which aims to facilitate the sustainable transport of timber in rural areas for the benefit of local communities and the environment. In order to receive support from the Fund projects must demonstrate a number of benefits including a strategic fit with national or regional timber transport priorities/actions and contribute to specific outcomes, most specifically in this case the construction of in-forest link roads to by-pass communities and fragile public roads.

3. Under Scottish law is there a specific obligation that information about comments received under the EIA procedure is available before the decision is issued?

27. In legislative terms, the EIA procedure for consents under section 36 of the Electricity Act 1989 is set out in the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (SSI 2000/320). Those Regulations were

amended on 8 September 2008 by the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008 (SSI 2008/246) to make changes to the 2000 Regulations to implement the public participation Directive.

28. As the Carraig Gheal decision (made on 13th June 2008) pre-dated those amendments, a summary of the position as relevant at the time is annexed below.
29. Moreover, Supplementary Environmental Information in the form of an addendum is frequently submitted by applicants to address comments by consultees and further support their application. Upon submission of such information, a full consultation, as required by paragraph 14 of 2000 Regulations is undertaken, with consultee bodies and members of the public afforded 28 days in which to submit representations on the new information.

4. Please elaborate on why the Renewable Energy Routemap is a policy rather than a plan/programme.

30. In Scotland, the relevant legislative framework for Strategic Environmental Assessment (SEA)'s is the **Environmental Assessment (Scotland) Act 2005**. Whereas under the SEA Directive, only certain plans and programmes are identified as potentially subject to SEA, a wider range of strategies, plans, programmes and policies fall within the scope of the 2005 Act. Hence the specific nomenclature is less relevant in Scotland: the **Renewable Energy Routemap** is viewed by the Scottish Government as a high-level policy document to guide development towards 2020 energy targets on electricity and heat, and (alongside the Electricity Generation Policy Statement) **has been subject to SEA, including formal public consultation**.
31. The stages of SEA required prior to adoption, including publication and consultation on an Environmental Report in accordance with Schedule 3 of the 2005 Act, were fully completed. However, the SEA process as a whole is not yet concluded, and a post-adoption SEA statement is expected by May 2013.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Ceri Morgan', with a stylized, elongated loop at the end.

Ceri Morgan

ANNEX

Relevant extracts from Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000, in relation to Question 3

Requirement to take environmental information into account when making a decision on an application for a section 36 consent

1. Regulation 3(1) required that Ministers do not grant a section 36 consent for EIA development unless there has been compliance with regulation 4.
2. Regulation 4(2)(b) requires that Ministers before granting a section 36 consent take the 'environmental information' into consideration.
3. Environmental information was defined in regulation 2(1) and meant (when read with the definition of 'environmental statement')-
 - a. the statement submitted by the applicant setting out the information on the impact on the development required by Schedule 4 to the Regulations (ie that required by Annex 4 of the EIA Directive) including-
 - i. a description of the aspects of the environment likely to be significantly affected by the development;
 - ii. a description of the likely significant effects of the development on the environment; and
 - iii. a description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment;
 - b. any further information which the Scottish Ministers required the applicant to submit in connection with the environmental impact of the project (under regulation 13 of the Regulations);
 - c. any representations made by
 - i. the planning authority;
 - ii. Scottish Natural Heritage ('SNH');
 - iii. the Scottish Environmental Protection Agency ('SEPA');
 - iv. any person whom the Scottish Ministers consulted as Ministers considered that person was likely to be concerned by the proposed development; and

- v. any other person about the likely environmental effects of the proposed development; and
- d. any views expressed by other member states.

Requirement to make information available before the decision is made

- 4. In terms of regulation 9 the applicant is required to publish a notice in two successive weeks in a local newspaper.

The notice must-

- a. describe the application;
 - b. state where a copy of the environmental statement can be inspected; and
 - c. state how and by when representations may be made to the Scottish Ministers in relation to the application.
- 5. Regulation 11 ensure that the planning authority, SNH and SEPA (“the consultative bodies”) are given an opportunity to make representations on the environmental statement. If the applicant has not already a copy of the environmental statement to the consultative bodies they may require the applicant to provide a copy and may subsequently make representations to Ministers.
- 6. In addition under regulation 11 Ministers may impose a duty on the applicant to provide a copy of the environmental statement on any other person that in their opinion is likely to be concerned by the proposed development by reason of that person’s specific environmental responsibilities.
- 7. In terms of regulation 14 if the applicant is required to submit further environmental information then the applicant is required to publish a notice in two successive weeks in a local newspaper. The notice must-
 - a. describe the application;
 - b. state where a copy of the further information can be inspected; and
 - c. state how and by when representations may be made to the Scottish Ministers in relation to the further information.