



Forestry Commission Scotland

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Conservator
Syd House

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Dear Ms Organ

West Loch Awe Timber Haul Route/Carraig Gheal Windfarm Access and Borrow Pits Environmental Impact Assessment (Forestry) (Scotland) 1999

Thank you for your response dated 20 October 2009 to the consultation exercise on the Environmental Statement for above project and to your subsequent correspondence via e-mail on 28 October 2009 which consisted of a paper from your ornithological expert Michael Gregory and your further e-mail correspondence of 25 January in response to the draft conditions to be attached to the EIA consent.

The formal consultation exercise is now complete and the replies from the various consultees have been reviewed. Forestry Commission Scotland has now issued the EIA consent for the construction of the haul route and borrow pits.

I note that your response of 20 October makes reference to '*some original concerns and requests have not been addressed or covered.....and with additional comments and observations constitute an objection*'. Within the Forestry EIA process there is no formal objection process built into the consultation phase.

However we take comments from organisations like yourselves very seriously and take them into consideration when deliberating whether to grant the consent and in the drafting of conditions, which accompany the consent. In this instance we have been able to resolve all outstanding issues raised by the various statutory bodies. Accordingly we have now granted consent and I have attached a copy of the EIA consent for your information. As you will see we have addressed a number of the various aspects raised by you but have not accepted all of them. I have outlined our rationale for doing so below.

The consultation exercise requested those being consulted to comment on the Environmental Statement. The role of Forestry Commission Scotland, as the competent authority' is to assess, in consultation with statutory bodies, the content of the ES and the likely impacts on the environment from the construction of the project as described by the applicant. Accordingly the purpose of the Environmental Impact Assessment is not to necessarily identify the best option but rather to identify that any chosen is acceptable in terms of its impact on the environment.

We expect applicants to outline the main alternatives and an indication of the developer's choice, taking into account any effects. Whilst pursuing the "best" option



is ideal there may be a variety of reasons why a developer chooses an alternative option.

If you peruse "Volume II: West Loch Awe Timber Haul Route and Carraig Gheal Wind Farm Access Road Environmental Statement (November 2008) Main Report Section 4.3 Alternatives" it discusses alternative actions and why they were discounted.

In addition I would like to address the points raised in your letter of 20 October 2009 in the order raised:

1 and 2. Argyll and Bute Council have now issued the Certificate Lawfulness.

3. SNH's response recommends additional mitigation, which has been accepted by the applicant and included in the conditions attached to the consent. In addition the applicant has withdrawn borrow pit number 27 from the project.

4. Borrow pit number 27 has been withdrawn from the project.

5 and 6. SNH as the FCS's advisors in relation to natural heritage issues have indicated that they are content that the proposed mitigation and controls for the crossing are acceptable. I note that the Community Council recently drew the attention of the applicant and FCS and its consultees to an alternative crossing. I trust that my comments above have already addressed this issue.

7a. As above.

7b. The applicants have stated that they will ensure that Argyll and Bute Council Environmental Health Department are aware of the conclusions of the Private Water Supply Survey. In addition Condition 5 of the EIA consent covers this aspect.

7c. I understand that discussions are underway and that Traffic Management for the construction of the road is currently being considered via condition 6.6 of the Carraig Gheal Wind Farm consent (Traffic Management Plan). In addition the EIA consent for the construction of the haul route covers this aspect under condition 9.

7d. Draft conditions were circulated to all consultees on 19 January 2010.

8. We have discussed your response with the applicants who uphold the conclusions (from their professional ecologists) of the Borrow Pits Ecological Report and the risk levels attached to it. SNH have also indicated that they are content with the report. The ongoing involvement of an on site Ecological Clerk of Works will ensure that any change in the risk levels are accounted for in the construction of the road and use of the borrow pits.

Avich and Kilchrenan Community Council's e-mail of 28 October 2009

The applicants submitted a clarification to the ES in relation to proposed section of the track which will run within a 1000m of the Eagles. The following documents which the Community Council have had sight of address the issue raised:

- West Loch Awe Timber Haul Route and Carraig Gheal Wind Farm Access Viewshed: Advice Note: Golden Eagles – prepared by RPS Group on behalf of the applicant (14 January 2010)

- Management Map and Future Forests and Habitats Map for the High Inan area of the Inverinan Forest Design Plan revision. **MAPs 1 and 2**
- Letter from SNH dated 18 January 2010 – SNH revised Conditions

Avich and Kilchrenan Community Council's e-mail of 25 January 2010

Conditions 16 and 17

It would be inappropriate for the EIA consent to include a condition that the B845 will not be used for timber haulage as Forestry Commission Scotland has no jurisdiction over the use of public roads. Equally the use of public funds for the construction of the road is not an issue that has to be addressed in the EIA process. Schedule 4 of the Regulation states that the following Environmental Factors have to be addressed:

- (a) Human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage; and
- (d) the interaction between the factors mentioned in paragraphs (a) to (c) above.

Certainly the expectation of the haul route project is that it will remove a significant volume of timber from a fragile rural road and we would expect certainly expect that to happen. It would however be inappropriate to say that the B845 will never be used as contingencies may exceptionally necessitate otherwise.

Condition 5 of the consent addresses the issue of emergency contingency plans for supply of Dalavich's water in the event of contamination should mitigation measures fail.

Thank you for letting me know of the alerts that have been sent to the EU Commissioners in respect of perceived breaches of the EU Birds Directives. SNH as FCS's advisors in relation to conservation matters have indicated that they are content for the project to progress and have not raised any potential breach of the EU Birds Directive. I also note that you have reported two planning issues, one in respect of the Wind Farm consent and the other on the WLATHR EIA procedure. FCS do not consider that these alerts and reports should hold up the issuing of the consent and are satisfied that the EIA procedures have been correctly followed.

I am afraid that I have had to cover a lot of detail in responding to your various letters and e-mails. Hopefully the prolonged dialogue and communication has helped you understand how we have arrived at the consent and any attached conditions. It may be though that you might still wish to contest the decision that has been made. Let me therefore outline the procedures you might follow if you are still not satisfied with the decision making process. Should the Community Council or anyone else wish to make an application to the Court of Session as a person 'aggrieved' by the granting of the consent then the following extract from the Regulation explains how to do this:

Application to the court by person aggrieved

19. - (1) On the application of any person aggrieved by the grant of consent, the court may make an order reducing the consent where it is satisfied that the consent was given contrary to whichever of regulation 15(3) or 17(7) applies in the case or that the interests of the applicant have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(2) An application to the court under this regulation shall be made within 6 weeks from the date of publication of the decision in accordance with regulation 16(b) or

17(8)(b).

(3) The court may by interim order, pending the determination of an application under this regulation, suspend the operation of the consent on such terms as it may think fit.

(4) In this regulation "the court" means the Court of Session.

Once again thank you for your involvement in the consultation exercise your input has been very valuable in helping Forestry Commission Scotland determine this project.

Yours sincerely

Nick Mainprize
Operations Manager
FCS Perth and Argyll Conservancy

A handwritten signature in black ink, appearing to read 'N. Mainprize', written over the typed name.