

Town and Country Planning (Scotland) Act 1997

CLOSING WRITTEN SUBMISSIONS

27 March 2017

on behalf of

HISTORIC ENVIRONMENT SCOTLAND

In relation to

Section 47 Appeal against the refusal of planning permission for the erection of 13 wind turbines and associated infrastructure at land located northwest of Steading Bar at Glenurquhart, known as Cnoc an Eas Wind Farm

DPEA REF: PPA-270-2155

Introduction

1. These are written submissions on behalf of Historic Environment Scotland relative to the appeal by Force 9 Energy Partners LLP and EDF Energy Renewables (the “Appellant”) against the refusal by The Highland Council to grant full planning permission for the construction of a windfarm comprising 13 turbines of up to 136.5m in height to blade tip at land northwest of Steading Bar at Glenurquhart, Highland (“the Application”).
2. Historic Environment Scotland was consulted on the Application and objected to the proposal by its consultation responses dated 19 August 2015, 29 March 2016 and 09 September 2016 [**HES17, HES20, HES21**].
3. The Highland Council refused the Appellant's Application. One of the reasons for refusal was "4. The application is contrary to Policy 67 (Renewable Energy) and Policy 57 (Natural, Built and Cultural Heritage) of the Highland-wide Local Development Plan ("HwLDP") and Scottish Historic Environment Policy as the impacts of the development would be detrimental to the setting of Corrimony Chambered Cairn scheduled monument."
4. The Appellant submitted an appeal under Section 47 of the Town and Country Planning (Scotland) Act 1997 (as amended) (“the 1997 Act”) against the decision of the Council to refuse the application for planning permission for the proposed development.
5. Historic Environment Scotland participated in the Inquiry Session held at Cannich Village Hall on 7 March 2017. That Inquiry Session was fixed to consider cultural heritage effects, specifically the impact of the proposed development on the setting of the scheduled monument known as Corrimony, chambered cairn 600m ESE of (SM90081).
6. Historic Environment Scotland prepared and submitted the following documents to the Inquiry:
 - a. Statement of Case
 - b. Inquiry Statement
 - c. Report prepared by Dr Ann MacSween [**HES15**]
 - d. Report prepared by Nicola Hall [**HES16**]
 - e. Report prepared by Victoria Clements [**HES17**]
7. Historic Environment Scotland led evidence, in the form of precognitions and oral evidence, from the following witnesses:
 - a. Victoria Clements
 - b. Dr Ann MacSween
 - c. Nicola Hall
8. Historic Environment Scotland did not participate in any aspect of the Public Local Inquiry other than the Inquiry Session dealing with the impact of the proposed development on the setting of the scheduled monument known as Corrimony, chambered cairn 600m ESE of (SM90081) and, accordingly, these submissions address that issue only.

Historic Environment Scotland's Remit and Role

9. Historic Environment Scotland is a Non Departmental Public Body, charged under the Historic Environment Scotland Act 2014 with safeguarding the nation's historic environment and promoting its understanding and enjoyment on behalf of Scottish Ministers.
10. The appropriate protection of scheduled monuments and their settings is a principle of national planning policies for the historic environment as set out in SPP **[CD3.8]**, Historic Environment Scotland Policy Statement **[CD5.2]** and Planning Advice Note (PAN) 2/2011 – Planning and Archaeology **[HES3]**, as described in detail within Historic Environment Scotland's Inquiry Statement.
11. Historic Environment Scotland's role in commenting upon a planning application relates to heritage assets where Historic Environment Scotland has a specific remit. In this case, Historic Environment Scotland's interest has been in the impact of the proposed development on the scheduled monuments and the setting of those scheduled monuments in its vicinity. Historic Environment Scotland is also a consultation body for developments requiring an Environmental Impact Assessment under the terms of the Environmental Impact Assessment (Scotland) Regulations 1999 as amended by paragraph 2 of the Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015.
12. On 1 October 2015 Historic Scotland merged with the Royal Commission on Ancient and Historic Monuments of Scotland (RCAHMS) to form Historic Environment Scotland. Under the terms of the Historic Environment Scotland Act 2014, granted Royal Assent on 9 December 2014, Historic Scotland was dissolved and its functions were transferred to Historic Environment Scotland. Historic Scotland was initially consulted on the application for this windfarm in August 2015. Following the merger in October 2015, Historic Environment Scotland assumed the role in the consultation process which was previously performed by Historic Scotland as an executive agency of the Scottish Government. For ease of reference Historic Environment Scotland is referred to as the consultation body throughout this submission.

National Policy and Guidance

13. The International Council of Monuments and Sites (ICOMOS) Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas **[HES22]** is the starting point for understanding the contribution that setting makes to the significance of heritage assets, and how they need to be carefully conserved and managed.
14. In policy terms, paragraph 137 of SPP **[CD3.8]** states that the planning system should *"promote the care and protection of the designated and non-designated historic environment (including individual assets, related settings and the wider cultural landscape) and its contribution to sense of place,*

cultural identity, social well-being, economic growth, civic participation and lifelong learning”.

15. Paragraph 137 goes on to state that *“change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting of the asset, and ensure that its special characteristics are protected, conserved or enhanced”.*
16. It is a matter of agreement between the Appellant and Historic Environment Scotland that, notwithstanding s.25 of the 1997 Act and policies within the HwLDP, any impact on the setting of Corrimony Chambered Cairn should, in terms of national guidance, be judged against the policy test at paragraph 145 of Scottish Planning Policy ("SPP").
17. Paragraph 145 of SPP states:

"Where there is potential for a proposed development to have an adverse effect on a scheduled monument or on the integrity of its setting, permission should only be granted where there are exceptional circumstances. Where a proposal would have a direct impact on a scheduled monument, the written consent of Scottish Ministers via a separate process is required in addition to any other consents required for the development."
18. Within the Glossary of SPP, "scheduled monument" is defined as *"Archaeological sites, buildings or structures of national or international importance. The purpose of scheduling is to secure the long-term legal protection of the monument in the national interest, in situ and as far as possible in its existing state and within an appropriate setting."*
19. Within the Glossary of SPP, "setting" is defined as being *"more than the immediate surroundings of a site or building, and may be related to the function or use of a place, or how it was intended to fit into the landscape of townscape, the view from it or how it is seen from areas round about, or areas that are important to the protection of the place, site or building."*
20. It is also a matter of agreement between the Appellant and Historic Environment Scotland that paragraph 145 has two separate strands, relating (a) to the *“potential for a proposed development to have an adverse effect on a scheduled monument”*; and (b) the *“potential for a proposed development to have an adverse effect on ... the integrity of its setting”*. The first strand relates to physical effects on the actual Scheduled Monument. The second strand relates to development within the surroundings of a Scheduled Monument when the monument itself is not directly affected. Only the second strand is relevant in the present case.
21. It is also common ground between the Appellant and Historic Environment Scotland that national policy for the historic environment stresses the preservation of both the site and the setting of scheduled monuments and

there is no distinction in terms of weight to be attached in the planning process between impacts on site and setting.

22. SPP does not define 'integrity' within the context of paragraph 145. Ms Clements set out Historic Environment Scotland's working definition of 'integrity' of the setting of a monument as meaning the key characteristics of the overall setting of the monument, which must remain intact and undiminished. These key characteristics are those elements of the setting that contribute considerably to the cultural significance of the monument and can include elements such as important views, relationships and 'sense of place, which will be different for every monument. Developments which would harm the integrity of the setting are changes that would decrease one's ability to draw on that relationship in understanding, appreciating and experiencing the monument. Thus, for a monument to retain the integrity of its setting, Historic Environment Scotland considers that there are key characteristics of the overall setting of the monument that must remain intact and undiminished. Ms Clements explained that while some developments may have an adverse effect on the setting of a monument, if they do not diminish one or more of the key characteristics then they are unlikely, on their own, to affect the integrity of the setting and diminish the cultural significance of the monument. Conversely, a development which alters one or more of the key characteristics (by disrupting or distracting from an important view or sense of place, for example) will have an adverse impact on the integrity of that setting and diminish the cultural significance of the monument as it will reduce the ability to understand, appreciate and experience the monument in its setting. There was no standard formula to the assessment of whether a development, for example, disrupts or distracts from an important view or sense of place and it involved an element of professional judgement to assess the setting effects.
23. This understanding of the meaning of 'integrity' in the context of the setting of a scheduled monument is consistent with the Corlic Hill appeal Decision Notice (CD6.3), wherein the Reporter found:
- a. "The setting guidance confirms that an understanding of the impact of a proposed change on setting should not be confined to whether key views to and from the asset are interrupted, but should also assess whether the proposed change would dominate or detract in a way that affects our ability to understand or appreciate the historic asset." (CD6.3 paragraph 131)
 - b. "...mere visibility from a scheduled monument of turbines at close range is not necessarily enough to undermine the integrity of its setting... [and] each case needs to be considered on its merits." (CD6.3 paragraph 132)
24. In putting this into context in respect of Corrimony Chambered Cairn, Ms Clements explained that Historic Environment Scotland considered that the key characteristics to be taken into account in assessing whether the integrity of the setting may be adversely impacted by the development included:

- a. the alignment of the passage and chamber (the passage and chamber are themselves key characteristics of monument itself);
 - b. the views to the southwest from the passage and views to the northeast towards, up and across the passage and chamber and towards the higher ground which forms the backdrop;
 - c. the sense of enclosure provided all around the Cairn by the valley sides and higher ground beyond providing the extent of the localised setting of the monument and the sense of being separated from the outside beyond that higher ground, all of which builds into a "sense of place" that is experienced within the setting of being in a quiet and relatively undeveloped rural landscape, which would have been important to the people who lived within the landscape and constructed the monument.
25. Ms Clements explained that taken together all of these contribute to the cultural significance of the monument and it was against that background that Historic Environment Scotland had assessed, within the consultation responses that she had prepared, that the proposed turbines would have a detrimental effect on some of those, which would diminish the integrity of the setting.
26. Within his evidence, Dr Carter explained that, within this context, he took from the term "integrity" that setting will change and the extent to which the changes will detract from the sense of wholeness of the setting denotes the impact upon the integrity of the setting. Ms Clements confirmed that Historic Environment Scotland and Dr Carter's interpretation of the integrity of setting are broadly similar and the differences of opinion or judgment are around the definition of the extent of the setting and what are considered to be the key characteristics of that setting and the level of impact that the turbines would have upon those key characteristics.
27. Mr Stewart's evidence was that he had "googled" the term "integrity" and that it meant "unity, wholeness, coherence, togetherness, solidarity". He indicated that one required to look at setting in the round in its entirety and that it involved the inter-relationship of all factors determining whether the integrity of the setting is interrupted or undermined.
28. Scottish Ministers' policies regarding the historic environment are further outlined in the Historic Environment Scotland Policy Statement 2016 **[CD5.2]**, as supplemented by PAN 2/2011: Planning and Archaeology **[HES3]**. Managing Change in the Historic Environment Guidance Note: Setting (2016) **[CD5.1]** is also relevant.
29. One of the key principles of the Historic Environment Scotland Policy Statement is that the conservation of any part of Scotland's historic environment should *"have regard to retaining, or where appropriate enhancing, the setting of the site, monument, building or landscape"* **[CD5.2, Paragraph 1.10]**.

30. The Policy Statement, in paragraph 3 of Annex 1, also explains that in order to be scheduled a monument must have a particular cultural significance **[CD5.2]**. It defines cultural significance as being *“inherent in the monument itself, its fabric, setting, use, associations, meanings, records, related monuments and related objects”*. Paragraph 5 of Annex 1 states that cultural significance includes intrinsic, contextual and associative characteristics.
31. Historic Environment Scotland’s Managing Change in the Historic Environment Guidance Note on Setting explains in Key Issue 1 that setting can be important to the way in which historic structures or places are *“understood, appreciated and experienced”* and that setting can often be *“integral to a historic asset’s cultural significance”* **[CD5.1]**.
32. The concept of sense of place is also emphasised in paragraph 137 of SPP **[CD3.8]**; page 2 of Our Place in Time: The Historic Environment Strategy for Scotland **[HES2]**; and in paragraph 2 of PAN 2/2011: Planning and Archaeology **[HES3]**.
33. In summary, the protection of the setting of the monument is required in national policy.
34. It is agreed between the Appellant and Historic Environment Scotland that there is the potential for impact on the cultural significance of the cairn through changes in its setting as a result of the presence of the development. In that context, the Appellant and Historic Environment Scotland also agree that best-practice guidance on the setting of historic assets is provided by Managing Change in the Historic Environment: Setting, published by Historic Environment Scotland in 2016 **[CD5.1]**. Section 1 of this guidance note sets out the definition of 'Setting' and it is agreed that this definition should be used in the present case. That definition is as follows:
- ‘Setting’ is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced. Monuments, buildings, gardens and settlements were almost always placed and orientated deliberately, normally with reference to the surrounding topography, resources, landscape and other structures. Over time, these relationships change, although aspects of earlier settings can be retained. Setting can therefore not simply be defined by a line on a map, and is likely to be unrelated to modern landownership or to curtilage, often extending beyond immediate property boundaries into the wider area.*
35. Section 3 of this guidance note sets out a three-stage approach to assessing the impact of change in setting in the context of development and it is agreed by both the Appellant and Historic Environment Scotland that this approach should be followed in the present case. Those stages are:
- a. Stage 1: identify the historic assets that might be affected by the proposed development.

- b. Stage 2: define and analyse the setting by establishing how the surroundings contribute to the ways in which the historic asset or place is understood, appreciated and experienced.
 - c. Stage 3: evaluate the potential impact of the proposed changes on the setting, and the extent to which any negative impacts can be mitigated.
36. Historic Environment Scotland agrees with the Appellant's position, as set out within their Inquiry Statement **[APP1]** at para 3.16, that 'Change in setting' refers to a neutral description of the way in which a proposed development would change the surroundings of an historic asset and 'Impact on setting' refers to the way in which any change in the surroundings would affect the contribution it makes to the cultural significance of an asset.
37. Whilst the Appellants and Historic Environment Scotland agree that the three stage approach is the correct approach to adopt and that this was the approach adopted in the present case, they do not agree regarding the extent or key characteristics of the setting or the degree to which the proposed wind farm would impact upon the integrity of the setting of Corrimony Chambered Cairn. In this context, it is agreed between the Appellant and Historic Environment Scotland that this difference of opinion reflects both conclusions regarding the contribution that setting makes to the cultural significance of the asset and the impact of the proposed wind farm on that contribution.
38. It is further agreed by both the Appellant and Historic Environment Scotland, that the relevant criteria for and guidance on the determination of the "National Importance" for Scheduling of Monuments is that found at Historic Environment Scotland Policy Statement **[CD5.2]**, Section 3: Annex 1, page 49. Within his evidence, Dr Carter confirmed that whilst the guidance groups the characteristics relevant to cultural significance into 'intrinsic', 'contextual' and 'associative', the guidance does not prioritise what is inherent in the monument itself against other factors including its setting.

Highland-wide Local Development Plan

39. The HwLDP addresses renewable energy developments within Policy 67. This provides that the Council will assess development proposals against other policies of the development plan, the Highland Renewable Energy Strategy and Planning Guidelines and have regard to any other material considerations; and, subject to balancing with these considerations and taking into account any mitigation measures to be included, the Council will support proposals where it is satisfied that they are located, sited and designed such that they will not be significantly detrimental overall, either individually or cumulatively with other developments, having regard in particular to any significant effects on various listed matters, including natural, built and cultural heritage features.
40. Policy 57 of the HwLDP provides that "All development proposals will be assessed taking into account the level of importance and type of heritage features, the form and scale of the development, and any impact on the feature and its setting" and , in particular, "*For features of national importance*

we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services” (CD3.1 s.21.2.1)

41. Historic Environment Scotland, as a key agency, advised The Highland Council on its local development plan policy for the historic environment and has confirmed that the policy, as adopted, has been found to be compliant with the principles as set out in Scottish Planning Policy.
42. The Appellants, and in particular Mr Stewart, criticise Historic Environment Scotland for not having taken the HwLDP into account in carrying out their role as statutory consultee; in setting out their objection to the Application; and in its evidence to the Inquiry. As was made clear within the evidence of Ms Clements, Historic Environment Scotland's role as statutory consultee is to apply national policy and Historic Environment Scotland guidance in its assessment of planning applications, which ensures that a consistent approach is taken in the performance of its role as statutory consultee. It is the role of a planning authority to apply its own policies. Historic Environment Scotland is not in a position to give evidence on The Highland Council's application of the policies set out within the HwLDP. Therefore, it is simply noted that one of the reasons for The Highland Council's refusal of the proposed wind farm was on the basis that it was contrary to the Highland Council's Highland-Wide Local Development Plan Policy 57 (Natural Built and Cultural Heritage). Further comment is made in para 109 below in respect of the Appellants' attempt to equate the provisions of policy 57 of HwLDP in relation to economic benefits of national importance to the provisions of para 145 of SPP in relation to 'exceptional circumstances'.

Grounds of Objection

43. Historic Environment Scotland's position on the Appeal is set out in its consultation responses dated 19 August 2015, 29 March 2016 and 09 September 2016 [CD2.1f, CD2.2e, CD2.3f], which are adopted herein for the sake of brevity.
44. Historic Environment Scotland's objection is that the proposal will have a significant adverse effect on the integrity of the setting of a scheduled monument: Corrimony, chambered cairn 600m ESE of (SM 90081) [HES1], which is also a Property in the Care of Scottish Ministers. Historic Environment Scotland's position is, further, that the Appellant does not set out "exceptional circumstances" which might justify the granting of planning permission despite these adverse effects, as would be required in terms of paragraph 145 of Scottish Planning Policy [HES2].
45. In Historic Environment Scotland's view, meaningful mitigation could only be achieved by the relocation of all of the turbines away from the area directly

above the cairn when viewed from the entrance passage to the chambered cairn, or by a substantial reduction in height of all of the turbines.

Highland Council's refusal of permission

46. One of the reasons for The Highland Council's refusal of the planning application was the significant adverse impact on the setting of Corrimony. The Council's position was that the development was contrary to their own policy for the historic environment.
47. The Council's Historic Environment Team, in an email dated 2 November 2015 to the Council's planning department objected to the application based on the significant impact on the setting of Corrimony. They stated that the proposed development will be "*an incongruous feature in the landscape that would detract from the setting of a nationally important archaeological site. The introduction of large scale industrial elements in views from this monument will significantly impact the ability to appreciate, experience and understand the cultural landscape*" **[HES 19]**.
48. Historic Environment Scotland note that The Highland Council's Historic Environment Team share Historic Environment Scotland's opinion that the setting of the monument includes the views to the northeast **[CD2.1aa]**, and that that the proposed turbines would have a significant adverse impact on the setting of the monument **[CD2.1aa]**.

Consultation with Historic Environment Scotland

49. Historic Environment Scotland was consulted on a proposal for a wind development in this location at pre-application stage in 2013. Historic Environment Scotland highlighted its concerns over the potential impacts of the proposals on the site scheduled as Corrimony chambered cairn 600m ESE of (SM 90081) in a letter of 12 August 2013 **[HES 9]**.
50. Historic Environment Scotland was consulted on the present proposal at scoping stage in 2014. Historic Environment Scotland again highlighted its concerns over the potential impacts of the proposal in a letter dated 11 December 2014 **[HES 10]**.
51. It was suggested to Ms Hall during the Inquiry Session that, in advising the developers at a very early stage that the development proposed was unlikely to be acceptable in its current form, Historic Environment Scotland had pre-judged the application and arrived at premature conclusions. Ms Hall's evidence was that this was not the case: Historic Environment Scotland had considered the information submitted at pre-application stage, including photo-montages, and had provided preliminary advice to the developer. As a key agency, Historic Environment Scotland is a successor party to the Joint Statement by Architecture and Design Scotland, Forestry Commission

Scotland, Historic Scotland, Scottish Environment Protection Agency, Scottish Natural Heritage, Scottish Water and Transport Scotland on pre-application engagement for National and Major Developments. It is stated at page 2 of that Joint Statement that "Pre-application engagement should be seen as an integral part of the planning process. The benefits of effective pre-application engagement can lead to a more efficient planning application process with shorter timescales and more effective use of resources." It is further set out at the first paragraph on page 5 of the Joint Statement that the agencies concerned undertake to "seek, as early as possible, to identify constraints of such significance that would make it difficult to achieve planning permission or other consents." Historic Environment Scotland applied the approach set out within the Key Agency Joint Statement in this case.

52. Between January and May 2015, following scoping stage, Historic Environment Scotland was in contact by email with Headland Archaeology Ltd, on behalf of the developer, to discuss the proposals and potential mitigation although no details of any mitigation were provided [HES11-16]. Historic Environment Scotland reiterated its concerns over the potential significant adverse impacts of the proposals, and requested that details of any proposed mitigation should be provided before any meeting to enable a view on such mitigation to be reached and in order to hold meaningful discussions. As no details of any proposed mitigation were provided, a meeting was not held.
53. Historic Environment Scotland was consulted on the planning application and associated Environmental Statement (ES) for the proposed windfarm in July 2015. Historic Environment Scotland assessed the proposal and concluded that an objection was required as the application would have a significant adverse impact on the integrity of the setting of an asset of national importance. In their response dated 19 August 2015 [HES 17], Historic Environment Scotland's objection was made on the grounds of the windfarm's impact on Corrimony, chambered cairn. This response was drafted by Ms Clements, who co-ordinated input from colleagues. Ms Hall considered the Appellant's Environmental Statement [CD3.1] and provided text to Ms Clements that was included within the Consultation Response letter.
54. In the Statement of Appeal dated July 2016 (paragraph 3.88), it is stated that Historic Environment Scotland has failed "*to fully and properly apply the recommended three-stage assessment process and, as a result, arrive at flawed conclusions.*". Historic Environment Scotland disputes this and gave evidence of proper assessment of the impacts having been undertaken, following the three stage process set out within Historic Environment Scotland's guidance.
55. Ms Clements and Ms Hall both gave evidence that the purpose of the letter dated 19 August 2015 [HES17] was to provide advice to The Highland Council by responding to and providing comment on the assessment presented in the Environmental Statement in fulfilment of Historic Environment Scotland's role as a consultation body under the Town and Country Planning Environmental Impact Assessment) Regulations 2011.

When carrying out the assessment of the application Historic Environment Scotland followed the assessment process as laid out in their own Managing Change in the Historic Environment guidance note on Setting. Having followed the three stage process, Ms Hall advised that she prepared a written summary of her assessment for the purpose of the Consultation Response, which Ms Clements advised was included by her within the Consultation Response. In providing her contribution to the Consultation Response, Ms Hall advised that she provided a summary, which took into account her review of the Appellant's Environmental Statement and the internal discussions and consideration of it that had taken place within Historic Environment Scotland, but did not seek to re-rehearse its full content. The conclusion of the annex to the consultation response does not directly quote from SPP but highlights the relevant test in the policy. The Appellant sought to criticise Ms Hall for not having prepared a fully detailed written assessment to sit behind the Consultation Response, which could be examined by the Appellant; and suggested that the absence of such a document indicated a lack of proper process or consideration. The Appellant pointed to no policy or guidance requiring such a document to be produced and did not suggest that production of such a document was standard practice. Ms Hall was clear in her evidence that she had carried out a proper assessment and the Consultation Response reflected her conclusions; the heritage asset was identified, its setting was defined and an assessment of impacts on that setting was undertaken. Ms Clements also confirmed within her evidence that, unlike an Applicant who requires to produce a full assessment within its Environmental Statement, what is required of a statutory consultee is to provide the planning authority with a Consultation Response; and as such, there is no need for Historic Environment Scotland to produce a full written assessment in writing or purposes to be served by doing so. Ms Clements confirmed during re-examination that Historic Environment Scotland did not produce full written assessments in other cases, The approach taken in this case was therefore in accordance with Historic Environment Scotland's standard working practices.

56. Historic Environment Scotland was also criticised for a lack of clarity as to its specific knowledge of Corrimony Chambered Cairn at the time of submitting its consultation response and, in particular, Ms Hall's inability to confirm for the benefit of the Reporter under cross-examination, whether she had visited the monument during the consultation period which led to HES' consultation response of 19 August 2015. First-time witness Ms Hall was anxious not to mislead the Inquiry, so advised that she had visited the site on various occasions, including before and after preparing her section of the consultation response. She was not, however, able to recall whether she had done so between the consultation being initiated on 22 July 2015 and the response being submitted on 19 August 2015. Ms Hall's evidence was that, in any event, whilst Historic Environment Scotland was not always in a position to visit the sites at the point of responding to planning applications, in this instance, regardless of dates upon which she had personally visited Corrimony, Historic Environment Scotland had a wealth of resource, including colleagues who had also visited the site, upon which she was able to call. Upon her return to her office, following the conclusion of her evidence, Ms

Hall has had the benefit of consulting with her office records and, with a view to assisting the Reporter and other parties on this point, has advised that she first visited the site at Corrimony on 22 October 2014, and thereafter visited the site on 10 March 2015, 4 May 2016 and then again on 13 December 2016. The fact that Ms Hall visited the site only a few months before the consultation was initiated (10 March 2015) but could not under cross examination recall the precise date explains her reluctance to confirm one way or the other whether she had visited the site within the consultation period, This only serves to underline Ms Hall's evidence that the statement within paragraph 11 of her precognition [HES30], and indeed Historic Environment Scotland's consultations response, was not simply a "paper exercise", as had been suggested on behalf of the Appellant.

57. Having indicated that in carrying out her assessment of the Environmental Statement and preparing her contribution to the consultation response she had worked with colleagues as a team and also applied her own professional judgement, Ms Hall acknowledged that she had not specifically had the benefit of Dr MacSween's detailed Report, which was prepared to assist the Reporter. As Ms Hall indicated, her evidence and that of Dr MacSween overlapped and was complimentary.
58. As was set out within its consultation response, the conclusion reached by Historic Environment Scotland was that the proposals will have a significant adverse impact on a key characteristic of the setting of the scheduled monument which will have a significant adverse effect on the integrity of the setting of the monument. It is for the Reporter to determine as to whether there are any exceptional circumstances that would nevertheless warrant the grant of planning permission in terms of paragraph 145 of SPP. In Historic Environment Scotland's view, there are none.
59. Supplementary environmental information for the application was submitted in March 2016 with minor changes to the scheme, although no change to the height or location of the turbines was proposed. As the changes did not alter the level of impact on the historic environment, Historic Environment Scotland maintained its objection to the application in a response dated 29 March 2016 **[CD2.2e]**
60. Following the submission of the appeal against refusal of planning permission for the application, additional environmental information was produced. No alterations to the height or locations of the turbines were proposed and the level of impact to the historic environment did not alter. Historic Environment Scotland, therefore, maintained its objection in a response dated 09 September 2016 **[CD2.3f]**.
61. In Historic Environment Scotland's view, meaningful mitigation could only be achieved by the relocation of all of the turbines away from the area directly above the entrance passage to the chambered cairn, or by a substantial reduction in height of all of the turbines.

62. In considering the proposal, Historic Environment Scotland has undertaken its assessment in line with current policy and guidance. Its expert opinion as national advisory body on the historic environment is that the proposal will have a significant adverse impact on the integrity of the setting of a cultural heritage asset of national importance.

Historic Environment Scotland's Position on Assessment Methodology

63. Historic Environment Scotland stated in its consultation response dated 19 August 2015 **[CD2.1f]** that the methodology of assessment used in the Environmental Statement for the application was appropriate. However, they disagreed with the significance attached to the impact predicted in the Environmental Statement.

64. Within his evidence in chief, Dr Carter referred to SPP145, and gave evidence that in applying a finding of magnitude of effect, of which only applies to scheduled monuments, one cannot double-count the fact that it is a scheduled monument. It appeared, therefore, that Dr Carter was suggesting that he did not consider that the magnitude of effect result arising from the table in the Environmental Statement to which he was referring, i.e. Tables 11.2, 11.3 and 11.4 within Chapter 11 of the Environmental Statement should be given the weights attributed within those Tables. At paragraph 11.135 of the Environmental Statement, there had been a finding of high importance; low magnitude, moderate significance: all of which resulted in a significantly adverse effect. It appeared, therefore, that Dr Carter was moving away from the position set out within the Environmental Statement and suggesting a lower magnitude of effect than was set out within the Environmental Statement. It further appeared that what Dr Carter was suggesting was that the assessment process should be halted at the magnitude of effect stage and not follow through to Table 11.4 to assess the significance of effect. In doing so, that avoids coming to the full conclusion that there was a significant effect and essentially puts the low magnitude of effect into the policy test, which, in Historic Environment Scotland's view would be an incorrect methodology.

65. Dr Carter, having given evidence that 'setting' is not a subsidiary consideration in relation to a monuments' cultural significance (in terms of "National Importance" for Scheduling of Monuments is that found at Historic Environment Scotland Policy Statement **[CD5.2]**, Section 3: Annex 1, page 49), clarified that, when he had said in his precognition that "Cultural Significance of the Cairn (and the reason for its designation as a Scheduled Monument) resides primarily in its intrinsic characteristics" he was not ranking the Scheduled Monument's 'intrinsic' characteristics ahead of its 'contextual' or 'associative' characteristics, but did consider that for Corrimony the bulk of its significance lies in its intrinsic characteristics. Dr MacSween's evidence on this point was that Corrimony's national importance flowed from a combination of its intrinsic, associative and contextual characteristics and that one should not separate them out. Each of Historic Environment Scotland's witnesses provided the Inquiry with evidence of the intrinsic, contextual and associative characteristics of the monument. Dr MacSween's Report **[HES15]** provided

the Inquiry with detailed evidence as to the construction of the monument (shape, use of coloured and cup-marked stones, etc.), which are its intrinsic characteristics; the positioning of the monument within a rural setting on a flat valley bottom in an area surrounded and enclosed by higher ground, which are contextual characteristics; and the alignment of the passage of the cairn on a northeast/ southwest axis and what that tells us about the location of such monuments, which are associative characteristics. Thus Dr MacSween agreed with Dr Carter that the Scheduled Monument's 'intrinsic' characteristics should not be ranked ahead of its 'contextual' or 'associative' characteristics, but could not agree with his judgement that for Corrimony the bulk of its significance lies in its intrinsic characteristics only.

66. It is only by diminishing the importance of the associative characteristic of the view to the northeast (i.e. attributing it a lower ranking), or discounting it as a key characteristic of the setting of the monument entirely, that the Appellant is able to produce the assessment of 'low magnitude of effect' on the integrity of the setting of Corrimony Chambered Cairn.

Description of Corrimony

67. The Appellant and Historic Environment Scotland agree that this heritage asset is designated as a nationally important scheduled monument; is a prehistoric ritual or ceremonial monument dating to the Bronze Age (2,500 BC to 800 BC), belonging to a group of monuments known as 'Clava Cairns' - a distinctive type of site located in and around the Moray Firth which include some of the attributes of passage graves, ring cairns and stone circles. As one of the best examples of a 'Clava Cairn', it is a Property in the Care of Scottish Ministers. Corrimony comprises a large cairn of water-worn stones, a passage which leads to the centre of a stone-built chamber, and a large cup-marked stone (possibly the original capstone). Surrounding the cairn are 11 standing stones which form a circle and are graded in height. Excavations in 1952 revealed traces of what is thought to be a crouched human burial beneath the chamber floor.

68. Historic Environment Scotland explained in evidence that the setting of heritage assets is recognised internationally, and is protected in Scotland by paragraph 145 of Scottish Planning Policy, which is accepted by the Appellants.

The setting of Corrimony

69. Having regard to the Managing Change in the Historic Environment Guidance Note on Setting **[CD5.1]**, which advises that where development is proposed, it is important to (i) identify the historic assets that might be affected, (ii) define the setting of each historic asset and (iii) assess the impact of any new development on this, Historic Environment Scotland explained in evidence what it considers the setting of the monument to be, how its setting adds to our understanding, appreciation and experience of the monument and how this in turn adds to its cultural significance.

70. This assessment includes factors which are identified in Historic Environment Scotland's Managing Change Guidance on setting such as:

- a. the current landscape context
- b. the character of the surrounding landscape
- c. views to, from and across or beyond the historic asset or place
- d. general and specific views including foregrounds and backdrops
- e. relationships with other features
- f. aesthetic qualities, non-visual factors and sensory factors
- g. sense of place

71. The passage of Corrimony faces to the southwest, with a reciprocal view towards the northeast. The Appellant's evidence is that only the view to the southwest is relevant to an understanding of the cultural significance of the monument. Historic Environment Scotland's evidence is that the reciprocal view to the northeast is equally important in being able to understand, appreciate and experience the monument and to its cultural significance. Both the Appellant and Historic Environment Scotland's witnesses agree that the passage leading to the chamber is a key characteristic of the monument; it is open and is how one approaches the chamber within the monument. It is also agreed that the area in front of the passage is key in being able to understand the monument.

72. Dr Carter's evidence was that the cultural significance of Corrimony Cairn resides primarily in its intrinsic characteristics. Dr Carter confirmed in cross-examination that the criteria for and guidance on the determination of the "National Importance" for Scheduling of Monuments can be found at Historic Environment Scotland Policy Statement **[CD5.2]**, Section 3: Annex 1, page 49. He confirmed that whilst the guidance groups the characteristics relevant to cultural significance into 'intrinsic', 'contextual' and 'associative', the guidance does not prioritise what is inherent in the monument itself against other factors including its setting. Dr Carter also confirmed that 'setting' is not a subsidiary consideration in relation to a monuments' "Cultural Significance" and clarified that, when he had said in his precognition that "Cultural Significance of the Cairn (and the reason for its designation as a Scheduled Monument) resides primarily in its intrinsic characteristics" he was not ranking the Scheduled Monument's 'intrinsic' characteristics ahead of its 'contextual' or 'associative' characteristics. Dr Carter advised that what was required for each site was a Site Specific Assessment of the monument concerned. Dr Carter further gave evidence that he accepted that the passage to Corrimony Chambered Cairn is a key characteristic of that monument.

73. Dr Carter's evidence was also that there are many view points from which to view Corrimony Chambered Cairn. His view was that whilst the horizon to the north east was the backdrop to the view of the Scheduled Monument, it was not part of its cultural significance. This was as opposed to the view to the horizon to the south west of the monument, which he did consider to be part of the cultural significance of Corrimony Chambered Cairn. His evidence was that the contribution that setting makes to the cultural significance of

Corrimony Chambered Cairn largely stems from a general appreciation of the placing of the Cairn in the local landscape, within an area of 2km of the Cairn. He accepted that there was no policy or guidance on the distance to which the setting of a monument extends. He also accepted that it was appropriate to apply stage 2 of the Historic Environment Scotland Setting Guidance, which can be found at page 9 of that document [CD5.1].

74. Dr Carter explained that the monuments' setting took in the whole valley landscape, including the valley sides and, in relation to the viewing directions, he considered that the views extended indefinitely into the distance. He also gave evidence, however, that it was not distance but orientation that was the important factor and, in particular, what the moon did in the direction of the southwest that was key to the contribution of our appreciation of the Bronze Age ritual practices at Corrimony Chambered Cairn. Dr Carter further expanded that he had reached the view that the long distance views or views to the horizon to the northeast are of less relevance to those views to the southwest of Corrimony Chambered Cairn based on his understanding of the cultural significance of Clava passage graves and their interpretation as ritual monuments. He advised that the passages face into the southwest quadrant and that is a key characteristic of such monuments. He advised that, in his view, this was related to the lunar calendar. His evidence was that the typical position of the passage of these Cairns is connected to the lunar standstill, which is what takes us to the horizon to the southwest. His view was that there was no such evidence to take us to the northeast horizon, except at the chambered burial cairns at Balnuaran of Clava.
75. Dr Carter had highlighted, within paragraph 3.7 of his precognition [APP29], a passage quoted from Bradley's "The Good Stones" [HES23 at page 126]. This passage highlighted that, whilst Clava Cairns are usually considered to be aligned with the positions of the moon, the monuments at Balnuaran of Clava seemed to be unusual in emphasising important solar alignments. The quote referred to continued "What is so unusual about the passage-graves at Balnuaran of Clava is that they were also aligned on the sun... That suggests that they may have encapsulated a greater body of symbolism than other monuments of this kind. As we shall see, that is also evident from their use of coloured stones." [HES23 at page 126]. Dr Carter advised that, in light of this passage of text, that at Balnuaran of Clava, both views to the southwest and views to the northeast are key for the setting of those Cairns. He explained that this was both because of the alignment on the mid-winter sunset and the alignment of the five easterly monuments to the sun-rise to the northeast. Dr Carter made reference to the plan within Bradley's volume at page 126, to illustrate this. Dr Carter further explained that not all Cairn types have a northeast/southwest alignments and that these are defining features of the Clava group of Cairns.
76. Dr Carter confirmed that Corrimony is a northeast/southwest aligned Cairn. When asked if Corrimony Chambered Cairn had been studied to the same extent as Balnuaran of Clava, Dr Carter indicated that Balnuaran of Clava was the most well-known. Dr Carter's evidence was that, when he says within his precognition that the solar alignments are characteristics "special to

Balnuaran of Clava", we should understand from that that his view is that we should interpret the word "unusual" in Bradley's text referred to above as meaning "unique" and referenced Bradley having drawn no parallels between Balnuaran of Clava and other Clava sites in this respect. Dr Carter, thereafter, conceded that it was possible for a less well-studied passage-grave than those at Balnuaran of Clava, with a northeast/southwest alignment, to have been built to relate to the winter sun as well as the lunar cycle. In relation to Corrimony, however, Dr Carter's view was that whilst Corrimony did indeed have a northeast/southwest alignment, in the same way as the passage-graves described by Bradley, his view was that the precise alignment was not the same for Corrimony and that it was in fact positioned in the wrong direction to catch the mid-winter sunset. As such, he adhered to his view that Corrimony Chambered Cairn, despite having a northeast to southwest alignment in the same way as those at Balnuaran of Clava described in Bradley, only aligned with the minor lunar standstill. It was for this reason that Dr Carter adhered to his previously stated view that the presence of windfarm turbines within the views to the northeast of Corrimony Chambered Cairn would not in themselves be harmful to the cultural significance of Corrimony.

77. Under reference to Section 6 of the Historic Environment Policy Statement **[CD5.2]**, at page 49 of Annex 1, which states "Understanding of cultural significance may change as a result of the continuing history of the monument, or in the light of new information, or changing ideas and values", Dr Carter agreed that the policy implies that our understanding of a heritage asset and what makes up its setting may change over time in light of new evidence. Dr Carter also confirmed that the surroundings of a heritage asset may change over time and that while setting can be considered in terms of key views, site lines, sensitive horizons/ridge lines etc., a heritage asset does not have a fixed setting that can be definitively plotted onto a map for all time. His view was that whilst it may be useful to plot setting onto a map, it was not a red line.
78. Dr Carter accepted that the standard approach within the study of archaeology is that the understanding of sites is advanced by taking the work carried out in detail at one site and looking at the conclusions in relation to their fit with what we know about other sites and that ideas should be tested against other sites. In relation to assessment of Clava Cairns, Dr Carter confirmed that he was not aware of any investigation in relation to Clava Cairns having been carried out since the publication of "The Good Stones", which was published in 2000. Dr Carter's view was that whilst this work was undertaken and published prior to the concept of setting having been defined in policy and guidance, what was undertaken by Bradley was a very thorough work regarding the understanding of the setting of Clava Cairns. In his view, that work addressed the issue of setting head on.
79. Dr Carter's position was that he would have much greater concern about proceeding with a development in light of a developing understanding of the cultural significance of chambered cairns if what was about to be undertaken was something irreversible. As such, Dr Carter's position appeared to be that,

because wind turbines could be dismantled at some point in the future should there be a change in the understanding of their impact upon the integrity of the setting of Corrimony Chambered Cairn, that should not prevent planning permission being granted at the present time. This is directly at odds with SPP paragraph 170, which, as was highlighted within the precognition of Ms Clements at paragraph 9, makes it clear that windfarms should be suitable for use in perpetuity, sited and designed to ensure impacts are minimised **[CD3.8, para170]**. In his re-examination Mr Trinick elicited responses from Dr Carter to the effect that notwithstanding the terms of paragraph 170 of SPP the potential reversibility of a development was nevertheless a relevant planning consideration. With respect, that is a distinction without a difference. If a windfarm site would not be suitable for use in perpetuity then planning permission should be approved notwithstanding the fact that the planning permission may be time limited.

80. Historic Environment Scotland's evidence as to the setting of the monument was agreed by the Appellants in certain respects, however Dr Carter took issue with various aspects of the evidence of Dr MacSween. Dr MacSween addressed Dr Carter's criticisms within her evidence.
81. Dr MacSween clarified that the reason that she considered Bradley's interpretation regarding the group of monuments at Balnuaran being built to a pre-determined plan was relevant to Corrimony by reference to the features that Audrey Henshall had used to define the group [HES24, pages 22-24] wherein she describes a round cairn defined by a kerb of orthostats, a passage facing to the southwest and leading to a corbelled chamber, also lined by orthostats and finished by a cap-stone; a platform around the Cairn and a stone circle around that. Dr MacSween explained that these features are replicated from site to site, something that she highlighted as accepted by Dr Carter within his precognition at paragraph 3.2, and that she considered that the final form of Clava Cairns must have been envisaged at the outset of building, otherwise one would expect much more variation in the features from one site to another. In short, Dr MacSween's evidence was that, when building the Clava Cairn at Corrimony, the architects had the design of the Cairn in mind and that was why she considered it relevant to highlight that the monument had been built to a pre-determined plan, as referenced in Bradley.
82. Dr Carter had criticised, within his evidence, Dr MacSween's consideration that the alignment of the Cairns indicated an interest in the rising and setting sun had relevance at Corrimony. Dr MacSween's evidence was that the fact that ten of the Clava Cairns are aligned to the southwest contrasts with other Cairn types. Dr MacSween referred to figure 46 in Henshall & Ritchie [HES27]. In Dr MacSween's view, the simplest explanation for this alignment is that the community, which lived and farmed within the river valley, were marking the setting of the sun around mid-winter. The sun sets facing the chamber entrance at the southwest. Dr MacSween expanded that she believes that the whole axis is important to those who built and used the Cairns, not just the southwest end of the structure because of the variation of the heights of the stones, with the higher stones beside the entrance to the Cairn and the lowest ones at a point directly opposite. The importance of this

axis has been accentuated by the use of feature stones, for example the cup-marked stone in the kerb of the northeast-passage grave at Balnuaran of Clava or the red stones within the passage at Corrimony. Dr MacSween confirmed that the monument is bounded on all sides by higher ground and that she and Dr Carter were in agreement on that point.

83. Dr MacSween's evidence was that Corrimony is still very important and is the most complete example of a Clava type passage grave and has the longest extent of roofed passage. She confirmed that her section on the interpretation of Corrimony Chambered Cairn was primarily based on Bradley [HES23] but that the quote from Henshall [HES24] is still important.
84. In relation to the paragraph that Bradley referred to at page 125, where he is talking about the alignment of the cairns, Dr MacSween's view was that he was talking about the alignment of the passages and the alignment of the cemetery as a whole in relation to Balnuaran of Clava. That did not detract from her view that at Corrimony the alignment of the single cairn was relevant and that Bradley's interpretation was relevant to Corrimony in that respect. In relation to lunar alignments, Dr MacSween advised that she had a healthy respect for the lunar standstill theory and its proponents but that, in her view, the lengthening and shortening of the day would have been at least as important to the communities who built and used Corrimony cairn. Marking an annual solstice seemed a more likely reason than a minor lunar standstill which only occurred every 18 years or so. As such, she was attaching less importance than Bradley [HES23] or Dr Carter to lunar episodes.
85. Overall, Dr MacSween's position was that when we interpret sites we look at all of the possibilities and interpretations. In her view, interpretation is not something static; we have to take the best fit of the evidence available and apply it in each individual case. Dr MacSween indicated that for everyone in the room there would be a difference of experience. However, a shared experience in coming to an understanding of the site was likely to be that one would stand at the entrance passage and align oneself with it and walk/process around the monument taking in the views from all directions, including looking up the passage and all around the chamber and site. Dr MacSween agreed with the proposition that one required to be careful not to over-extrapolate from the information available.
86. In respect of evidence, other than Bradley, for the application of the sun's alignment at sites other than Balnuaran or Clava, Dr MacSween referred to Henshall & Ritchie [HES27] at page 120, referencing figure 46 which showed the alignment as being a south-westerly alignment. Dr MacSween's evidence was that this indicates an interest in the mid-winter sun and considered that the most logical explanation is that the south-westerly alignment is an interest in the alignment to the mid-winter sun. In relation to Bradley saying that "the monuments at Balnuaran of Clava seem to be unusual in emphasising important solar alignments", Dr MacSween's position was that the entrance of the Clava passage graves are directed to the south-west and aligned south-west/northeast and that is relevant to the sunrise and sunset in midwinter and midsummer. In Dr MacSween's view, further research requires to be done in

relation to this. Dr MacSween advised that she had not seen the moon shine down the passage but that for people living on the land, the sun and the moon would both have been important to them.

87. In relation to Dr Carter's evidence that he sees the primary characteristics of Corrimony Chambered Cairn as coming from its intrinsic characteristics, Dr MacSween could not agree and her evidence was that it was a combination of all of the characteristics (i.e. intrinsic, associative and contextual) and that one required to look at all of the characteristics, the monuments' position in the landscape, etc.) to enable there to be a determination of the setting of the monument. In Dr MacSween's view, the characteristics are not exclusive; they require all to be considered together.
88. Dr MacSween was referred to SPP145 and it was put to her that in order to measure the impact of cultural significance on a monument she would be relevant to know what contributes to its cultural significance. Dr MacSween's evidence was that setting does not just stop at the boundary of a Property in Care. The placement of a monument within the landscape contributes to the cultural significance of Corrimony, with this site positioned on a flat valley bottom within a community and surrounded by higher ground. From this, Dr MacSween's evidence was that it was possible to understand that setting today. Dr MacSween's position was also that, with regard to the associative characteristics, even if that was not possible for the parties to agree on whether it was the sun or the moon that was a greater significance, the north east/ south west alignment remained important and would take the setting of Corrimony to the horizon.

The adverse impact on Corrimony

89. In their Appeal Statement the appellant claims that the monument can be appreciated within its "local valley landscape" which only extends to "*within 2km of the cairn*", and that the south-western orientation of the passage is the key characteristic of the monument (Sections 3.54 to 3.55). In Historic Environment Scotland's opinion, the appellant provides a very narrow definition of the setting of the monument. It focusses on views from the monument towards the southwest from the passage of the monument. The Appellant's definition is also based on generalisations made about the siting of Clava Cairns i.e. that they are located in inconspicuous positions and that long-distant views are not important.
90. The development site boundary would be located approximately 3km to the northeast of Corrimony. All 13 wind turbines of up to 136.5m to blade tip height would be highly visible in a key view from the monument to the northeast on the skyline at a distance of approximately 4km to the nearest turbine. VP CH01 (Figure 11.3 of the ES) demonstrates how these large-scale, moving turbines would appear not just in this important view, but also directly above the passage. This is one of the key features of the monument and is also how one approaches the monument.

91. Views of the surrounding landscape are available from the monument in all directions. However, were the development to be permitted, all 13 turbines would be present in the view to the north-east directly above the entrance passage to the chamber. Large-scale, prominent, industrial and moving elements would be introduced into this view which Historic Environment Scotland considers to be an integral part of the setting of the monument.
92. This adverse impact will be particularly significant as one approaches the passage of the monument as, at this point, one is aligned towards the position of the development. This is because there is a foreshortening effect, whereby the immediate flat landscape to the northeast of the monument is effectively blocked from view, making the turbines appear more dominating and prominent. This will significantly impact on the ability to understand, appreciate and experience the monument.
93. Dr Carter confirmed that the proposed turbines were within the setting of the scheduled monument and that, when considering paragraph 137 of SPP **[CD3.8]**, which states that the planning system should promote the care and protection of the Historic Environment under reference to "sense of place", he understands "sense of place" to mean present day communities, the distinctive nature of surroundings and how that helps us to understand the past. Dr Carter confirmed that he agreed with the evidence of Nicola Hall within her precognition **[HES30]** and report **[HES16]**, that for Corrimony, the sense of place was contributed to by:
- a. The quiet, relatively undeveloped rural landscape today, which was also important to the people who lived within this landscape and constructed the monument;
 - b. The sense of enclosure provided all around the Cairn by the valley sides and the higher ground beyond which add to the sense of being separated from the outside beyond that higher ground;
 - c. The entrance passage and chamber of the Cairn, the fabric of the monument being the key element of the structure, including the views in, out and across the entrance and passage and the views along the southwest, northeast aligned River Valley from the chambered cairn, albeit Dr Carter wished to clarify that the river takes an abrupt eastwardly swing north of Corrimony, which he considered to be relevant to the alignment of the monument with the river valley.
94. Dr Carter's position was, further, that the Bronze age landscape would have been rural and agricultural, and the modern-day landscape was also rural and agricultural, so in looking at the current landscape, we can imagine what the setting of the monument would have been like in the Bronze Age. Notwithstanding all of that, Dr Carter's position was that if the windfarm was to be built, it simply adds another modern feature, such as the road, wooden electricity pylons and Beauty/ Denny electricity pylons, none of which fall within any view that any party contends to be a 'key characteristic' of the monument. Dr Carter's position that the change that the proposed development would bring to the setting and the sense of place at Corrimony Chambered Cairn would not amount to an adverse effect on the integrity of

the setting of the monument was entirely predicated on his judgement that it did not impact upon a view that was a key characteristic of the cultural significance of the monument.

95. Historic Environment Scotland recognises that the wider surroundings are not devoid of modern development, however, these developments do not significantly impact on the setting of the monument because they do not significantly adversely affect views that are key characteristics of the cultural significance of the monument. Through the evidence that it laid before the Inquiry, it maintained its position that the proposed development would impact upon a view that was a key characteristic of the cultural significance of the monument.
96. At Corrimony, the key characteristics of the setting identified by Historic Environment Scotland are the alignment of the passage and chamber (the passage and chamber are themselves key characteristics of the monument itself), the views to the SW from the passage and to the NE along the line of the passage and chamber towards the higher ground which forms the backdrop, the sense of enclosure provided all around the cairn by the valley sides and higher ground beyond providing the extent of the localised setting of the monument and the sense of being separated from the outside beyond that higher ground; which builds into the 'sense of place' experienced within the setting of being in a quiet, relatively undeveloped rural landscape which was very important to the people who lived within this landscape and constructed the monument. These elements all add to the cultural significance of the monument and the turbines would have a detrimental impact on some of these, which would diminish the integrity of the setting.

Historic Environment Scotland's Position on Mitigation

97. At the time of the application in July 2015 no additional mitigation for cultural heritage impacts was proposed in the Environmental Statement. Following Historic Environment Scotland's objection to the application in August 2015, the Appellant wrote a letter to Highland Council dated 10 September 2015 **[CD1.15]**, in which they proposed a number of enhancement measures for the scheduled monument.
98. Historic Environment Scotland would note that the original pre-application consultation made in 2013 suggested screening by planting trees at the fence line to the north of the chambered cairn in order to screen any future development on the Cnoc an Eas site from Corrimony chambered cairn. As this proposed mitigation would have had the effect of entirely divorcing the Corrimony chambered cairn from its setting to the north, this suggestion was not considered to be suitable mitigation for the proposed scheme in the response dated 12 August 2013 **[HES5]**.
99. The proposed enhancement measures for the current application include additional promotional material for the monument to encourage more visitors, additional signposting to the site, additional interpretation of the monument on site, improved access including better car parking, construction of a pavement

alongside the road and disabled access around the monument, further archaeological work in and around the monument including the undesignated mound to the north, and high quality landscaping around the monument.

100. The mitigation proposed by the Appellant in respect of cultural heritage impact can only be treated as at best a compensatory measure, rather than the prevention or reduction of the significant adverse impact of the proposed development on Corrimony chambered cairn. The latter options i.e. prevention or reduction of the significant adverse impact would be favoured by Historic Environment Scotland.
101. It should also be noted that aspects of the mitigation proposed by the Appellant in their letter **[CD1.15]**, such as the “high-quality landscaping” would be out of character at this rural monument and would therefore be an unwelcome intrusion into the setting of the monument, providing a further adverse impact to the setting of the cairn.
102. Historic Environment Scotland also notes that the further archaeological work in and around the monument as proposed by the Appellant may not be appropriate and would require Scheduled Monument Consent which cannot be guaranteed to be granted.
103. The planning application has to be assessed in relation to national policy for scheduled monuments (as set out in paragraph 145 of SPP **[CD3.8]**). In Historic Environment Scotland’s view, the inclusion of compensatory measures does not provide the exceptional circumstances that would allow the granting of planning permission for a development which has a significant adverse impact on the integrity of the setting of scheduled monuments.
104. The Scottish Government’s Planning Advice Note 1/2013: Environmental Impact Assessment **[HES 4]** advises that compensatory or off-setting measures should only be considered if significant adverse effects are avoided and reduced.
105. Historic Environment Scotland also notes that the impact on the setting of the monument would remain even if the compensatory measures being suggested by the Appellant were to be implemented. In Historic Environment Scotland’s view, a meaningful mitigation could only be achieved by the relocation of all of the turbines away from the area directly above the cairn when viewed from the entrance passage to the chambered cairn or by a substantial reduction in height of all of the turbines. This level of mitigation cannot be achieved within the parameters of the current application as it stands given the level of redesign required.

Exceptional Circumstances

106. Giving his evidence, and within his precognition **[APP30]**, Mr Stewart indicated that the "exceptional circumstances" test in paragraph 145 of the SPP should be equated with the "range of benefits which flow from a

renewable energy scheme" and "benefits of national importance flowing from the development", under reference to policy 57 of the Highland-wide Local Development Plan. In explaining why the social or economic contribution of this particular development should be treated as being of national importance, Mr Stewart indicated that, as is set out in SPP and in the planning authority's Local Development Plan, renewable energy schemes are not just about providing power. He continued that Scottish Government is now moving towards a greater role for community power schemes as original targets have already been met and passed; the supply chain is now well established (for wind, solar and tidal); and made reference to January figures set out in his Report. He opined that there is no single site solution and no one wind farm solves the problem of targets and so this policy relates to an overall drive to meet targets and supported his proposition that any windfarm development would meet the "exceptional circumstances" test. Upon being asked by the Reporter how this "exceptional circumstances" test should be applied if it would be met by all windfarm developments, Mr Stewart indicated that there were a range of potential harms and that the greater the contribution of the windfarm the greater the offsetting would be against the harm to the monument and pointed the Reporter to separate tests for site and setting. Mr Stewart's evidence was also, however, that we would be falling into a trap if we looked at statistics in relation to the percentage increase that would be delivered by this scheme against the total installed capacity in Scotland.

107. Historic Environment Scotland's position on 'exceptional circumstances' was that Mr Stewart's position did not hold up: had Scottish Government intended that all windfarms should meet the 'exceptional circumstances' test, there would simply have been an exception for windfarms from SPP paragraph 145.

108. Ms Clements' evidence in this respect was that the appropriate protection of scheduled monuments and their settings is a principle of national planning policies for the historic environment as set out in Scottish Planning Policy **[CD3.8]**, Historic Environment Scotland Policy Statement **[CD5.2]** and Planning Advice Note (PAN) 2/2011 – Planning and Archaeology **[HES 3]** as described in detail in the HES Inquiry Statement. Her evidence underlined that national policy for the historic environment stresses the preservation of both the site and the setting of scheduled monuments and there is no distinction in terms of weight to be attached in the planning process between impacts on site and setting (which was accepted by Dr Carter within his evidence). National planning policy is clear that although there is strong policy support for renewable energy and sustainable development, it is not at any cost and development should be guided to appropriate locations through the planning system **[CD3.8, 28; CD3.7, 6.8]**. Her evidence also highlighted that SPP states that proposals for energy developments must take into account a number of criteria including impacts on the historic environment as well as net economic impacts and socio-economic benefits **[CD3.8, 169]**.

109. Ms Clements disagreed with Mr Stewart's argument that, for the purposes of para 145 of SPP, 'exceptional circumstances' can be deemed to relate to the issues of benefits of national importance flowing from the

development as defined in Policy 57 of the Highland-wide Local Development Plan (HwLDP). She considered that in order for a benefit/circumstance to be exceptional for the purposes of SPP 145, the benefits would have to be incapable of being achieved by another similar development in another location which would not have similar adverse effects. A major road project for which there was only one feasible route would be an example of exceptional circumstances for the purposes of para 145 of SPP.

110. Ms Clements acknowledged the contribution that a windfarm on the scale of Cnoc an Eas would make to the national targets for renewable energy, however it seemed likely to her that it would be possible to construct other wind developments in other locations, which would render the contribution of this site to be unexceptional.

Historic Environment Scotland's Position on Visitor Numbers and Accessibility

111. The Appellant's proposed mitigation measures primarily relate to improvements to the site with regard to visitors and accessibility.

112. It should be noted that all scheduled monuments are considered to be of national importance whether or not they are visited by the public, and that scheduled status does not grant right of access. For this reason, Historic Environment Scotland does not consider visitor numbers or ease of access when assessing impacts on scheduled monuments or their setting. Their focus is on how the asset will be understood and appreciated by present and future generations.

113. Historic Environment Scotland's Managing Change Guidance on setting also notes on page 9, "Whether or not a site is visited does not change its inherent value, or its sensitivity to alterations in its setting. This should be distinguished from the tourism, leisure or economic role of a site. Tourism and leisure factors may be relevant in the overall analysis of the impact of a proposed development, but they do not form part of an assessment of setting impacts" [HES4].

114. In this case, the scheduled monument is also a Property in the Care of Scottish Ministers which is managed and maintained by Historic Environment Scotland. Car parking and interpretation facilities are provided at the site. The monument is publically accessible.

Conclusion

115. It is submitted on behalf of Historic Environment Scotland that the evidence submitted to the Reporter at the Inquiry Session supports The Highland Council's refusal of the Appellant's Application. In particular, the evidence of Dr MacSween correlates with The Highland Council's reason for refusal four, i.e. "The application is contrary to Policy 67 (Renewable Energy) and Policy 57 (Natural, Built and Cultural Heritage) of the Highland-wide Local Development Plan and Scottish Historic Environment Policy as the impacts of

the development would be detrimental to the setting of Corrimony Chambered Cairn scheduled monument.”

116. As their evidence has demonstrated, Historic Environment Scotland maintains its opposition to the proposed development on the basis that it will have a significant adverse impact on a key characteristic of the setting of the scheduled monument, which will have a significant adverse effect on the integrity of the setting of the monument. In this case, Historic Environment Scotland considers that there are no exceptional circumstances that would nevertheless warrant the grant of planning permission.

117. As such, in respect of reason for refusal four, Historic Environment Scotland respectfully invites the Reporter to refuse the Appeal and uphold the decision of The Highland Council to refuse planning permission.