

1 INTRODUCTION

- 1.1 This submission is submitted on behalf of Glen Earrach Energy Limited (the “Applicant”) in connection with its application for consent under section 36 of the Electricity Act 1989 and deemed planning permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997, to construct and operate Glen Earrach Pumped Storage Hydro, located within the Highland Council administrative area (the “Proposed Development”).
- 1.2 This representation is submitted in response to the request from the Energy Consents Unit (ECU) dated 31 March 2026 for written submissions on the implications of the recent decision of the Inner House of the Court of Session in *Raeshaw Farms Ltd v The Scottish Ministers* [2026] CSIH 10.
- 1.3 The ECU requests that the Applicant confirms the following:
- what are the implications of the Raeshaw Farms judgment with regards to the above application;
 - whether the proposed Development and its grid connection are considered one project for the purposes of EIA – please note that where an applicant considers that they are not one project, justification will be required outlining how this conclusion has been reached;
 - where it is considered that the proposed Development and the grid connection are one project, have the significant effects of the project, including the grid connection, been adequately assessed in the EIA report?
 - if the significant effects have been adequately assessed, please provide further justification outlining how this conclusion has been reached; and
 - if the significant effects have not been adequately assessed, please advise what further assessments are required and the likely timescales involved in gathering this information.
 - where it is considered that the proposed Development and grid connection are not one project, has any consideration been given to any likely significant cumulative effects of the proposed development and its grid connection?
 - are all likely significant effects of the project identifiable at this stage?
 - If the answer to above question is “no”, please provide justification outlining why are the significant effects not identifiable at this stage and how should the Scottish Ministers address that issue in determining the present application?

- 1.4 The Applicant submits that the decision of the Inner House in the Raeshaw Farms case does not raise any new legal issues. Rather, with reference to existing case law, it restates the requirement for the decision maker properly to identify the “project” for which an Environmental Impact Assessment (EIA) is required, and give a properly reasoned decision in that regard.
- 1.5 The Applicant’s position is that the Proposed Development is the project for which an EIA is required. The grid connection is a separate, albeit connected, project. On this basis, the Applicant submits that the scope of the EIA and the level of assessment within the EIAR is appropriate for reasons outlined below.
- 1.6 As background to this response, at the time that the application was submitted for the Proposed Development (31 March 2025), there was no information that provided detail of the route for any grid connection from the site of the Proposed Development to the Bingally substation (being the identified connection point to the UK National Grid for the Proposed Development), or the technical solution that would be chosen (i.e. underground cable vs overhead line). That remains the case.
- 1.7 Since the submission of the Application, planning permission has been granted for the Bingally substation. However, no further information is available on the grid connection from the Proposed Development to the substation. For additional context, at the time of submission of the Application, the Bingally substation was provided as the connection point for the Proposed Development to the UK National Grid by ESO, the grid operator at that time. Since the submission of the Application, ESO has been replaced by NESO, and a grid reform process has been underway described as TMO4+. As part of this grid reform process, the Proposed Development’s grid connection point has been amended to being indicative only, reducing still further any available information on the grid connection for the Proposed Development.
- 1.8 At scoping, the Applicant undertook to assess any likely significant effects resulting from any available information on the connection to the grid. An identified worst-case connection to Bingally was assessed for landscape and visual impact as part of the submitted EIAR, being viewed as the only potential area of likely significant effects which could be reasonably assessed with the information available at the time of submission.
- 1.9 Notwithstanding the Applicant’s position that the project for the purposes of EIA does not include the grid connection and that the scope of the EIA and level of assessment within the EIAR was appropriate, in preparing its response to the questions raised by the ECU, the Applicant has instructed the identification and assessment of a reasonable routing of a grid connection from the Proposed Development to the Bingally Substation based on reasonably available information. The Applicant is submitting this information as Supplementary Environmental Information for completeness, so that the Scottish Ministers may have regard to it to further inform their recommendation and decision. This Supplementary Environmental Information

considers the likelihood of significant effects on the environment arising from the grid connection when assessed with the Proposed Development.

- 1.10 As such, irrespective of the view reached by the Scottish Ministers on whether the Proposed Development and the associated grid connection should be considered a single project for EIA purposes, they can be satisfied that all likely significant effects of the Proposed Development and the grid connection have been identified, and can take that into account in determining the Application.
- 1.11 Taking account of matters raised in the ongoing Public Local Inquiry for the Loch Kemp scheme on Loch Ness, and for the sake of completeness, this submission also addresses whether the Dochfour Weir should be considered part of the project for EIA purposes. For the reasons that follow, the Applicant submits that those works are quite clearly a distinct project from the Proposed Development.

2 **RELEVANT EIA LEGISLATION**

- 2.1 The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the EIA Regulations") apply to applications under section 36 of the Electricity Act 1989 and set out the legislative requirements of the EIA process. The EIA Regulations implement the EU Directive 2011/92/EU, as amended by Directive 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment.
- 2.2 What constitutes an "EIA Development" is defined by reference to Schedule 1 and Schedule 2 of the EIA Regulations. An EIA report is required for developments falling within Schedule 1 of the EIA Regulations and for certain developments listed in Schedule 2 of the EIA Regulations where the development is likely to have significant effects on the environment by virtue of facts such as its nature, size or location. As the Proposed Development comprises an electricity generating station with a generation capacity of greater than 50 MW, it falls within the definition of Schedule 2 development contained in regulation 2(1) of the EIA Regulations.

- 2.3 Regulation 3 of the EIA Regulations provides that:

"The Scottish Ministers must not—

(a) grant an Electricity Act consent for EIA development; or

(b) direct that planning permission is deemed to be granted under section 57(2) or (2ZA) of the 1997 Act in respect of EIA development,

unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the Scottish Ministers must take the environmental information into account."

- 2.4 Further, regulation 4 sets out the EIA process which requires the developer to prepare an EIA report which is publicised and then examined by the decision maker, who must reach a reasoned conclusion on the significant effects of the development on the environment. The factors to be identified and assessed within the EIA report are set out in regulation 4(3).
- 2.5 In terms of regulation 4(5), the EIA must identify the likely significant effects of the proposed development on the environment before a decision to grant consent under the Electricity Act for that development is made. There are exceptions to that which are found in regulation 4(6) where the Scottish Ministers:
- (a) consider that the likely significant effects of the development on the environment are not fully identifiable at the time of their determination of the application for Electricity Act consent; and
- (b) are minded to grant Electricity Act consent for EIA development, or to direct that planning permission for EIA development is deemed to be granted, subject to a condition that all or part of the proposed development must not commence before certain matters in implementation of that consent, or planning permission, have been approved by the Scottish Ministers, or the planning authority, as the case may be.
- 2.6 Regulation 5 and Schedule 4 of the EIA Regulations prescribe the information which needs to be included within the EIA report.

3 THE RAESHAW FARMS CASE

- 3.1 On 17 February 2026, the Inner House of the Court of Session delivered a decision in *Raeshaw Farms Limited v Scottish Ministers* [2026] CSIH 10. The Court quashed the planning permission for the Wull Muir Wind Farm, granted on appeal, and remitted the decision back to the Scottish Ministers for a different reporter to retake the decision.
- 3.2 The main issue considered by the Court was whether the construction of the wind farm and its grid connection constituted a single project for the purpose of assessing its environmental impact and whether the decision maker's evaluation of that issue was sufficiently reasoned and fact specific.
- 3.3 Addressing the grid connection issue, the Court quoted the following paragraph from the reporter's decision (para [17]):

"An objector asserts that, as the appellant has not detailed the grid infrastructure that will be necessary to connect the proposal, it is impossible for the full environmental effects of this proposal to be assessed. I disagree. Whatever grid connection solution is ultimately proposed will (if it requires planning permission) be subject to its own evaluation. It is not part of the current proposal. The objectors (sic) reference to the term "salami slicing" is misdirected. That properly refers to an attempt to circumvent

the objectives of the EIA Directive and regulations by dividing what is in reality a single project into separate parts. In this instance, there has been no attempt to avoid the need for an EIA. The development proposal has been subject to EIA in the normal way and if a subsequent proposal for a grid connection were EIA development, that too would require to be assessed in accordance with the EIA regulations”.

- 3.4 The appellant advanced four grounds of challenge relating to the reporter’s consideration of the grid connection. The first being an irrationality challenge about taking into account the benefits of the project that could only be realised were a grid connection to be installed without taking the disbenefits into account. The other grounds addressed the central issue which the Court considered in its decision being whether the windfarm and associated grid connection properly constituted a single project requiring an EIA of the whole development and not just the construction phase.
- 3.5 In its determination, the Court found that the reporter erred in failing to conduct the necessary fact specific evaluation of the proposal which was required before a conclusion could be reached on whether the windfarm and grid connection constituted a single project for the purposes of the EIA (para [45]). Further, the reporter ‘misdirected himself in relation to the definition of “salami slicing” in a way that resulted in a failure to focus on the fundamental question of the interrelationship between the two phases of development and whether they both required an EIA at this stage.’ (para [45])
- 3.6 The Court considered that there was no consideration by the reporter of the non-exhaustive list of relevant factors as set out in relevant precedent, such as the decision in *R (Wingfield) v Canterbury City Council* [2020] JPL 154 (see below) and that the required evaluation of this issue was not ‘carried out at all, or at least not adequately’ (para [47]). In addition, the Court stated that the reporter’s decision ‘contains largely assertion and conclusions and is bereft of reasoning directed at the point at issue’ (para [55]).
- 3.7 Importantly, the decision of the Inner House was not that a generating station and a cable route will always be a single project for the purposes of the EIA Regulations. Nor did it decide that the relative stage of the two developments and the lack of information in relation to one or other was irrelevant, see e.g. its consideration of the Wildland case in the last lines of paragraph [45]. Rather, it supported the taking of a realistic approach and looking at all matters. The failing of the reporter which the court identified and on which the court’s decision focused was (i) the lack of analysis of the fact specific circumstances in his decision and (ii) a failure in understanding the relevant precedent as regards ‘salami-slicing’.
- 3.8 The case did not break any new legal ground, but was essentially a challenge to the incorrect and inadequate approach of the reporter. It does not justify a conclusion that the grid connection will always be part of the generation project. Each case

requires a factual appraisal and is a matter of judgment reviewable only on a *Wednesbury* basis.

4 **KEY PRINCIPLES FOR DETERMINING WHAT THE ‘PROJECT’ IS FOR EIA PURPOSES**

4.1 The Inner House cited a range of cases that set out principles to inform the approach a decision maker should take in assessing what ‘the project’ is for the purposes of an EIA. The following is a summary of the relevant principles.

4.2 An EIA needs to consider the likely significant effects of the development (or project) on the environment. The question of what constitutes the ‘project’ for the purposes of the EIA Regulations is a matter of judgement for the competent decision-maker. A court will not interfere with that decision unless it is irrational in the sense set out in the *Wednesbury* case (i.e. that the decision is so unreasonable that no reasonable person acting reasonably could have made it). It is not possible to circumvent the EIA thresholds and avoid screening by dividing a project and applying for consent for each of the sub-divided projects (colloquially known as ‘salami slicing’).

4.3 Lang J in *R (Wingfield) v Canterbury City Council* [2020] JPL 154 considered what constituted the project for EIA purposes in relation to a mixed-use development of dwellings and associated infrastructure on a number of designated sites. Lang J compiled a non-exhaustive list of relevant factors which may indicate whether applications could constitute a single project:

- (a) Common ownership: where two sites are owned or promoted by the same person;
- (b) Simultaneous determinations: where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another;
- (c) Functional interdependence: where one part of a development could not function without another; and
- (d) Stand-alone projects: where a development is justified on its own merits and would be pursued independently of another development.

4.4 It is important to note here that these are not legal tests but rather non-exhaustive indicators, as emphasised by the repeated use of the words “may indicate”.

4.5 Those criteria were endorsed by the English Court of Appeal in *R (Ashchurch Rural Parish Council) v Tewkesbury Borough Council* [2023] EWCA Civ 101. The Court of Appeal found that the local authority had acted irrationally when granting planning permission for a road bridge which was part of a wider, residential development, for which planning permission had not yet been sought. The planning committee had

taken account of the benefits that would accrue from the wider development but had not considered the possible harms. In addition, the Court concluded that the local authority had erred in treating the bridge as a standalone project and disregarded the potential impact of the wider development when deciding whether an EIA should be carried out. The Court emphasised the need to understand the term ‘project’ ‘broadly, and realistically’ and that the ‘decision-making authority should consider “the degree of connection... between the development and its putative effects” and whether a particular consequence is “truly an effect”’.

- 4.6 The principle of two connected projects being assessed in different applications was considered in the recent decision of the English Court of Appeal in *R (Together against Sizewell C Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWCA Civ 1517. The matter before the court considered a different environmental assessment regime, under the Habitats Regulations, but made observations that applied to both the HRA and EIA regime, with Lindblom LJ, giving the court’s judgment stating (at paragraphs 60-61):

“A further principle, also well established, is that two connected projects may proceed separately, and their cumulative effects be assessed, whether under the EIA Regulations or under the Habitats Regulations, either in two stages or at the second, but as soon as those cumulative effects can be identified for meaningful assessment (see the judgment of Sales L.J., as he then was, in *Larkfleet*, at paragraphs 36 to 38, and also his judgment in *R. (on the application of Forest of Dean (Friends of the Earth)) v Forest of Dean District Council*, [2015] PTSR 1460 at paragraphs 13 to 19). A ‘staged approach’ to assessment is, in principle, legitimate and will prevent what has been described as ‘sclerosis in the planning system’ (see the judgment of Sales L.J. in *Forest of Dean District Council*, at paragraph 18). In some cases this will be the obvious and only realistic course to take. It can enable the first project to receive the permission or consent it requires, without preventing or prejudicing a proper assessment of likely cumulative effects”.

- 4.7 The court also emphasised (at paragraph [68]) that determining the nature and scope of a particular project and whether two or more developments are properly to be regarded as a single project (as opposed to connected projects as discussed in the excerpt in the paragraph above) were not matters of law for the court but of fact and evaluative judgement for the decision maker itself. This is consistent with the view expressed by the Inner House.

- 4.8 Decisions of the Outer House of the Court of Session in *Skye Windfarm Action Group v Highland Council* [2008] CSOH 19 and *Wildland v Highland Council* [2021] CSOH 87 rejected challenges to the scope of the EIA where there were connected developments but, in each case, the decision maker had carried out an appropriate analysis of what constituted ‘the project’ for EIA purposes.

(a) In *Skye Windfarm Action Group v Highland Council* [2008] CSOH 19, the planning permission for a windfarm was challenged by a local action group who contested that

the environmental statement was defective as it did not initially include consideration of the effect of the borrow pits. The Lord Ordinary rejected that challenge concluding that “The initial assessment in 2002 and the August 2006 assessment did not identify any significant environmental effects of the borrow pits whether considered alone or cumulatively with the wind farm...the court should look at the particular circumstances of each case in deciding whether a cumulative assessment is needed to fulfil the purposes of the Directive. While...the cumulative effects of the wind farm and the borrow pits are commutative, I see no practical reason for an environmental impact assessment of the borrow pits other than in the context of the wind farm application”.

(b) In *Wildland v Highland Council* [2021] CSOH 87, one of the challenges made to the planning decision to grant the development of a space hub was that the EIA report had not considered the environmental impacts of the proposed visitor facilities on the site. In dismissing the claim, the Lord Ordinary concluded that:

“I am not persuaded that the respondent has erred in law. In my view this is not a case where there has been salami slicing of a project which ought to have been assessed as a single development. On the contrary, there is a rational justification for not identifying the proposed location of visitor facilities and for not applying for permission to develop them at this stage. Until the size of the LEZ is clarified there is obvious uncertainty about appropriate locations for visitor viewing areas or car parking. It was not sensible for the petitioner to attempt to identify such locations. Nor was it sensible to seek planning permission for their development, or to include an assessment of their environmental impacts as part of the present application”.

5 THE APPLICANT’S EVALUATION OF THE PROPOSED DEVELOPMENT

- 5.1 The Applicant has had regard to what required to be assessed under the EIA Regulations as ‘the project’ and as part of a cumulative assessment throughout the EIA process. This included assessing the grid connection to the extent that it was able to do so at the time it submitted the application.

Grid connection

- 5.2 A grid connection to connect the Proposed Development to the UK National Grid is required. This is anticipated to be via a 400kV cable and transmission line from the powerhouse forming part of the Proposed Development to the national grid. There are two sets of works required to form that grid connection. The first is a cable from the powerhouse to a new 400kV Gas Insulated Switchyard. These works, including the new 400kV Gas Insulated Switchyard, have been included and assessed as part of the Application.
- 5.3 The second set of works would be a new connection between the Transmission System Operator’s control building to be located within the Gas Insulated Switchyard, and the Proposed Development’s indicative connection point at the Bingally substation. These works will be progressed in accordance with the Applicant’s grid

connection agreement. As explained further below (para 5.15), the Applicant's Gate 1 Grid Offer is indicative only at this stage.

EIA Scoping

- 5.4 The Scoping Report prepared by the Applicant in April 2024 stated the following in relation to the grid connection:

"2.7.2.6 Switching Station and Grid Connection

The grid connection for the Development would be via a new switching station located within the Development Site. An indicative switching station would consist of control building(s), switchgear, busbars, perimeter fence, and overhead or underground cables. This is likely to comprise a hard-standing area of approximately 22,500 m².

The location of the onsite switching station is likely to be at grid reference NH 48342 25849.

The grid connection will be subject to a separate consenting arrangement and undertaken by the statutory undertaker. Notwithstanding this, information will be provided within the EIAR on the most likely grid connection route and method, including a high-level assessment of any likely significant cumulative effects on the information known at the time of submission."

- 5.5 In adopting their Scoping Opinion, the Scottish Ministers noted they had taken into account "information provided by the applicant in its request dated 26 April 2024 in respect of the specific characteristics of the proposed development and responses received to the consultation undertaken. In providing [their] scoping opinion, the Scottish Ministers have had regard to current knowledge and methods of assessment; have taken into account the specific characteristics of the proposed development, the specific characteristics of that type of development and the environmental features likely to be affected." They further confirmed that they were "satisfied with the scope of the EIA set out by the scoping report."

- 5.6 The Scoping Opinion stated that the "Scottish Ministers expect the EIA report to include all matters raised in responses from the consultees and advisors." The Glen Urquhart Community Council Scoping Response requested that the Description of the Development should include:

"a full description of the physical characteristics of the whole development and the full land-use requirements during the operational, construction and decommissioning phases. These should include requirements for borrow pits, local road improvements, infrastructure connections (i.e. connections to the national grid), off site conservation measures, etc. Full description of project required to enable full assessment of project."

- 5.7 In relation to landscape and visual they requested that “The EIAR should consider both the landscape and the visual impact of the development. This should include the expected impact of borrow pits, ponds, embankments, tracks, cable routes, construction/mobilization staging areas and infrastructure connections”.

EIAR – assessment of grid connection

- 5.8 The Applicant submitted an EIAR along with the application for the Proposed Development. Chapter 2: Project and Site Description included the following description of the grid connection:

“2.12 Description of the Grid Connection

- 2.12.1 The grid connection route is anticipated to be to Bingally substation at NH 30340 24171, which is located approximately 15 km to the west of the Proposed Development Site. The exact route and nature of the connection will be established by the Transmission System Operator (TSO) and subject to a separate planning application by them and does not form part of this Application. A grid connection agreement has been accepted for the Proposed Development between the Applicant and SSEN.
- 2.12.2 Within the Proposed Development Site, the high voltage (HV) cables will be routed from the underground Transformer Cavern through the 2No. Cable Tunnels to surface level. At surface level, the cables will be undergrounded in trenches alongside the new Permanent Access Track to the GIS Switchyard (PC04).
- 2.12.3 As noted above, the exact route and type of the grid connection from the Proposed Development Site to Bingally is currently unconfirmed. The connection may be via an underground cable, however, for the purposes of the assessment it has been assessed on a “worst case” scenario, i.e. that it will be via an overhead line.”

- 5.9 Chapter 4: Approach to EIA explained the following in relation to the Grid Connection and the approach taken to the assessment of cumulative effects:

- “4.5.24 It is acknowledged that a grid connection will be required for the Proposed Development. This is not included as part of this application and will be progressed by the electricity transmission network operator (currently Scottish & Southern Electricity Networks) and subject to a separate application by them, likely under Section 37 of the Electricity Act 1989. A grid connection agreement has been accepted for the Proposed Development between the Applicant and Scottish & Southern Electricity Networks. The grid connection is anticipated to be to Bingally Substation which is located approximately 15 km west of the Proposed Development Site – the exact route of the grid connection is currently unconfirmed. Further details on the

grid connection are provided in [Section 2.12] Description of the Grid Connection in Chapter 2 Project and Site Description (Volume 2: Main Report).”

- 5.10 No statutory consultee has raised concerns with that approach throughout the iterative EIA process.
- 5.11 The grid connection was included in the EIAR assessment of potential cumulative landscape and visual effects (Chapter 6: Landscape and Visual, Section 6.10 Cumulative Effects). This assumed a worst-case direct line routing from the GIS switchyard included as part of the Proposed Development and the grid connection point at the Bingally Substation. In the absence of more information on potential routing of the grid connection, assessment of landscape and visual effects on a worst-case basis was considered the only topic for assessment of likely significant effects which could reasonably be carried out at the time of submission of the Application and met the requirements identified in scoping.
- 5.12 It should be noted that as part of the evolution of design, the location of the GIS switchyard included as part of the Proposed Development was moved from the location referenced in the scoping report to a location more suited to a low impact routing of the transmission line to the Bingally Substation. While Chapter 3: Evolution of Design and Alternatives, Section 3.4.9, identified this change, it did not explicitly reference optimisation of the potential grid connection as one of the drivers for this change¹.

Grid Connection Project

- 5.13 SSEN Transmission, operating under licence held by Scottish Hydro Electric Transmission plc, owns, operates and develops the electricity transmission system in the north of Scotland and remote islands and has a statutory duty to develop and maintain an efficient, coordinated and economical system of electricity transmission. By virtue of the separation of functions within the electricity industry under the Electricity Act 1989, the Applicant, as a generation licence holder under the Electricity Act 1989, could not lawfully own and operate the transmission line connection from the Proposed Development to the UK National Grid. Only the holder of a transmission licence could do so. SSEN Transmission as the relevant transmission licence holder for the area in which the Proposed Development is situated is required to provide the grid connection for the Proposed Development given its statutory duties. This will form part of a separate Grid Connection Project.
- 5.14 At the point of submitting the application for the Proposed Development, there was no information on the connection route. It was unknown whether the connection

¹ Additional Information *AI_3_32 Additional Information Chapter 3 Evolutions of Design (May 2026)* is now provided to clarify this aspect of the evolution of design.

would be undergrounded or if it would be overhead lines, together with towers, or a combination of the two. This remains the case.

- 5.15 The Applicant has now received a Gate 1 grid offer from the National Energy System Operator (NESO) as part of the ongoing grid reform process, superseding the previously received grid connection offer. NESO has also confirmed that the connection point identified in the previous grid connection offer is now indicative only, pending a future Gate 2 offer through the CMP434 process, the timing of which remains uncertain and, based on current grid reform processes, is unlikely to occur before some time in 2027. This means there is no fixed route, design or connection solution capable of detailed assessment at present.

6 **Question 1**

What are the implications of the Raeshaw Farms judgment with regards to the above application?

- 6.1 As explained in Sections 3 and 4 above, the case did not break any new legal ground but was essentially a challenge to the incorrect and inadequate approach of the reporter in that particular case. It reinforces the existing legal position that where the EIA Regulations apply, the decision maker must carry out a factual appraisal of the proposed development to identify the project for EIA purposes. This is an exercise of judgment reviewable only on a *Wednesbury* basis.
- 6.2 The decision maker must therefore carry out this exercise for this application.

7 Question 2

Whether the proposed Development and its grid connection are considered one project for the purposes of EIA – please note that where an applicant considers that they are not one project, justification will be required outlining how this conclusion has been reached

- 7.1 For the reasons that follow, the Applicant submits that, on a proper analysis of the facts and circumstances, the Proposed Development is ‘the project’ for the purposes of undertaking an EIA. The Proposed Development and the future grid connection should not be considered as a single project for EIA purposes.
- 7.2 The Applicant submits that this conclusion is supported by the following balanced assessment of the “Wingfield criteria”.
- 7.3 The factors set out in *Wingfield* are a non-exhaustive list of factors that may indicate two developments are one project. However, it is clear that no single factor should be considered determinative, and the factors should be considered together as part of an overall balanced judgment, and not in isolation as if they were a statutory test.

1. Common Ownership

- 7.4 The sites for the Proposed Development and the grid connection will not be owned and promoted by the same person. As explained at paragraph 5.13 above, as a generation licence holder, the Applicant could not lawfully own and operate the transmission line connection from the Proposed Development to the Bingally Substation. This will be taken forward by SSEN Transmission as Transmission Owner.
- 7.5 The Applicant submits that significant weight should be attached to this factor in the overall balancing exercise. It firmly points toward the Proposed Development and the grid connection being separate, albeit connected, projects.
- 7.6 There is no common ownership, and the first criterion is not met.

2. Simultaneous determination

- 7.7 The development and consenting of the Proposed Development and the grid connection route are being undertaken on different timelines. As set out more fully in paragraph 7.8 below, this is a consequence of several factors, including grid reform, SSEN’s processes, and construction timescales.
- 7.8 As explained at paragraph 5.13 above, SSEN Transmission will take forward the consenting of the grid connection infrastructure, as contracted to do so by the NESO. The timing of the application for the grid connection route is driven by both grid reform and SSEN processes, neither of which is controlled by the Applicant. As part of the

ongoing grid reform process, the Applicant must wait for a Gate 2 offer from the NESO before the point of connection is confirmed. Gate 2 offers depend on an evaluation of multiple “readiness” factors including planning status (with planning consent providing a pathway to a Gate 2 offer), and award of an Ofgem support scheme (such as the Long Duration Energy Storage ‘Cap and Floor’ scheme, which also assesses planning status as part of eligibility). Only once a Gate 2 offer is signed do SSEN Transmission progress the grid connection project, starting with the application for permission for the grid connection route. There is a significant difference in time for construction of the Proposed Development (7 years) compared to that for the grid connection (which takes several years less to construct), further explaining why the Proposed Development and the grid connection route are being undertaken on different timelines.

- 7.9 The practical reality of this is that the Proposed Development being consented is the trigger for SSEN Transmission progressing the grid connection. That necessarily means they cannot be taken forward simultaneously. On the contrary, they will always be taken forward separately, one after the other.
- 7.10 The Applicant submits that significant weight should be attached to this factor in the overall balancing exercise. It firmly points toward the Proposed Development and the grid connection being separate, albeit connected, projects.
- 7.11 The second criterion relating to simultaneous determination is not met.

3. Functional interdependence

- 7.12 The Applicant acknowledges that there is a degree of functional interdependence between the Proposed Development and the grid connection. The Proposed Development ultimately cannot function without a connection to the UK Grid, in some shape or form. However, in *Wingfield* the court stated that “Where one part of a development could not function without another, this may indicate that they constitute a single project (Burridge at [32], [42] and [78]).” (emphasis added). The degree and nature of the interdependence should be taken into account in the overall assessment. In the *Burridge* case, there was a high degree of functional interdependence. It concerned two permissions, one for a biomass renewable energy plant and the other for a combined heat and power plant on nearby land. A pipeline would connect the two, transferring biogas from the biomass plant to the combined heat and power plant. As the Court said at para. 25: “*The functional interdependence is obvious. The industrial installation proposed could not operate without the plant at Crown Milling and the pipe carrying fuel between the two sites.*” Critically, it should also be noted (para. 32) that they were considered by the committee on the same day and based on planning officer’s reports which were cross-referenced to each other and plainly treated the two applications as forming part of a single project. At para. 41 it said:

"The present situation comes into that category². The two proposed developments were functionally interdependent and can only be regarded as an "integral part" of the same development. They cannot be treated otherwise than as a single project or development and were actually considered by the committee on the same day and on the basis of cross-referenced reports. The geographical separation of something over 1km does not, in my judgment, defeat that, particularly given the link provided by the pipeline. Not only was 0445 inevitably part of a more substantial development (Swale BC), it was considered by the committee at the same time as 1372"

- 7.13 In contrast to *Burridge*, whilst a grid connection of some description will be necessary for the Proposed Development to connect to the UK Grid, there are currently not two identifiable developments that could be said to be an integral part of the same development. This is a simple fact since, for the reasons given at paragraph 7.8 above, at both the time of the Application and at the present time, there was and is no grid connection project available for assessment or determination.

4. Stand-alone projects

- 7.14 The assessment of this factor concerns essentially the same question as the previous factor – are the projects functionally interdependent, or could they be pursued independently of each other. With respect to this factor, the court in *Wingfield* again said that "Where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (Bowen-West at [24]– [25])." Whilst the Proposed Development will require a connection to the UK Grid, in some shape or form, it is not dependent on any particular grid connection. In that sense, the Proposed Development can be considered stand-alone since the form of the future grid connection does not alter the development as proposed.

Overall balancing and exercise of judgment

- 7.15 Applying the criteria together as part of a balanced judgment, in summary, the Applicant submits that the Proposed Development and its grid connection do not constitute a single project for the purposes of EIA for the following reasons: 1) The Proposed Development and the grid connection do not have common ownership; 2) The Proposed Development and the grid connection are clearly also not subject to simultaneous determination (and could not reasonably be due to ongoing grid reform processes); 3) While there is a degree of functional interdependence between the Proposed Development and a grid connection, there is currently no identifiable grid connection project on which the Proposed Development can be said to be functionally interdependent; and 4) similarly, the Proposed Development will require a grid

² The "category" in question was as described by Simon Brown J, as he then was, in *R v Swale BC ex parte Royal Society for the Protection of Birds* [1991] 1 PLR 6 as a case in which a proposal could not be considered in isolation "if in reality it is properly to be regarded as an integral part of an inevitably more substantial development."

connection, but the nature of this future grid connection does not alter the development as proposed, and in that sense, the Proposed Development can be considered stand-alone as a project.

- 7.16 For the reasons given above, the Applicant submits that significant weight should be attached to the first two factors in the overall balancing exercise, which firmly point towards the Proposed Development and the grid connection being separate projects.
- 7.17 Ultimately, the determination of what 'the project' is for EIA purposes is a matter of judgment for the Scottish Ministers as decision maker. However, the Applicant submits that the Proposed Development and the SSEN Transmission grid connection are different 'projects' for EIA purposes.

8 **Question 3**

where it is considered that the proposed Development and the grid connection are one project, have the significant effects of the project, including the grid connection, been adequately assessed in the EIA report?

- **if the significant effects have been adequately assessed, please provide further justification outlining how this conclusion has been reached**
- **if the significant effects have not been adequately assessed, please advise what further assessments are required and the likely timescales involved in gathering this information**

- 8.1 As explained above in answer to question 2, the Applicant maintains that the Proposed Development and the grid connection are not one project for the purposes of undertaking an EIA. The Applicant submits that the assessment contained within the EIA Report had proper regard to what 'the project' is for the purpose of the EIA and included a robust assessment.
- 8.2 As set out in Section 5 above, the Applicant has given a reasoned consideration at each stage of the EIA process as to what constitutes 'the project' requiring assessment. It has also given a reasoned consideration to what can be assessed cumulatively at each stage, including the grid connection. The Applicant consulted on the scope and extent of the EIA it was carrying out, and no statutory consultee suggested the scope was insufficient.
- 8.3 The ECU's request for written submissions on the implications of the *Raeshaw Farms decision* has necessarily led the Applicant to review its assessment of the significant effects of the project. This has led the Applicant to identify areas in which it is able to provide further information on the likelihood of significant effects on the environment arising from an assumed reasonable grid connection route, assessed with the Proposed Development. The Applicant has submitted this as Supplementary Environmental Information as part of this submission. This Supplementary Environmental Information reaches the conclusion that it is unlikely that the development of the grid connection would result in any likely significant effects on the environment. On the basis of that assessment, the Applicant submits that it remains the case that the grid connection when considered with the Proposed Development, is unlikely to give rise to significant effects on the environment beyond those already identified and assessed in the EIAR.

Question 4

where it is considered that the proposed Development and grid connection are not one project, has any consideration been given to any likely significant cumulative effects of the proposed development and its grid connection?

- 9.1 As set out in Section 5 above, the Applicant has given a reasoned consideration at each stage of the EIA process as to what constitutes the 'project' requiring assessment. It has also given a reasoned consideration to what can be assessed cumulatively at each stage. The Applicant consulted on the scope and extent of the EIA it was carrying out, and no statutory consultee suggested the scope was insufficient.
- 9.2 Following the scoping process, the Applicant assessed the visual and landscape aspects of the grid connection project for any likely significant effects taking account of a worst-case routing of a grid connection from the Gas Insulated Switchyard forming a part of the Proposed Development and the indicative connection point at the Bingally Substation.
- 9.3 The Applicant has now submitted further Supplementary Environmental Information that can be taken into account in the assessment of the likely significant effects of the project. This Supplementary Environmental Information assumes a reasonable grid connection route identified on the basis of the best information reasonably available at this stage, including the location of the Proposed Development GIS switchyard, the indicative connection point at Bingally Substation, the surrounding topography, and an understanding of standard transmission routing considerations. On that basis, it considers the likelihood of significant effects on the environment arising from this grid connection together with the Proposed Development. This assessment concludes that it is unlikely that the development of the grid connection would result in any likely significant effects on the environment. On the basis of that assessment, the Applicant submits that the grid connection when considered with the Proposed Development is unlikely to give rise to significant effects on the environment beyond those already identified and assessed in the EIAR.

Question 5

are all likely significant effects of the project identifiable at this stage?

- **If the answer to above question is “no”, please provide justification outlining why are the significant effects not identifiable at this stage and how should the Scottish Ministers address that issue in determining the present application?**

- 10.1 The EIAR, Supplementary Environmental Information and the Additional Information have assessed all likely significant effects of the Proposed Development and a reasonable grid connection route which has been assumed as part of this submission. The Supplementary Environmental Information provided as part of this submission considers the likelihood of significant effects on the environment arising from this grid connection route with the Proposed Development. Notwithstanding the Applicant's position that the project for the purposes of EIA does not include the grid connection and that the scope of the EIA and level of assessment within the EIAR was appropriate, the Applicant has submitted this information for completeness, so that the Scottish Ministers may have regard to it to inform their decision.
- 10.2 As such, the Scottish Ministers can be satisfied that all likely significant effects of the Proposed Development and a reasonable grid connection route have been identified, and the assessment of those effects can be taken into account in determining the Application.
- 10.3 Furthermore, the SSEN Transmission final grid connection will be subject to its own consenting process and environmental assessment, at which stage any new or additional route-specific effects can be assessed.

11 **NESS WEIR (ALSO KNOWN AS DOCHFORD WEIR)**

- 11.1 The Applicant notes that in the Public Local Inquiry for Statera's application for the Loch Kemp Storage project, parties to the inquiry, including the applicant, have addressed whether or not the proposed upgrade to the existing Ness Weir structure (also known as 'Dochfour Weir'), which is located at the point where Loch Dochfour and the River Ness come together, forms part of 'the project' for EIA purposes.
- 11.2 For the reasons that follow, the Applicant submits that, on a proper analysis of the facts and circumstances, the Proposed Development is the 'project' for the purposes of undertaking an EIA. The Proposed Development and any planning application to modify the Dochfour Weir should not be considered as a single project for EIA purposes.
- 11.3 The Applicant submits that this conclusion is supported by the following assessment of the "Wingfield criteria".
- 11.4 The Applicant notes the written submission of the Ness District Salmon Fishery Board to the Loch Kemp Public Local Inquiry dated 8 April 2026 (WS10), in which the Applicant is characterised as having been 'upfront that this was a single project' in respect of the Dochfour Weir modifications. The Applicant respectfully clarifies that position. The Applicant has been transparent, from the outset of stakeholder engagement, about the proposed modifications to Dochfour Weir to deliver the environmental mitigation described in the EIAR. Transparency about the proposed weir-related mitigation is not, however, the same as a statement that the weir works and the Proposed Development are a single project for EIA purposes. Those are two distinct questions. The first question is whether the relevant environmental effects, including those arising in connection with any modification to Dochfour Weir proposed as a mitigation, have been properly identified and assessed. The Applicant has done so. The second question is entirely separate, and is addressed below.

1. Common Ownership

- 11.5 Dochfour Weir is owned by Scottish Canals. The Applicant has no property interest in the weir.
- 11.6 This criterion is not met.

2. Simultaneous determination

- 11.7 The Proposed Development and any upgrade to Dochfour Weir are being developed on their own timelines. The Applicant has included an indicative design to modify the weir and proposed a negative suspensive condition as an appropriate and lawful way in which to secure the mitigation. However, at present no planning application has been made by the Applicant or the owner of the Dochfour Weir to modify the Dochfour Weir. Any such planning application will require its own EIA, including an assessment

of cumulative effects. It would then be considered and determined by The Highland Council as the planning authority.

- 11.8 This criterion is not met.

3. Functional interdependence

- 11.9 The Application for the Proposed Development includes modification of the Dochfour Weir as mitigation. However, other parties, including Scottish Canals and Statera (developer of Loch Kemp Storage), are proposing similar upgrades to the weir. One of those proposals is likely to go ahead regardless of whether the Proposed Development is consented. Indeed, Statera sought a Scoping Opinion from The Highland Council for its proposal (25/03507/SCOP) that was provided on 16 February 2026.
- 11.10 In this regard, attention is drawn to the decision of HH Judge Jarman KC *in R (oao Llandaff North Resident's Association) v Cardiff City Council* [2023] EWHC 1731 (Admin), in which case the Court determined that it could be lawfully concluded that a pumping station and a housing development were different projects, albeit that the pumping station was necessary for the housing development, as it also served other existing and potential developments in the area.

- 11.11 This criterion is not met.

4. Stand-alone projects

- 11.12 Both projects could be carried out and justified on their own merits and are being pursued independently of one another. As explained above, a project to modify Dochfour Weir is likely to be progressed even if the Proposed Development did not proceed, as it would have its own independent merits, including better water management to facilitate other pumped storage developments on Loch Ness, to aid flood risk alleviation and improve water navigation within Loch Ness and the River Ness catchment, as well as providing fish passage improvements.
- 11.13 This criterion is not met.
- 11.14 It is therefore submitted that, having regard to the criteria set out in *Wingfield*, it is clear that the Proposed Development and any planning application to modify Dochfour Weir are distinct projects for EIA purposes.

SUMMARY AND CONCLUSION

- 12.1 This submission has been made in response to the ECU's request for written submissions on the implications of the decision *in Raeshaw Farms Ltd v The Scottish Ministers* [2026] CSIH 10 for the present application.

- 12.2 The Applicant submits that *Raeshaw Farms* does not establish any new rule of law that a generating station and its future grid connection must always be treated as a single project for the purposes of EIA. Rather, the decision confirms that the question is one of fact and evaluative judgment for the decision maker, requiring a proper appraisal of the particular circumstances and a reasoned conclusion.
- 12.3 In the present case, the Applicant submits that, on a proper analysis of the facts and circumstances, the Proposed Development is the relevant project for the purposes of the EIA Regulations and that the future grid connection should not be treated as part of the same project. In particular:
- (a) there is no common ownership or promotion of the two developments;
 - (b) they will not be subject to simultaneous determination;
 - (c) whilst there is a degree of functional interdependence, there are not at present two sufficiently defined developments capable of being treated as integral parts of a single project; and
 - (d) the future grid connection will be progressed separately by SSEN Transmission in accordance with the statutory and regulatory framework governing transmission infrastructure.
- 12.4 The Applicant further submits that the EIAR properly addressed the scope of the project requiring assessment, including a landscape and visual assessment of a worst-case grid connection routing, and that this approach was transparently explained through the scoping process, the EIAR itself, and the cumulative assessment undertaken. No statutory consultee identified any insufficiency in that approach during the EIA process.
- 12.5 In any event, and for completeness, the Applicant has now submitted Supplementary Environmental Information assuming a more detailed, reasonable routing of the grid connection, allowing for a further assessment of any likely significant environmental effects of the grid connection, considering those effects with the Proposed Development. That information concludes no likely significant effects from the grid connection.
- 12.6 Accordingly, whether the Scottish Ministers conclude that the future grid connection is a separate project or consider it appropriate to take it into account together with the Proposed Development, the environmental information before them is sufficient to enable a reasoned conclusion to be reached on the likely significant effects of the Proposed Development combined with the grid connection capable of assessment at this stage.
- 12.7 As regards Question 5, the Applicant submits that all likely significant effects of the Proposed Development have been identified and assessed, including taking due

account of the future grid connection, which has been assessed to the extent reasonably possible at this time. The assessment has concluded no likely significant effects arising from the grid connection. Any future grid connection, once sufficiently defined, will in any event be subject to its own consenting process and environmental assessment.

- 12.8 The Applicant also submits that any future planning application relating to modification of Dochfour Weir should not be regarded as part of the same project as the Proposed Development for EIA purposes. It would be a separate project, pursued on a separate timetable, by a different party or parties, and subject to its own consent and assessment requirements.
- 12.9 The Applicant therefore submits that the decision in *Raeshaw Farms* does not materially alter the present application. The Scottish Ministers can lawfully determine the application by:
- (a) carrying out the required fact-specific appraisal of what constitutes the project for EIA purposes;
 - (b) giving reasons for their conclusion on that issue; and
 - (c) taking into account the EIAR, the Additional Information already submitted, and the further Supplementary Environmental Information now provided.
- 12.10 The Applicant invites the Scottish Ministers to proceed to determine the application on the basis that the environmental information before them is adequate and that there is no legal or evidential impediment arising from *Raeshaw Farms* to the determination of the present application.