

**SCOTTISH GOVERNMENT**

**PLANNING AND ENVIRONMENTAL APPEALS DIVISION**

**Application References:**

**TRL-170-1, TRL-170-2, TRL-170-2, TRL-170-3, TRL-170-4, and, TRL-170-5**

**CLOSING SUBMISSIONS FOR SP ENERGY NETWORKS**

in relation to

Five Applications for Electricity Consents under section 37 of the Electricity Act 1989,  
and, and related directions under section 57(2) of the Town and Country Planning  
(Scotland) Act 1997 for deemed planning permission.

for the

132kV Kendoon to Tongland Reinforcement Project (“the KTR Project”)

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## 1. INTRODUCTION

- 1.1. These Closing Submissions have been prepared on behalf of SP Energy Networks, referred to interchangeably in these Closing Submissions as “SPEN” and “the Applicant”, in relation to the Applications made under section 37 of the Electricity Act 1989 (“the 1989 Act”) by SPEN for the necessary consents to construct and operate the KTR Project.
- 1.2. In accordance with the Reporters’ procedural timetable, the Closing Submissions on behalf of the Applicant should draw to a conclusion the Inquiry process that has been ongoing since the opening of the Inquiry on 24 October 2022. This is subject to a ruling by the Reporters on an admissibility issue related to the summary of case and closing submissions lodged by Senior Counsel acting on behalf of Lord Sinclair and Knocknalling Estate; and in respect of which the Applicant’s position is necessarily reserved.
- 1.3. It has, unfortunately, been a long drawn out Inquiry Process. Primarily as a consequence of the adoption of National Planning Framework 4 (“NPF4”) shortly after the conclusion of the original Inquiry timetable at the end of November 2022. It was a matter of agreement between the parties and the Reporters that it would represent a significant omission if the proposed electricity infrastructure project was not considered in the context of the Scottish Government’s most up-to-date policy framework as contained in NPF4. In circumstances in which the Dumfries and Galloway Local Development 2<sup>1</sup> (“LDP”) makes no policy provision for new electricity transmission infrastructure, together with the legislative reforms associated with the adoption of NPF4, the inter-relationship between national planning policy and development plan policy has changed. Common sense and legal considerations dictated that further procedure was necessary to take into account the relevant provisions of NPF4 and the effect on the LDP.
- 1.4. More regrettable has been the delay caused by the need for additional exchanges of

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<sup>1</sup> CD005.001

written submissions after the last agreed upon Hearing Session on 29 March 2023. As documented in correspondence with the DPEA in the lead up to the Hearing Session of 29 March 2023, this was necessitated by Galloway Without Pylons<sup>2</sup> blatant and unapologetic transgression of the procedural arrangements put in place to address the policy matters listed in Procedural Notice No. 4 dated 24 January 2023.

- 1.5. The issues in relation to the attempts by GWP and Dr Ford to pass off the new written submissions in Dr Ford's Hearing Statements 7 and 8 (as referenced by GWP) that were of relevance to the topics addressed as part of Inquiry Session in relation to the Technical and Economic Justifications (Inquiry Session No.1), and not NPF4, were summarised in the final written submission lodged on 5 May 2023 on behalf of the Applicant. GWP's refusal to conform to the procedural arrangements put in place by the Reporters was further confirmed by the content of GWP's closing submissions. Within Section 19 "Supplementary Matter – 5 May 2023", Senior Counsel for GWP took it upon himself, with no prior notice to either the Reporters or the Applicant, to provide his own response in relation to what was supposed to be the Applicant's final comments that were lodged on 5 May 2023, in response to Dr Ford's submissions of 28 April 2023. Those submissions will be addressed in these Closing Submissions when summarising the Applicant's position on the Technical and Economic Justifications in Chapter VII below.
- 1.6. Although equally lacking in substance as the submissions contained in Dr Ford's Hearing Statement 7 and Dr Ford's further written submission dated 28 April 2023, this further procedural transgression on the part of GWP is highlighted at the outset of the Applicant's Closing Submissions to draw to the attention of the Reporters, and the Scottish Ministers, the increasingly desperate attempts by GWP's representatives to go behind:
  - Ofgem's decisions on the Technical and Economic Justifications for the KTR Project; and,

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<sup>2</sup> Galloway Without Pylons is referred to as "GWP" in these Closing Submissions.

- the Scottish Government’s recently adopted policy intent as stated in NPF4 which provides clear and strong policy support in terms of the need for the replacement of the 132 kV high voltage electricity transmission lines in Dumfries and Galloway.

- 1.7. The Closing Submissions are structured to address firstly the generic issues that have a bearing upon a wide range of topic based submissions, which includes the legal and policy frameworks for the decision-making process. The Structure is as outlined on the covering title page of these Closing Submissions and in Chapter V below.
- 1.8. Reference will be made to the Summary of SPEN’s case that was submitted to the Reporters on 26 April 2023. The requirement that has been imposed by the DPEA, through the Reporters, on each of the parties to the Inquiry to produce a summary of the main points that comprise the case as presented through the Inquiry/Examination process on behalf of the party, has represented an innovation in the procedures adopted by the DPEA for the purposes of compiling the Report to Scottish Ministers under Schedule 8, paragraph 2(2) to the 1989 Act. Based on communications with the relevant Case Officer within the DPEA, it is understood by those advising the Applicant that the Summary will be appended to the Report and will not be subject to any editing by the Reporters. It is to be treated as the party’s Summary of its case.
- 1.9. In order to avoid duplication, for the purposes of these Closing Submissions it is not intended to repeat the summary of evidence that has already been provided within SPEN’s Summary. It will, however, be cross-referenced where appropriate using the paragraph numbering contained in the Summary of Case. Considerable time and effort went into the production of the Summary of the Applicant’s Case by the Applicant’s legal team, including Senior Counsel, with careful checking of the transcripts of evidence and liaison with the Applicant’s expert witnesses. It is submitted that the Summary of SPEN’s Case provides a reliable account of the factual and expert evidence on the various topics covered during the examination process. The content of the Summary of SPEN’s Case is therefore adopted for the purpose of these Closing Submissions.

- 1.10. There is reference throughout these Closing Submissions to different Inquiry Sessions and Hearing Sessions. To aid understanding in relation to the cross-referencing used in the Closing Submissions, Appendix 2 that is attached to these Closing Submissions provides a list of all of the Inquiry and Hearing Sessions relative to the topic addressed at those Sessions.
- 1.11. As has been explained in email correspondence, Senior Counsel for the Applicant has unexpectedly fallen ill in the period preceding the submission of these Closing Submissions. Those representing the Applicant wish to once again apologise for any inconvenience caused, and express their gratitude to the Reporters and the other parties for their understanding and continued patience. As a result of Senior Counsel's ill health, these Closing Submissions represent a joint submission by Senior Counsel and Shepherd and Wedderburn LLP on behalf of the Applicant, as follows:
  - 1.11.1. Chapters I – VI and Chapter VII Part 1 have been prepared by Senior Counsel on behalf of the Applicant;
  - 1.11.2. Chapter VII Parts 2 and 3, and Chapters VIII – IX have been prepared by Shepherd and Wedderburn LLP on behalf of the Applicant; and
  - 1.11.3. Chapters X and XI have been prepared jointly by Senior Counsel and Shepherd and Wedderburn LLP on behalf of the Applicant.

## 2. THE APPLICATION PROCESS

### Overview of the KTR Project

- 2.1. The KTR Project consists of proposals for the replacement of the existing 132kV overhead transmission lines between Polquhanity in the north of the project, through the existing Kendoon and Glenlee Substations, and south to the existing Tongland Substation. The 132kV overhead transmission lines (“OHL”) to be replaced currently connect five hydro-electric power stations in Galloway that serve the populations of Galloway, Dumfries and Ayrshire with electricity. Built in the 1930s and running at full capacity, the existing OHLs are at the end of their operational life and are therefore in need of replacement.
- 2.2. The KTR Project includes five new OHLs which will all operate at 132kV via a mix of double and single circuited connections. The five connections running north to south are:
- (i) A new 132kV double circuit steel tower OHL, of approximately 10.1km in length between Polquhanity (approximately 3km north of the existing Kendoon Substation) and Glenlee Substation, via the existing Kendoon Substation (“**P-G via K**” and referenced by the DPEA as Application TLR-170-5);
  - (ii) A new 132kV single circuit wood pole OHL, of approximately 2.6km in length, between Carsfad and Kendoon Substation (“**C-K**” and referenced by the DPEA as Application TLR-170-2);
  - (iii) A new 132kV single circuit wood pole OHL, of approximately 1.6km in length, between Earlstoun and Glenlee together with a short section of approximately 250m of underground cable to connect into Glenlee Substation (“**E-G**” and referenced by the DPEA as Application TLR-170-3);
  - (iv) A new 132kV double circuit steel tower OHL deviation of the existing BG route, at Glenlee Substation approximately 1.2km in length (“**BG Deviation**” and referenced by the DPEA as Application TLR-170-1); and,

- (v) A new 132kV double circuit steel tower OHL, of approximately 32.3km in length, between Glenlee and Tongland Substations (“G-T” and referenced by the DPEA as Application TLR-170-4).

2.3. In addition to the five new connections referred to above, and which are each referred to individually as a “Connection”, the KTR Project that comprises all five Connections also includes ancillary development (both permanent and temporary). This would include the removal of the existing 132kV OHL between Polquhanity, Kendoon, Carsfad, Earlstoun, Glenlee and Tongland; known as the N route and the R (North) and R (South) routes. See Figures 1 to 6 of the Non-Technical Summary for the Environmental Impact Assessment Report (“EIA Report”); CD001.210<sup>3</sup>. This will involve the decommissioning of around 43.3km of existing OHL infrastructure. The removal of the N route towers between Polquhanity and Kendoon (towers N230-N240), and R route (North) between Kendoon and Glenlee (comprising towers R000A-R29) are the subject of an application for deemed planning permission as part of the P-G via K Application. Deemed planning permission has also been sought for the removal of the R route (South) between Glenlee and Tongland (comprising towers R30-R153) as part of the G-T Application.

2.4. The other ancillary development includes minor realignment works at the existing Substations at Kendoon, Carsfad, Earlstoun and Tongland<sup>4</sup>. The related works required at Glenlee Substation have been the subject of a separate planning application that has been made to Dumfries and Galloway Council and granted by the Council on 11 August 2020<sup>5</sup>. In addition, temporary works associated with the felling of forestry and the construction phases of the KTR Project are included within the description of ancillary development as summarised from pages 15 to 18 of the Non-Technical Summary for the EIA Report (CD001.210). These works include the creation of forestry wayleaves, timber stacking areas, accesses and access tracks,

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<sup>3</sup> More detailed plans are produced as Figures to the EIA Report and which are reproduced for each of the five applications, as Core Documents CD001.002 to CD001.006, together with the KTR Project Overview Map as CD001.001.

<sup>4</sup> Pages 13-14 of the Non-Technical Summary for the EIA Report (CD001.210)

<sup>5</sup> See paragraphs 3.22 to 3.27 of Inquiry Report of Kate Wigley



quarries, construction compounds, watercourse crossings, working areas around support structures for the OHL, winching areas and undergrounding of existing distribution voltage network<sup>6</sup>

- 2.5. The KTR Project lies fully within Dumfries and Galloway Council's local authority area, and is located within the Glenkens Valley and Galloway Hills, part of the southern reaches of the Southern Uplands. The route of the KTR Project covers a linear area, running broadly north to south, from Polquhanity to the existing Substation at Tongland (approximately 1.5km to the north of Kirkcudbright). The area is broadly bounded by the A762 and Loch Ken to the east and the eastern periphery of the Galloway Forest Park and forested hilltop summits to the west.
- 2.6. The northern section of the KTR Project is located in an area predominantly rural in nature, comprising land cover of rough pasture and grazing farmland before entering the coniferous forestry of the Galloway Forest Park on the western side of the Glenkens Valley, east of New Galloway. The central section of the KTR Project is located in an area that consists most notably of extensive commercial forestry, including the eastern periphery of the Galloway Forest Park and Laurieston forest immediately to the south. The southern reaches of the area within which the KTR Project is located remain predominantly rural in nature, and are characterised by a pattern of farmland and scattered coppices of deciduous woodland.
- 2.7. The area within which the KTR Project is located is sparsely populated in comparison to the more densely populated coastal areas to the south. Settlements nearby include several small towns and villages including, amongst others, the villages of St John's Town of Dalry, Mossdale, and Laurieston, with smaller 'clusters' and individual properties dispersed throughout the area. The local road network encompasses a section of the A713 from Polquhanity to St John's Town of Dalry, the A762 south to Tongland the A711, A713 and the A75 trunk road. These roads service both the main settlements and smaller dwellings, connecting them to the wider Dumfries and

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<sup>6</sup> Pages 15 to 18 of the Non-Technical Summary (CD001.210) and Chapter 4 – Development Description, in the EIA Report (CD001.010)

Galloway area. Within the commercially forested areas, numerous forest tracks create access to the more remote areas of the Southern Uplands<sup>7</sup>.

### **Chronology of the Application Process**

- 2.8. The application process, including the Public Inquiry, has been very lengthy and not reflective of the current ambitions of the Scottish Government or the Chief Reporter, to streamline the consenting process associated with electricity development. A summary chronology of the application process is appended to these Closing Submissions as Appendix 1.
- 2.9. The Applications were submitted on 28 August 2020 after a lengthy and detailed pre-application consultation process that the Applicant conducted with statutory and non-statutory consultees, businesses, communities and the wider public, with interests in the geographical areas described in summary in paragraphs 2.5 to 2.7 above. The Energy Consents Unit of the Scottish Government (“the ECU”) validated the Applications on 7 September 2020 and began the formal consultation and publication processes in relation to the Applications and accompanying EIA Report.
- 2.10. The first major delay in the application process has resulted from the objection by Dumfries and Galloway Council (“the Council”) that was made after consideration of the Applications by the Council’s Planning Applications Committee on 14 April 2021. The recommendation from the Council’s planning officers was that no objection be raised to the five Applications for the Connections subject to the imposition of conditions. Contrary to that recommendation the Committee decided to object to all five Applications notwithstanding the fact that the ground of objection was restricted in geographical scope as it was based on the Councillors’ concerns regarding adverse effects on landscape character and visual amenity within the Galloway Hills and Solway Coasts Regional Scenic Areas (“RSA”). The decision of the Council was intimated to the Energy Consents Unit on 16 April 2021.
- 2.11. In terms of paragraph 2(2) of Schedule 8 to the 1989 Act, as a consequence of objection

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<sup>7</sup> Paragraph 1.18 to 1.19 of Chapter 1 of the EIA Report (CD001.007)

by the relevant planning authority, the Scottish Ministers were obliged to hold a public inquiry before determining whether or not to grant consent under section 37 of the 1989 Act. However, partly due to delays associated with the need to resubmit additional environmental information that had previously been sent to the Scottish Environment Protection Agency (“SEPA”), but which had been affected by the SEPA cyberattack at that time, it took the ECU nine months to send the Applications to the DPEA on 1 February 2022. It then took another 2 months for the DPEA to notify the Applicant by letter dated 6 April 2022 of the appointment of the Reporter, Ms Katrina Rice, to conduct the Public Inquiry, by which time about a year had passed since the Council’s objection.

2.12. On 12 May 2022, the DPEA confirmed the arrangements for the Pre-Examination Meeting. After the commencement of the Inquiry procedure, the Council obtained legal advice from an external solicitor, Mr Peter Ferguson of Harper MacLeod, who appeared on behalf of the Council at the Pre-Examination Meeting on 15 June 2022. At that time Mr Ferguson was not in possession of instructions as to the approach that the Councillors involved in the Committee Meeting on 14 April 2022, intended to take in relation to the outstanding objections to the five Applications. After further correspondence between the DPEA and Mr Ferguson, and the Applicant’s solicitors, Shepherd and Wedderburn, Mr Ferguson provided confirmation on 29 June 2022 that the Council’s objections in respect of three of the Applications (TRL-170-1, TRL-170-2 and TRL-170-3) would be withdrawn.

2.13. At that time he was still unable to confirm the nature of the Council’s involvement and extent of participation in the Public Inquiry, and, how it intended to participate in the inquiry session in relation to its landscape and visual objection. Notwithstanding the request from the Reporter, Ms Rice, to provide clarification and confirm the Council’s attendance and participation in the different sessions that the Council was “strongly invited to attend”<sup>8</sup>, the Case Officer at the DPEA subsequently

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<sup>8</sup> Paragraph 48 of the Pre-Examination Meeting Note

received an email dated 12 October 2022 from Mr Ferguson, advising that the Council was withdrawing its outstanding objection to Applications TRL-170-4 and TRL-170-5 for the Glenlee to Tongland Connection and the Polquahnity to Glenlee Connection, respectively. The Reporters and parties were informed by Mr Ferguson that the Council did not propose to have any further involvement in the Inquiry. By letter dated 13 October 2022, the Reporters consulted the parties on the three Options that the Reporters had identified in light of the Council's withdrawal of its remaining objections. By letter dated 19 October, the DPEA confirmed on behalf of the Reporters that all parties and the ECU favoured proceeding with the Public Inquiry as planned and that the Council would appear only at the Conditions hearing sessions to provide assistance as requested by the Reporters.

- 2.14. The procedure associated with the Inquiry process was summarised by the lead Reporter, Ms Rice, in the Pre-Examination Meeting Note ("PEM Note") issued by the DPEA on 28 June 2022. The PEM Note was subsequently updated in August 2022 following the submission of further written submissions on matters 1, 2, 3 and 4 of Procedure Notice No.1. In the intervening period the Applicant received notification from the DPEA on 16 August 2022 that a second Reporter, Mr David Buylla, had been appointed with responsibility for two Inquiry Sessions. The relevant topics were the Technical and Economic Justifications (Inquiry Session No.1) and the Justification for the Environmental Impact Assessment (EIA) Methodology (Inquiry Session No. 3). New minutes of appointment were issued on 19 October 2022 for both Reporters to reflect the fact that the Council had withdrawn its application and that the Public Inquiry would proceed under paragraph 3(2) of Schedule 8 to the 1989 Act. This was on the stated basis that the Scottish Ministers considered that it was appropriate for a Public Inquiry to be held taking into account the objections from consultees, and members of the public, together with all other material considerations.
- 2.15. The written submissions procedure began on 13 July 2022 and, for the Inquiry and Hearing Sessions, the Hearing Statements and Inquiry Statements were due on 29 August 2022. Documents for both the Inquiry and Hearing Sessions, including

witnesses' Inquiry Reports, were lodged on 12 September and precognitions lodged on 10 October 2022. The Inquiry commenced on 24 October 2022 and the original procedural timetable was concluded on 28 November 2022. A mixture of Inquiry Sessions and Hearing Sessions were held over that 6 week period, including Inquiry Sessions for the Necessary Wayleave applications for Knocknalling Estate and Slogarie Estate on 28 November 2022.

- 2.16. As a consequence of the revised draft NPF4 being laid before the Scottish Parliament on 8 November 2022 for approval by resolution of the Scottish Parliament, which was expected at that time to be approved either by the end of the year or early in January 2023, it was agreed between the parties and the Reporters that the approved and adopted NPF4 should be the subject of further written submissions procedure. It was subsequently decided by the Reporters that a seventh Hearing Session should take place on 29 March 2023 to address the parties' written submissions on NPF4, and also the three other draft Policy documents listed in Procedure Notice No. 4 that was issued by the Reporters on 24 January 2023.
- 2.17. Unfortunately the Inquiry process was extended as a result of GWP going out with the ambit of Procedure Notice No.4 through the content of the Hearing Statement produced by its witness Dr Ford, dated 14 March 2023. Fairness dictated the need for a further written submissions procedure after the 29 March 2023, to provide the Applicant with the opportunity to respond on the new matters raised as a consequence of GWP lodging 3 new documents that had no bearing on the findings that the lead Reporter, Ms Rice, would have to address in relation to national planning and energy policy under reference to the policy documents listed in Procedure Notice No. 4. According to the procedure set out in the Case Officer's email dated 30 March 2023 following Hearing Session No.7, that procedure officially concluded on 5 May 2023 with the submission of the Applicant's final comments on Dr Ford's further written submission dated 14 April 2023 based on his new documents submitted with his Hearing Statement for Hearing Session No.7, namely GWP22 to GWP 23. However, yet again GWP has blatantly contravened the

procedural arrangements put in place in terms of Mr Colin Bell's email dated 30 March 2023 because, in its closing submissions lodged on 10 May 2023, Senior Counsel for GWP has made further written submissions in response to the Applicant's final comments contained in its written submissions dated 5 May 2023. This is addressed in greater detail in Chapter VII of these Closing Submissions but for the purposes of summarising the chronology associated with the Inquiry process, it is noted that GWP has extended that process by an additional 10 weeks through the failure to respect the procedural arrangements put in place by the Reporters to ensure fairness and efficiency in the Inquiry process.

- 2.18. In summary, it has taken 11½ months from the Council's intimation of its objection to the Applications until they were forwarded to the DPEA, and, another 13 months to reach the end of the Inquiry process and reach the point at which parties' Closing Submissions were due to be submitted. There has been a two year delay in the consenting process occasioned by the Council's objection that was motivated by the local Councillors influenced by objectors, such as the GWP, and not based on the professional advice and assessment of the Applications by appropriately qualified Council officers which was to raise no objection to the Applications. It has opened the door to the main objector group, GWP, to engage in unfair practices through an Inquiry forced by the Council's objection that was then withdrawn at the eleventh hour, thereby unnecessarily lengthening the whole consenting process

### **The Electricity Act 1989**

- 2.19. There are important considerations that flow from the statutory requirement for an electricity consent under the 1989 Act for the construction and operation of either a generating station with a permitted capacity greater than 50 MW, or the installation of an overhead electricity line. Such development requires: (i) an electricity consent granted under either section 36 or section 37 of the 1989 Act, respectively; and also, (ii) planning permission granted under the town and country planning regime. Electricity development that requires the grant of a statutory consent from central

government under either section 36 or section 37 of the 1989 Act, are considered relevant to the fulfilment of central government's energy policy that is pursued in the national interest. In general terms, such developments are of a scale and/or strategic importance that the decision on whether to grant development consent is reserved to central government and removed from the jurisdiction of local government operating as the planning authority within the Town and Country Planning regime.

- 2.20. The strategic national importance of such development has recently been confirmed by the Scottish Government through the adoption of NPF4, in terms of which electricity development that is categorised as "Strategic Renewable Electricity Generation and Transmission Infrastructure" is described as national development<sup>9</sup>. In terms of the "Designation and classes of development" descriptions these national developments include: (a) onshore electricity generation from renewable sources exceeding 50 megawatts (MW) of capacity [i.e a development requiring section 36 consent under the 1989 Act]; and, (b) new and/or replacement upgraded onshore high voltage electricity transmission lines of 13kV or above [i.e. a development requiring a section 37 consent under the 1989 Act]. Please refer to Chapter VI for further comments regarding the national development status.
- 2.21. The legal nuances associated with the fact that the Applications are made under the 1989 Act are discussed in greater detail in Chapter IV of these Closing Submissions. But of considerable significance to the procedural history associated with the Applications, and the decision-making process that follows upon the holding of the Public Inquiry, is that the Reporters can conclude that the Council's elected representatives have demonstrated that they are not well-placed to give greater priority to the national interest, as expressed in NPF4, as opposed to the interests of local communities and objectors who expect their elected Councillors to prioritise their own personal interests.
- 2.22. Related to this issue is the fact that the Applicant is a regulated statutory undertaking

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<sup>9</sup> Annex B at page 103 of NPF4 "National Developments Statement of Need"; (CD003.042)

under the 1989 Act as the holder of a transmission licence granted under section 6 of the 1989 Act. It is not a commercial developer promoting development driven primarily for profit. As will be discussed in Chapter IV of these Closing Submissions, the Applicant has a number of statutory and regulatory duties that it requires to meet through the development and promotion of this “relevant proposal”, as defined in paragraph 3(4) of Schedule 9 to the 1989 Act. The Scottish Government is reliant upon the Applicant, as the holder of the transmission licence for this part of south west of Scotland<sup>10</sup> to bring forward relevant proposals to meet its statutory, and licence, obligations under section 9 of the 1989 Act, and, to facilitate the achievement of policy objectives in NPF4 and other related national energy and planning policy that are in the wider public interest.

2.23. This statutory context is necessarily emphasised in this opening Chapter of the Closing Submissions because it has a bearing upon the whole of the decision-making process. The recent further written submissions from Dr Ford, including his Hearing Statement for Hearing Session No.7, and the closing submissions recently lodged on behalf of GWP, the main objector group in relation to the Application TRL-170-4 for the Glenlee to Tongland Connection, serve to demonstrate the obvious errors that can result from a failure to have proper regard to the relevant statutory context. The unwillingness on the part of GWP’s self-acclaimed expert, Dr Ford, and its Senior Counsel, to acknowledge that there is an inter-relationship between the Applicant fulfilling its statutory and related licence obligations to the achievement of the Scottish Government’s national energy and planning policy objectives, is an issue that should be recognised by the Reporters at the outset. By not doing so it is impossible to evaluate the weight to be placed on Dr Ford’s evidence and the closing submissions from their Senior Counsel on the various topics in respect of which Dr Ford gave evidence as an expert witness.

2.24. The fact the Applications are made under the 1989 Act and not the Town and Country

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<sup>10</sup> See Figure 1.1: Electricity transmission system in south west Scotland on page 1 of the Scoping Report (CD001.235)



Planning (Scotland) Act 1997 (“the 1997 Act”) is also of relevance to the procedure to be adopted. Notwithstanding the different procedures that the Reporters have utilised for the purposes of the Public Inquiry being held under Schedule 8 to the 1989 Act into the Applications, the whole process is referred to in these Closing Submissions as “the Inquiry process”. This is by virtue of the fact that the holding of the Public Inquiry is as a result of the Scottish Ministers exercising their powers under section 62 and paragraphs 2 and 3 of Schedule 8 to the 1989 Act, which are specific to the holding of a public inquiry. As confirmed in paragraphs 3 to 5 of the PEM Note, the DPEA has produced a Code of Practice for the conduct of a public inquiry held under section 62 of, and Schedule 8 to, the 1989 Act. It is noted that: *“The procedure to be followed at inquiry is a matter for the discretion of the reporter, the objective being to conduct proceedings in a fair, transparent and efficient manner.”*<sup>11</sup> The Reporters confirmed that the approach outlined in the Code of Practice would be adopted for the Inquiry and it is produced as Core Document CD003.002. The procedure proposed by the lead Reporter from the outset of the inquiry proposed has been a hybrid of written submissions, hearing sessions, and inquiry sessions.

### **Scoping Opinion for EIA Development**

- 2.25. The KTR Project was always treated by the Applicant as EIA Development for the reasons explained in Section 2 of the Inquiry Report of Ms Kate Wigley (APP003.001). The Applicant therefore submitted a request for a Scoping Opinion in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“2000 EIA Regulations”) (CD003.004). The request was made on 28 April 2017 and in accordance with established procedures under the 2000 EIA Regulations, a Scoping Report<sup>12</sup> was produced. As a consequence of the Applicant submitting the EIA Report with the Applications for the Schedule 2 development, in terms of Regulation 6 of the 2000 EIA Regulations the proposed development was deemed EIA development; as set out within paragraphs 2.2 to 2.3 of Ms Wigley’s

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<sup>11</sup> Paragraph 8 of the Code of Practice (CD003.002)

<sup>12</sup> CD001.235

Inquiry Report.

2.26. A Scoping Opinion<sup>13</sup> was issued by the ECU and was adopted by the Scottish Ministers on 4 October 2017; paragraph 2.4 of Ms Wigley's Inquiry Report. As confirmed by the ECU in the Scoping Opinion, a consultation exercise was carried out by the ECU on behalf of the Scottish Ministers on receipt of the Scoping Opinion request<sup>14</sup>. The consultation on the contents of the Scoping Report was with the Council, as the relevant planning authority, Scottish Natural Heritage (now NatureScot), SEPA and Historic Environment Scotland, as statutory consultees. In addition, the ECU consulted with the non-statutory consultees, which the Scottish Ministers considered were likely to have an interest in the proposed development by reason of their specific environmental responsibilities or local and regional competencies. As noted in the Scoping Opinion (page 4), where the Scottish Ministers adopt the Scoping Opinion the EIA Report must be based on that Opinion. There is no dispute with any of the consultees that the EIA Report has been based on the Scoping Opinion and the ECU has accepted the EIA Report and additional environmental information as complying with the EIA Regulations and the Scoping Opinion.

2.27. It is submitted on behalf of the Applicant that criticisms made by GWP's main witness during the Inquiry Process in relation to the EIA Report, have to be considered against this background. The issues raised in evidence by GWP on EIA methodology will be addressed in greater detail in Chapter VIII below, but once again it is important that there is an appreciation by the Reporters from the outset that the issues raised by Dr Ford on behalf of GWP are not supported by the statutory consultees or non-statutory consultees (although please refer to APP003.001 in relation to the position of RSPB).

### **Pre-application consultation**

2.28. It is noted in the Scoping Opinion that Scottish Ministers were active in organising

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<sup>13</sup> CD001.236

<sup>14</sup> Pages 5 and 6 of CD001.236

effective consultation during the pre-application process. In addition to directing the establishment of a Community Liaison Group (“CLG”), the Scottish Government was also actively involved in the Statutory Stakeholder Liaison Group (“SSLG”)<sup>15</sup>. The involvement of these Groups in the pre-application process was explained in the Applicant’s Hearing Statement produced for the topic of “Strategic route selection, design strategy and consultation”. Reference is made to paragraphs 5.17 to 5.20 of the Hearing Statement for Hearing Session No.2, together with the supporting Core Documents cross-referenced in that evidence. Some of the Applicant’s witnesses who participated in Hearing Session No.2, namely Mr Jack of SPEN, Mr Hayman of Copper Consultancy Ltd, and Ms Wigley and Mr Walker of LUC, were all actively involved in the pre-application consultation process throughout the whole process prior to submission of the Applications in August 2020.

- 2.29. The consultation process involved three rounds of consultation over the period from the summer of 2015 to the winter of 2017/2018. As recorded in the Applicant’s Hearing Statement<sup>16</sup>, the first of those consultation exercises was carried out in the context of preferred corridors for the project known as the “Dumfries and Galloway Strategic Reinforcement Project”, (“DGSRP”). The criticisms from GWP, and in particular Dr Ford, are addressed in Chapter VII below, but the Reporters are invited to have regard to the reliable and consistent evidence from a range of the Applicant’s witnesses who were all involved at different stages of the pre-application processes, and from different professional backgrounds. Reference is being made to the evidence from Mr Diyar Kadar of SPEN in relation to explaining the design solution to different stakeholders during the consultation process, Mr Stephen Jack of SPEN with responsibilities for the consenting process on behalf of the KTR Project team, Ms Kate Wigley of LUC with overall responsibility for the EIA process, and, Mr Ross Hayman of Copper Consultancy Ltd who are a leading specialist in consultation and engagement for major infrastructure projects<sup>17</sup>.

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<sup>15</sup> Pages 5 to 6 of the Scoping Opinion (CD001.236)

<sup>16</sup> Paragraph 5.14 on page 27

<sup>17</sup> Paragraph 5.11 of the Applicant’s Hearing Statement

- 2.30. All of these witnesses have given evidence regarding the relevance of the first of the consultation exercises in terms of receiving feedback on the identified preferred routes for the reduced scheme that became the KTR Project. It is clear from the Hearing Statement, and from the oral evidence that they each gave during the course of the Inquiry process (Mr Kadar through Inquiry Session No. 1) and the other witnesses during the second of the Hearing Sessions in relation to “Strategic route alternatives, design strategy and consultation” held on 9 and 10 November 2022 (Hearing Session No. 2), that the feedback from that initial consultation exercise remained relevant. It was, however, built upon by the subsequent consultation exercises that constituted the second and third round of consultations.
- 2.31. It should be recognised by the Reporters that the evidence presented on behalf of the Applicant does objectively demonstrate that the pre-Application consultation was carried out with a true commitment to achieving effective consultation and engagement, and, with a level of professionalism that has been recognised by many objectors during the Inquiry process. This was fairly recognised by Mr Howieson on behalf of Scottish Forestry, and Mr Paul Swift on more than one occasion during the Inquiry process on behalf of GWP and who has been involved in the Project almost as long as Mr Jack of SPEN. Although it was clear that Mr Swift remains of the view that there should have been different decisions made in relation to the design of the KTR Project, specifically in relation to the G-T Connection, he does not extend that belief into criticism of the pre-application consultation process. The Applicant has carried out the pre-application consultation process in accordance with guidance produced by the Scottish Government<sup>18</sup> and has documented the conclusions drawn from each round of consultation and the steps taken to address particular issues raised through the feedback.<sup>19</sup>

### **Summary & Concluding Comments**

- 2.32. The Application process has been lengthy, and taken together with the pre-

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<sup>18</sup> Paragraph 5.10 of the Hearing Statement on “Strategic route alternatives, design strategy and consultation”

<sup>19</sup> Paragraphs 5.37 to 5.58 of the above referenced Hearing Statement

application process that was specific to the KTR Project that commenced in 2016<sup>20</sup>, at this stage of the consenting process almost 7 years have passed. Notwithstanding the urgency associated with the Project that will be discussed in greater detail in Chapter VII of these Closing Submissions, the Applicant has not skimmed or cut corners on the essential preparatory work associated with an EIA application under the 1989 Act, or, the pre-application consultation process.

- 2.33. The consultation process has been described by third parties as exemplary and the documented history in documents before the Inquiry, as spoken to by witnesses involved in the whole 7 years of the KTR Project, bears out that testament.
- 2.34. Based on the evidence before the Inquiry, which will be discussed in greater detail in the relevant Chapters below, it is submitted that the Reporters should place considerable weight on the security of supply driver for this Project that is the subject of discussion in Chapter VII. That is the end-of-life condition that has been assessed since before 2016 in respect of the 132kV transmission assets between Polquhanity and Tongland, which given that they were constructed in the 1930s should not be a surprise to anyone.
- 2.35. At the time of the Applications there was an urgency associated with securing consent to replace these transmission assets. That urgency has not gone away and will not go away until the assets are replaced. That process cannot commence until consent is granted so that construction can commence and provide the necessary security of supply to “around 31,000 customers (including NHS facilities, medical practices, dental surgeries, phone/communications infrastructure, private dwellings, hotels, restaurant, large scale industrial customers and wind farms)”<sup>21</sup>. The drawn out application process has simply served to increase the urgency and the delays that are now associated with the Inquiry process driven by the Council’s objection. This has further compounded the urgency associated with security of supply obligations that relate to the end of life assessment condition of the assets that was identified at the

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<sup>20</sup> Paragraph 5.2 and 5.14 of the above referenced Hearing Statement. The relationship with the earlier DGSR Scheme, as discussed in Chapter VIII, should also be noted.

<sup>21</sup> Paragraph 7.1 of Mr Kadar’s Inquiry Report (APP001.001)

time of the DGSRP on in 2014/2015 and which are the subject of the these Applications. As will be discussed in the following Chapters, the new urgency and imperative stemming from the recently adopted NPF4 and related national energy policy and climate change legal obligations on the Scottish Ministers to meet renewable energy generation targets, has only served to emphasise the need to speed up the application process.

### **3. THE PUBLIC INQUIRY PROCESS**

- 3.1. As referenced above, once the Council intimated to the ECU its statutory objection on 16 April 2021 based on the potential landscape and visual impacts on the Galloway Hills and Solway Coast RSAs, a public inquiry was inevitable. It was not a ground of objection that could be addressed through the imposition of conditions in terms of paragraph 2(4) of Schedule 8 to the 1989 Act.
- 3.2. It was ironic, and frustrating for the Applicant, that having been the initiator of the Inquiry process the Council came to withdraw its objection on 12 October 2022, almost on the eve of the Inquiry commencing. By that time the expectation on the part of the main group of Objectors, GWP, was that its grounds of objection would be explored through the proposed public inquiry process. The procedural letter sent by the DPEA on 13 October 2022 clearly did not envisage the option of not proceeding with the Inquiry at that stage in the process. The ECU came to confirm to the Reporters that it favoured proceeding with the Public Inquiry in light of the numbers of third party representations received, namely 951 containing objections. The nature of the third party representations are discussed below in this Chapter.
- 3.3. The lead Reporter, Ms Rice, recorded in Annex 2 to the PEM Note, the identity and number of individuals who had stated their intention to participate in the various Inquiry and Hearing Sessions listed in that Annex. In addition to the Applicant and the Council (the latter of whom was strongly encouraged to attend all of the Sessions) these included: Scottish Forestry, GWP, Alastair Kerr, Bernhardt von Spreckelsen, Laura Moodie on behalf of the Scottish Green Party and Community Councillor, Steve Maclean, a resident of Laurieston, and Nancy Harrison, a resident of Laurieston, retired ornithologist and member of GWP. Of all those objectors who indicated an intention to participate in the Inquiry the only Objectors who did in fact appear at the Inquiry and participate in the Inquiry and Hearing Sessions (excluding the Evening Session) were Scottish Forestry, GWP and Mr Kerr. Subsequent to the PEM, the Galloway & Southern Ayrshire Biosphere Reserve Partnership Board

intimated its intention to participate in the Hearing Sessions that it considered relevant to its interests; (i.e. planning policy and planning conditions). A Hearing Statement was lodged on its behalf on 7 September 2022. In addition, during the pre-inquiry procedure those acting on behalf of Lord Sinclair, owner of Knocknalling Estate, intimated their client's desire to be treated as an Objector to the section 37 application as well as an Objector to the necessary wayleave application that applied to his land for the P-G via K Connection. This was agreed to by the Applicant which resulted in an Inquiry Statement being produced for Lord Sinclair in respect of his interests in Knocknalling Estate.

- 3.4. Chapters V to XI of these Closing Submissions are structured to cover the matters upon which the Scottish Government has specifically requested parties to address in closing submissions in paragraphs 34 to 39 of the DPEA's Code of Practice relative to electricity applications under the 1989 Act. These requirements are outlined in Chapter V below. This Chapter of the Closing Submissions provides some introductory comments in relation to the overall approach adopted by each of the Objectors during the Public Inquiry process. The submissions below are relevant to the Reporters' considerations as to the weight to attribute to the evidence presented for these Objectors, and/or the Objectors' position. In some instances, they bear upon the credibility and reliability of the evidence presented by the Objectors.

### **The Council**

- 3.5. At the outset of the Inquiry process, the Council was regarded by the other parties as the main protagonist given its elevated status in terms of Schedule 8 to the 1989 Act, not only as a statutory objector to the proposed electricity transmission development but as the relevant planning authority with the power to force the Scottish Ministers into holding a public inquiry. The Reporters are invited to place no weight, or very limited weight, on the historical fact that for limited periods of time the Council maintained objections to the proposed Applications. The reasons that form the basis of this submission are as follows:



- (i) The decision of the Councillors who attended the Planning Applications Committee on 14 April 2021 was a decision that was made against the recommendation of the Head of Economy and Development, and the reporting professional planning officer Mr Chris McTier, who was the Case Officer who had responsibility for preparing the report to Committee following consultation with the relevant professional officers within the Council from different disciplines, as listed in Section 2 of the Committee Report<sup>22</sup>. In essence it was a politically motivated decision that was not supported by the Council's officers.
- (ii) The reason for refusal given by the Council to the ECU on behalf of the elected representatives of the Committee<sup>23</sup> lacked substance and ultimately the Councillors were not prepared to appear at the Inquiry to defend, or justify, the reason for the decision.
- (iii) The evidence of Mr Dan Walker, the Landscape Architect who was involved in advising the Applicant's project team from the beginning of the routeing process for the Connections, and throughout the Applications and Inquiry processes, provided convincing and unchallenged evidence regarding the avoidance of impacts on the special qualities of the RSAs, as far as they can be determined<sup>24</sup>, through careful routeing.

3.6. As previously referred to briefly in Chapter II above, this conduct on behalf of the Councillors of the relevant planning authority serves to demonstrate that there is a sound basis for restricting the local planning authority's jurisdiction in the consenting of nationally important electricity infrastructure development. A politically motivated local government decision that favours the interests of local objectors above the national interest has been shown in this case not only to cause considerable delay in the consenting process but, also, to the fulfilment of the Scottish

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<sup>22</sup> CD002.001.

<sup>23</sup> *Ibid* pages 3 and 4 of the Document.

<sup>24</sup> As noted in evidence, the position of Mr Walker representing the Applicant remains that the Council has not adequately defined the special qualities in coming to designating the RSAs.

Government's stated renewable energy policy objectives. For these reasons it should be made clear to the Scottish Ministers that the relevant planning authority failed to support its statutory objection and provided little assistance to the Reporters other than to attend the Hearing Session on Conditions (Hearing Session No.6), and respond at officer level to correspondence from the DPEA in relation to matters within the Council's areas of responsibility and competence.

- 3.7. The importance of the Reporters making a clear finding as to the lack of substance to the Council's objection and the unwillingness on the part of the Councillors to appear at Inquiry to defend and justify its position, has a wider significance. GWP in its closing submissions adopts a position that simply confirms that its membership has laboured under the misapprehension that a planning authority's obligation in relation to applications for development consent for nationally important infrastructure is to act in the interests of "its population". GWP's Senior Counsel complains in his closing submissions that the Council's non-involvement in the public inquiry process "was a significant failure in DGC's obligation to its population". These comments are to be found in Section 4 of GWP's closing submission, which although dated on the 9 May 2023 were not intimated or lodged until 10 May 2023.
- 3.8. The tone of this part of the submissions for GWP is predicated on the assumption that the Council was opposed to the proposed development in support of those sections of the community who were either fundamentally opposed to the KTR Project, or the G-T Connection. But the reason given for the withdrawal of the Council's objection removes any legitimate basis for the submissions made on behalf of GWP as regards the Council's position. On the basis that it must be concluded from Mr Ferguson's correspondence withdrawing the Council's objection<sup>25</sup>, and from the Reporters' correspondence that followed thereafter, that the Council no longer maintains any objection to any of the Applications, on that basis the whole genesis of

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<sup>25</sup> Email of 12 October 2022, referred to in paragraph 2.13 above.

the submissions made on behalf of GWP on this issue has no foundation in fact. The submission on behalf of the Applicant is that under the guidance of Mr Ferguson the Council acted properly when it must have been advised that the objection could not be supported in light of the Applicant's evidence, and withdrew its Objection. The closing submissions for GWP on this issue are misguided but which obviously reflect the views of many within GWP that its members are entitled to expect the Council's elected representatives to object to the KTR Project in order to protect their local interests in opposing the G-T Connection.

- 3.9. The Council's true position must therefore be made clear to the Scottish Ministers through the Report that is to be prepared by the Reporters following conclusion of the Public Inquiry. Before leaving the Council's position, the Applicant would wish to record appreciation to Council officials who have provided considerable support and invaluable feedback during the application process. This has been instrumental in shaping the proposed mitigation measures and strategies and provides the Applicant's project team with confidence that the proposed mitigation will be effective. This is discussed in greater detail in Chapter X of these Closing Submissions.

### **Scottish Forestry**

- 3.10. It has been acknowledged by Mr Doug Howieson, Conservator for the South Scotland Conservancy of Scottish Forestry, during both Hearing Session No. 2 and the hybrid Inquiry/Hearing Session held on 16 November 2022 in relation to impacts on forestry (Inquiry Session No.5), that the Applicant has engaged in a meaningful and effective consultation process since the stage of pre-application consultation. He stated in his evidence that he considered the same approach had been carried through in the lead up to the commencement of the Inquiry. This is borne out by the fact that through negotiations and discussions between Mr Moray Thomson of Shepherd and Wedderburn on behalf of the Applicant, and Mr Howieson on behalf of Scottish Forestry, the scope of the objection from Scottish Forestry has narrowed considerably.

- 3.11. It was clear from the Inquiry Session on the Scottish Forestry objection that the remaining issue that had not been resolved was the loss of 42.37 hectares of Ancient Semi Natural Woodland (ASNW), Plantation on Ancient Woodland Sites (PAWS) and sites record on the Native Woodlands Survey of Scotland (NWSS). Indeed, that had become clear earlier in the Inquiry when Mr Howieson had participated in Hearing Session No. 2 on Strategic Route Selection.
- 3.12. The nature of the outstanding objection and Scottish Forestry's position of objection in principle to the loss of any ASNW, PAWS and NWSS is addressed in Chapter IX below. By way of an overview comment, it is the Applicant's position that the attitude of Mr Howieson as the representative of Scottish Forestry at this Public Inquiry, is unrealistic and not reflective of the legal and policy frameworks within which a decision on the proposed nationally important infrastructure development requires to be taken. It is not doubted that Mr Howieson is genuine in his belief that he must guard against, and resist, the loss of ancient woodland, as he clearly considers that this is consistent with his role as conservator for Scottish Forestry.
- 3.13. Ultimately, therefore, it is for the Scottish Ministers to resolve the competing interests of Scottish Forestry, and, those coincident interests of the Applicant and the Scottish Government in the timely delivery of essential transmission infrastructure. The proposed development that would adversely impact on ASNW, PAWS and NWSS is not one of private development but has been brought forward by the Applicant as the incumbent holder of the transmission licence in this part of Scotland. In that capacity the Applicant has the responsibility of bringing forward relevant proposals to meet its statutory obligations, and thereby assist in the delivery of the Scottish Government's policy objectives in relation to essential transmission infrastructure. The nature of those competing interest and the weighing of the evidence will be addressed in greater detail in Chapter IX.

#### **Galloway and Southern Ayrshire Biosphere Reserve Partnership Board**

- 3.14. The Vice-Chair of the Galloway and Southern Ayrshire Biosphere Reserve

Partnership Board (“GSAB Partnership”), Mr John Thomson, submitted a Hearing Statement for the purpose of the Hearing Sessions on both national planning policy and development plan policy (Hearing Sessions Nos. 1 and 11). It became clear from his involvement that the GSAB Partnership is appreciative of the need for electricity transmission infrastructure and recognise the importance of both drivers for the KTR Project<sup>26</sup> but argues that the Biosphere Reserve should be kept free of “tall built structures”<sup>27</sup>. Primarily for that reason, Mr Thomson argued that the Applicant should pursue the use of underground technology rather than the proposed overhead line Connections to avoid adverse impacts on the landscape and visual environmental qualities within the Biosphere Reserve.

- 3.15. It was clear from Mr Thomson’s involvement that his appearance was more in the nature of exercising the right to participate in the Inquiry process to ensure that the Reporter, Ms Rice, and through her the Scottish Ministers, were advised of the concerns that the GSAB Partnership had in relation to the proposed KTR Project. He fairly recognised that there were many aspects of the evidence being covered through the Inquiry process that are out with his area of expertise. It is submitted that the objection from the GSAB Partnership dated 12 January 2021, as supported by Mr Thomson through the submission of his Hearing Statement, is properly to be regarded as a planning issue. This is recognised in the Supplementary Hearing Statement produced by Mr David Bell, the specialist energy planning consultant who presented the planning evidence on behalf of the Applicant at the Inquiry. The case for the GSAB Partnership is therefore addressed in these Closing Submissions when addressing the Policy Framework in Chapter VI below.

### **Galloway Without Pylons**

- 3.16. Through the tireless efforts of Mr Paul Swift, and a number of similarly minded and motivated local residents within the area affected by the proposed G – T Connection, GWP has maintained opposition to the KTR Project almost from its inception. It was

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<sup>2626</sup> Paragraph 1 (unnumbered) of the GSAB Partnership summary of its case  
<sup>2727</sup> *Ibid* - paragraph 2 (unnumbered)

clear from the informal exchanges between the Applicant's environmental planning manager, Mr Jack, and Mr Swift, that they have had many interactions and involvements over the years and during the pre-application consultation process. They were both mutually respectful of each other's position and Mr Swift acknowledged on more than one occasion during the Inquiry process that Mr Jack and the Applicant's project team had provided helpful support and information.

- 3.17. The Applicant acknowledges that the concerns being expressed at the Evening Session of the Public Inquiry on local amenity issues, at which many members of GWP participated, are genuine concerns regarding the construction impacts and the longer term landscape and visual impacts that it is feared would have a negative effect on tourism in the locality. Although not initially clear from GWP's early engagement in the Inquiry process, as the written evidence came to be produced in accordance with the Reporters' procedural arrangements, it became clear that the focus of GWP's objection is the Glenlee to Tongland Connection.
- 3.18. On the front page of the majority of the Inquiry Statements and Hearing Statements lodged on behalf of GWP, there is specific reference only to Application reference TRL-170-4. Dr Ford confirmed during cross-examination that the objection for GWP is restricted to that Connection and he has repeated that position in Hearing Statements produced this year in relation to Policy matters, and when transgressing into evidential areas linked to the Technical and Economic Justifications. In closing submissions for GWP, it is stated by GWP's Senior Counsel in Section 5, first un-numbered paragraph that: *"The group's purpose is to critically examine that part of the five applications referenced as TRL-170-4; that is, the section of the Overhead Line (OHL) proposed to run on steel lattice towers from Glenlee to Tongland."*
- 3.19. The Reporters are therefore entitled to conclude that the interest of the group of Objectors known as Galloway Without Pylons to the KTR Project, are in fact restricted to preventing the proposed G-T Connection from obtaining consent. In that regard, the Reporters are respectfully invited to record a finding to that effect to ensure that the Scottish Ministers are aware that the five Connections are not objected to by GWP.

There are procedural and substantive issues associated with GWP's position which will be addressed when making submissions on the determining issues in the following Chapters.

- 3.20. Although it is accepted on behalf of the Applicant that the members and supporters of GWP share concerns and anxieties regarding the nature of the impacts during the construction and operational stages of the development, the strength of the case for GWP and the weight to be afforded to those concerns in this consenting process cannot be measured solely on the basis of judgement being exercised as to whether or not the Objectors genuinely hold such concerns. When matters of personal interest for the Objectors found an objection to a proposed development, the issue for the decision-makers is whether or not those issues are of such materiality as to give rise to issues of public interest.
- 3.21. This is a project that is being promoted in the public interest, as borne out by the fact that it is being promoted by a statutory undertaking in the public interest that stems from the need for security of electricity supplies to the customers in the region, and to facilitate the meeting of renewable energy targets, in accordance with statutory duties and regulatory obligations. Moreover, in terms of planning policy it has the highest level of Government support through the Government's recently adopted NPF4, subject to demonstrating the predicted likely significant adverse environmental effects do not outweigh the consenting of this nationally important development.
- 3.22. The representation for GWP during the Public Inquiry process has paid scant regard to the weight of national energy and planning policy that supports the grant of the statutory consents sought for the five Connections. This is primarily due to the attitude, and inadequacies, of the one "professional" witness led on behalf of GWP on a myriad of topics in respect of which an appropriately qualified and professionally experienced witness would be expected to be led by the party claiming their witness was an "expert witness". Dr Ford did not, and does not, possess the relevant qualifications and/or professional experience to be led as an expert witness

on: (i) Technical and Economic Justifications for the Project; (ii) Strategic Alternatives including undergrounding; (iii) Statutory Context and National Energy and Planning Policy; (iv) Strategic Route Selection, Design strategy and Consultation; (v) Justification for EIA Methodology; (vi) Development Plan and other relevant planning guidance.

3.23. Based on comments contained in the closing submissions presented on behalf of GWP on 10 May 2023, Senior Counsel for GWP seeks to cover up the inadequacies of his “expert” witness by dismissing the criticisms made of Dr Ford’s evidence as amounting to personal insult and unjustified use of pejorative language. This is to distract from the responsibilities of Counsel when appearing before a tribunal such as that convened by the Scottish Ministers in the form of a Public Inquiry. It is the responsibility of Counsel to assist the Scottish Ministers’ Reporters in the exposure of unreliable evidence that serves only to mislead the Reporters in carrying out their functions on behalf of the Scottish Ministers. In a situation such as that which has prevailed during this Inquiry process, when an individual claims to be providing the Reporters with “professional expert opinion”<sup>28</sup>, the untruth of that claim should be exposed in the public interest.

3.24. It is respectfully submitted that the Reporters have no alternative but to make clear findings as to the credibility and reliability of the evidence given by Dr Ford. The obligation to do so is explained in greater detail in Chapter IV below, under reference to relevant case law. A number of the topics upon which he has offered himself up as an “expert witness” are of national importance and erroneous conclusions based on that evidence would have far reaching implications for other decision-making processes related to the development of nationally important electricity infrastructure.

3.25. It will be recalled that at the opening of the Public Inquiry with Inquiry Session No.1 in relation to the Technical Justification and Economic Justification, Dr Ford was

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<sup>28</sup> See the descriptor used by GWP’s Senior Counsel in unnumbered paragraph 2 of Section 19 of his closing submissions



asked at the outset of his cross-examination whether or not he was presenting himself as an expert witness on the topic. He confirmed that he was and he was then cross-examined as to whether or not he understood the obligations incumbent on an expert witness. Reference will be made in Chapter IV of these Closing Submissions to the principles of law that the Reporters should take into account when considering Dr Ford's claims of professional expertise and his role as an expert witness, not just in relation to that topic but all of the other topics listed in paragraph 3.22 above. The criticisms made of Dr Ford in these Closing Submissions are not made as personal insult or unnecessarily and unjustified pejorative criticism. They are criticisms made on the basis of Counsel's professional responsibility to her clients and the Reporters to characterise the quality of evidence proffered by a self-proclaimed expert, in the absence of any objectively verifiable evidence of expertise in the form of relevant academic and/or professional qualifications or experience. It will be recalled by the Reporters that at the outset of Dr Ford's cross-examination he confirmed that he had never before been involved in a public inquiry that was taking place to scrutinise a proposal for transmission infrastructure, as opposed to wind farms.

- 3.26. Unfortunately the criticism as regards the representation on behalf of GWP cannot be limited solely to GWP's "expert" witness. The closing submissions made on behalf of GWP by their Senior Counsel, have little foundation in evidence. Submissions have been made above in relation to the inaccuracies associated with the representation by GWP's Counsel as to the nature of the Council's position at Inquiry. The other issues will be addressed in the Chapters below within which the topics that feature in GWP's closing submissions arise. The unreliability of the submissions made by GWP's Senior Counsel and also his disregard for procedural propriety, introduces unfairness into the Public Inquiry process and risks misleading the Reporters into errors on the facts, and also errors of law. Examples include: section 19 (Supplementary Matter) of GWP's closing submissions that contains a response to the Applicant's concluding comments on the technical and economic justification issues introduced by Dr Ford through his Hearing Statement in response to

Procedure Notice No. 4, for which there is no formal procedural justification and in respect of which the Reporters have not requested this response; and, the late closing submissions in relation to the section 37 objection made on behalf of Lord Sinclair and Knocknalling Estate in which an entirely new issue is raised in relation to possible impacts on the setting of Knocknalling House.

- 3.27. The Reporters are therefore invited to treat the submissions that have been made by Senior Counsel for GWP with a high degree of caution and not to assume that they accurately portray the evidence that has been presented during the Inquiry Process.
- 3.28. It should be made clear that the members of the GWP are not being criticised, and in particular Mr Swift as the organiser of the GWP case as he was entitled to rely on those who had been instructed to represent the interests of GWP. The nature of the evidence that members of GWP gave when participating in particular Hearing Sessions will be addressed in the Chapters below that are of relevance to the topics in respect of which they gave evidence. As discussed in paragraph 3.20 above, it is submitted that the issue for the Reporters is the extent to which the anxieties and concerns of the members of GWP are founded on adverse impacts that give rise to issues of public interest and the weight that should be attributed to those issues.

**Mr Alastair Kerr**

- 3.29. The only third party objector to participate most days of the Public Inquiry was Mr Alastair Kerr, householder within Galloway Forest Park. The written submissions that he had lodged with the DPEA, including his closing submission, were brief and to the point, and always consistent. He is a local resident who owns a residential property in Galloway Forest Park known as Darsalloch, and from which he has views toward the A712 (the Queen's Way).
- 3.30. The main ground of objection from Mr Kerr are the environmental impacts associated with introducing a section of the G-T Connection into views from his property and, more generally, into Galloway Forest Park. The primary argument that he developed during the Public Inquiry is that the Connection should be undergrounded and he

argues that this is the trend with other electricity undertakers. It is submitted that given the repeated expression of his main ground of objection during the Inquiry process in response to Ms Rice's invitations to Mr Kerr to provide his comments during Inquiry and Hearing Sessions, the objection from Mr Kerr should be properly regarded as being based on residential visual amenity and adverse effects on wider visual amenity within Galloway Forest Park from the G-T Connection. In relation to the wider visual amenity issues that he associates with the G-T Connection, he expressed concerns that the G-T Connection would negatively affect tourism assets that are based on landscape and scenic quality. His concerns are addressed in Part 1 of Chapter IX in relation to landscape and visual amenity, in Part 2 of Chapter VII in relation to undergrounding, and indirectly in Part 4 of Chapter IX on tourism.

### **Third Party Representations**

- 3.31. Throughout the Public Inquiry Process the lead Reporter, Ms. Rice, placed considerable emphasis on the consideration given to third parties' representations by the Applicant. On the basis that there were 951 individual representations received during the consultation process according to the Reporters' minutes of appointment<sup>29</sup> that were issued by the ECU, this was an onerous task. The initial approach taken in the Applicant's Position Statements in relation to each of the Connections was to group the objections based on the principal grounds of objection stated in the representation. This was considered to represent a reasonable and proportionate approach to responding to the significant number of individual representation. At the PEM, as recorded in the PEM Note, the lead Reporter indicated that she did not agree with the level of detail provided in the Applicant's Position Statements. In particular a request was made to list each individual representation and to provide a response on each representation in a manner that made it clear that all representations had been responded to by the Applicant, particularly where "non-standard" issues had been raised.

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<sup>29</sup> Minutes of appointment of Ms Rice and Mr Buylla dated 19 October 2022

- 3.32. In response to the PEM Note the Applicant and its specialist consultant, Copper, embarked upon a more detailed analysis. These representations form documents CD016.001 – CD016.956. The representations received from third parties include submissions which were based on a template produced by the local community group GWP (CD016.955), and a template prepared by the Scottish Green Party (CD016.956).
- 3.33. The lead Reporter made it clear in her written correspondence of 28 April 2022 and during the Pre-Examination Meeting on 15 June 2022, and in the subsequent PEM Note, that her expectation was for the Applicant to address every response in detail. The Applicant therefore undertook a further review of each representation and prepared a detailed response to each for the benefit of the lead Reporter. There were in fact 953 representations on the DPEA portal at that time<sup>30</sup>. The Applicant reviewed each individual response in detail to ensure that all issues were recorded, and a detailed response provided for each. The task also had to ensure that any incorrect references or anomalies in the representation numbering on the ECU website were properly taken into account.
- 3.34. As part of the detailed review, all issues raised in the representations were collated and grouped together under the main topic headings (e.g. undergrounding, landscape and visual impact, ecology, ornithology, socio-economic etc.) and sent to the Applicant's technical experts to review, consider and input.
- 3.35. Considering the volume of representations, and the importance of providing the detailed response requested by the Reporter, the Applicant felt the best approach to presenting the responses would be in a tabular format. The Applicant provided a table that included the name of the author of each representation and the ECU reference number of the representation, the link to the representation on the DPEA portal, comments set out in the representation, and, the response of the Applicant set out in corresponding columns. The responses addressed every representation across

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<sup>30</sup> Additional representations were accepted by the Reporters later in the Inquiry process. The Applicant was separately asked by email to provide any comments it wished to make in response to those representations.

all five Applications.

3.36. The topics addressed in the representations, and responded to by the Applicant, can be summarised as follows:

- Potential effect on visual amenity general;
- EIA methodology;
- Effect on landscape character;
- Strategic alternatives considered (including the Applicant's approach to undergrounding);
- Socio-economic impacts on tourism and recreation, and impacts on specific businesses and business sectors in general;
- Effects on nature conservation in the area (including ornithology and ecology) and on specific types of habitat or birds;
- The technical needs case for the project;
- The impact on traffic and the local road network, including specific areas or routes;
- Future National Park status for the study area;
- KTR Project proposals being counter to the D&G Council Climate Change Strategy;
- Possible effects on specific cultural heritage resource e.g. Non-Inventory Designed Landscapes;
- Possible effects on specific landscape resource e.g. National Scenic Areas and Regional Scenic Areas; and
- Possible effects of Electric and Magnetic Fields (EMFs), including micro shocks.

3.37. The lead Reporter made a procedural ruling on Day 2 of the Public Inquiry (25 October 2022) that she would not consider the content of the responses until after the close of the Inquiry at the end of November.

3.38. Thereafter the lead Reporter, Ms Rice, sought clarification on 8 responses during February 2023. In response, the Applicant provided a further document addressing Ms Rice's queries. The format of the additional clarifications reflected the format of

the earlier responses to representations, with an additional column in which Ms Rice's questions were specifically responded to. The lead Reporter has not made any further requests regarding the Applicant's responses to representations.

- 3.39. It is submitted on behalf of the Applicant that detailed responses to each of the individual representations (and the lead Reporter's subsequent follow up queries) have been provided. Additionally, the position of the Applicant on the majority of the issues listed in paragraph 3.34 above, have been addressed through its written evidence, and the oral evidence provided as part of the Inquiry and Hearing sessions during October 2022, November 2022 and March 2023.
- 3.40. The Applicant respectfully suggests that based on the available evidence, the lead Reporter would be able to confirm to the decision makers that the main grounds of objection which emerged from the representations are as detailed above in paragraph 3.34. Should it be the preference of the lead Reporter to provide a more granular summary of the matters which emerged through the representations, then the Applicant's response to the third-party representation dated 25 October 2022, and follow up responses of 28 February 2023 would be the most appropriate means of achieving this. In either case, the Applicant respectfully submits that all matters which emerged through the representations have been addressed by the Applicant, in specific written responses and the majority of the issues have been the subject of written and oral evidence to the Inquiry.
- 3.41. Separately, the Reporter arranged an Evening Session that was not covered by Inquiry procedure (in that the Applicant had no role other than to be in attendance and was prohibited from challenging any of the statements by the third parties who attended and delivered statements as to their concerns). This took place in the evening of 1 November 2022 during which approximately 26 of the 34 statements that had been produced by individuals were read out. A proportion of the individuals who appeared at that Session also appeared on behalf of GWP at the Hearing Sessions in relation to Socio-economic, tourism and recreation impacts and Traffic and transport impacts.

### **Lord Sinclair and Knocknalling Estate**

- 3.42. The objection that was originally lodged on behalf of Lord Sinclair as owner of Knocknalling Estate and representing the interests of Knocknalling Estate, was in respect of the necessary wayleave application (WAY-170-19) that had been served by the Applicant on Lord Sinclair as landowner. Prior to the PEM, Ms Rice had reviewed the objection by Lord Sinclair to the necessary wayleave and noted that “significant parts of his objection relate to issues relevant more widely than to one landowner and might be to appropriately address in a wayleave report only into his objection”<sup>31</sup>. After further communications with both the Applicant’s solicitor, and those representing Lord Sinclair, it came to be agreed between the parties and the Reporter appointed to report on the section 37 application, which at that time was solely Ms Rice, and the wayleave applications, with Ms Rice jointly appointed with Mr Paul Cackette, that the solution was to treat Lord Sinclair as an objector to the section 37 Applications as well as objector to the necessary wayleave application. The procedural arrangements to implement this decision were set out in an email dated 30 August 2022 from a Case Officer at the DPEA, Mr Christopher Kennedy, to Senior Counsel, Mr Campbell, who by that stage had been instructed by Lord Sinclair. The email was also copied to the Applicant’s solicitor, Mr Thomson.
- 3.43. In response, Mr Campbell produced an Inquiry Statement dated 29 August 2022 on behalf of his client. By way of background as stated in the Inquiry Statement it is explained that Lord Sinclair is the objector as owner of Knocknalling Estate and for the interests of the Estate. This collective interest has been referred to in the Inquiry documents as “LSKE”, which is adopted hereafter in these Closing Submissions unless the context dictates otherwise.
- 3.44. The grounds of objection set out in the Inquiry Statement are that:
- the 132kV OHL that crosses Knocknalling Estate, as part of the P-G via K Connection, should be undergrounded (section 3 of the Inquiry Statement);

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<sup>31</sup> Letter dated 17 June 2022 from the Case Officer, Liz Kerr of the DPEA.

- the landscape and visual effects associated with the location of Knocknalling Estate within the Galloways Hills Regional Scenic Area, the impacts on the Non-Inventory Designed Landscape (NIDL) within Knocknalling Estate, and the impacts caused through the loss of trees that are on the Ancient Woodland Inventory (section 6 of the Inquiry Statement).
- the Applicant has not fulfilled its Schedule 9 duties (section 5 of the Inquiry Statement).

3.45. It will be noted by the Reporters that there is no reference to any adverse effects on the setting of Listed Buildings. The only mention of the Listed Buildings is in the section on background where there is reference to Knocknalling House being a Category B Listed Building, and, that there is an outbuilding on the Estate that is a hayshed that has been listed as Category A. For the purposes of submissions that will be made in Chapter IX in relation to environmental impacts on Knocknalling Estate and the newly alleged adverse impacts on the setting of these Listed Buildings, it should also be noted that in section 5 of the Inquiry Statement that sets out the relevant policy tests to the LSKE objection, there is absolutely no mention of the statutory provisions cited in the Closing Submissions by Mr Campbell nor the policy tests from Historic Environment Scotland's guidance.

3.46. The summary of the Conclusions to be drawn from this Inquiry Statement on behalf of LSKE makes no mention whatsoever of adverse impacts on the setting of listed buildings. This is in marked contrast to the Closing Submissions for LSKE in which it is stated in the first unnumbered paragraph under the heading "REASONS FOR THIS OBJECTION TO THE APPLICATION", that "The reasons for the objection are straightforward and are predicated upon a correct understanding of the status of a listed building and its setting". There is no mention at all in the closing submissions dated 11 May 2023 of the grounds of objection set out in the Inquiry Statement dated 29 August 2022. There is also no mention in the evidence of Mr Mark Steele, the expert witness upon whose evidence the objection from LSKE is predicated, about adverse impacts on the setting of listed buildings. In summary, no evidence has been



led on behalf of Lord Sinclair in relation to adverse effects on the setting of Listed Buildings. There is no case before the Inquiry on this issue, and the notice of the case that was to be presented at the Inquiry, as set out in the Inquiry Statement and which was presented through the evidence of Mr Steele, is not referred to at all in the closing submissions for LSKE.

- 3.47. It is submitted on behalf of the Applicant that after the cross-examination of Mr Steele there was a realisation that private interests cannot be taken into account for the purposes of outweighing the public interest in allowing a proposed development to proceed. The language used in the closing submissions for LSKE is all designed, cynically, to dress up the objection from LSKE as involving more than private interest. This will be an issue that is returned to when addressing Lord Sinclair's objection as originally framed, in Chapters VII, in relation to undergrounding, and Chapter IX in relation to LVIA.

#### **Public Inquiry Procedure**

- 3.48. As stated in paragraph 8 of the Code of Practice for Handling Inquiries under Section 62 and Schedule 8 to the Electricity Act 1989, "There are no prescribed rules for the conduct of inquiries held under schedule 8 of the Act." This is acknowledged in paragraph 2.24 above.
- 3.49. The procedures that were put in place for the conduct of this Public Inquiry were generally agreed between the Reporters and parties to the Inquiry at the PEM. However, the blatant disregard for those procedural arrangements shown by those representing GWP when breaching the purpose and intent of those arrangements, as referred to in these Closing Submissions, has been disappointing and frustrating for the Applicant and its Inquiry team. In relation to GWP's blatant transgressions of the arrangements put in place by the Reporters, both GWP's "expert" witness and Senior Counsel have worked against the Reporters in meeting the objective stated in paragraph 8 of the Code of Practice to conduct proceedings in a fair and efficient manner for the reasons explained in these Closing Submissions.

- 3.50. The form of hybrid procedure discussed in the Code of Practice reflects the procedure adopted by the lead Reporter at the time of the PEM. Through discussion with the parties to the Inquiry there was general agreement reached as to the nature of the procedure to be followed. Annex 1 to the PEM Note records the mix of procedure to be followed for the different topics. In light of the wide ranging issues raised during the Evening Session and during the Traffic and transport Hearing Session, it is worth drawing the Reporters' attention to the fact that it was a matter of agreement that no further procedure was considered necessary by the lead Reporter or the parties to the Inquiry on construction impacts including noise, impact on peat and geology or on EMF exposure and in relation to dust.
- 3.51. It was agreed that further written submissions were required in relation to nature conservation interests, intra-connection and intra KTR effects, archaeology and **cultural heritage impacts including impact on setting**<sup>32</sup>, and, hydrology and hydrogeology, including fishing interests. It is necessary to a pause at this juncture and draw to the Reporters' attention that the RSPB had wanted a session that would involve oral evidence at the Inquiry, but it was accepted that in light of NatureScot's position of no objection to the KTR Project, including in relation to ornithological interests, that further written submissions would be a proportionate response to RSPB's concerns.
- 3.52. Also, it should be noted that it was agreed that archaeology and cultural heritage impacts would be dealt with through further written submissions. Initially, the Council was requested to provide certain information in relation to cultural heritage assets in line with Procedure Notice No. 2. Subsequently and more recently, on 14 February 2023, the Reporters issued Procedure Notice No. 5 requesting further information in relation to two historic assets, namely the Bruce Mausoleum and Unmarked graves of black people. Against that background it is undeniable that the recent action by Senior Counsel for Lord Sinclair, who has seen fit to introduce an

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<sup>32</sup> Emphasised because of the inter-relationship to the issues raised in relation to the summary of case and closing submissions for LSKE above and below

entirely new matter in the summary of case and closing submissions recently lodged and intimated on behalf of Lord Sinclair and Knocknalling Estate, contravenes the procedural arrangements.

- 3.53. The obvious exceptions in relation to the topics upon which there was agreement as to the form of procedure to be adopted were in respect of Technical justification and Economic justification and the Justification for EIA methodology. Despite the Applicant putting forward further written submissions as to the basis upon which it was contended that neither a Hearing Session nor an Inquiry Session were required for either of these topics, the lead Reporter decided that the complexities involved in relation to each of the topics led her to the conclusion that they should be examined through Inquiry Sessions.
- 3.54. In relation to the technical and economic justifications, the Applicant's position was that in light of Ofgem's approval of the technical and economic needs case presented by SPEN to Ofgem, and, the Scottish Government's national planning policy support through both NPF3 and the draft NPF4 for the project as national development, further enquiry was not justified. Mr Swift at the PEM assured the Reporter that it was his intention to instruct an "expert" witness on the topic of the technical and economic justifications for the KTR Project who would challenge the Applicant's needs case. Submissions are made in Chapter VII below as to the reasons that the Applicant submits should lead the Reporters to reject the notion that Dr Ford is an expert on that topic. Similar submissions will be made in relation to other topics upon which Dr Ford gave evidence.
- 3.55. Otherwise there was general agreement on the procedures set out in Annex 1 of the PEM Note. Insofar as it has not resulted in the most efficient way of conducting the Inquiry in relation to the issues associated with the technical and economic justifications and the objection pursued on behalf of Knocknalling Estate, this is entirely attributable to the unwarranted actions of GWP's witness Dr Ford, assisted by GWP's Senior Counsel, and, the equally unwarranted attempts by Senior Counsel for Knocknalling Estate who has disregarded principles of fairness and established

Inquiry procedure by introducing new evidence and new issues through closing submissions. It is put beyond question through the guidance contained in paragraph 38 of the Code of Practice that: *“The submissions **must** not introduce any new evidence.”*. Senior Counsel for the Objectors referred to above should, in any event, be well aware of this principle given the number of years’ experience that he has working in public inquiries.

- 3.56. It is against that general background as regards the Public Inquiry Process, and the participants in that Process, that the Closing Submissions that follow are made on the determining issues.

#### 4. LEGAL FRAMEWORK FOR DECISION-MAKING

- 4.1. It is of crucial importance for not only the Applicant but also for all those involved in this Inquiry Process (which has extended the consenting process for more than 2 years), that the decision that is made at the end of this process is not subject to legal challenge. Although this is a general principle that applies to all decision-making processes, in terms of these electricity applications for section 37 consent for essential transmission infrastructure that will ensure security of supply for existing customers within this part of Dumfries and Galloway, and, expand the capability of the transmission system to connect new renewable generation, it is a principle that is also of particular importance for the Scottish Government having regard to the current national energy policy and related national planning policy.
- 4.2. There are a number of issues that have arisen during the Inquiry Process that have been conducted for the KTR Project that have legal implications and which should, therefore, be considered during this next stage of the decision-making process. Failure to do so could result in a legally challengeable decision. An understanding of, and giving recognition to, the legal framework for decision-making in relation to these electricity applications under the 1989 Act is of importance for the purpose of ensuring that the decision is made in accordance with the law. In addition, this Inquiry has given rise to specific legal issues related to the status of the development plan for decision-making purposes, the role of an expert witness, the weighing of evidence, and, the law that is of relevance to the legality of conditions attached to development consents. The legal framework has a particular relevance in this case because of the fact that the “expert” witness who has been led on behalf of GWP has consistently run lines of argument in his evidence which, if followed, would lead the Reporters and potentially the Scottish Ministers into errors of law.
- 4.3. The legal issues that have been identified as being of particular relevance to the decision-making process in this case are:

- (i) The statutory framework of relevance to the decision under the 1989 Act and related legislation.
- (ii) The status of the development plan.
- (iii) Expert evidence and the role of the expert witness.
- (iv) The weighing of evidence.
- (v) The law relating to the use of conditions.

4.4. This Chapter addresses these legal issues in order to assist the Reporters and the Scottish Ministers in the next stage of the decision-making process. Separately, in terms of paragraph 35 of the DPEA's Code of Practice<sup>33</sup>, the DPEA has specifically requested that in closing submissions attention should be drawn to any relevant statutory provisions.

#### **The Statutory Framework**

4.5. A decision that is made in the exercise of powers bestowed under legislation is subject to different constraints that depend upon an understanding of the particular statutory framework. It is a well-established legal principle that where a discretion has been conferred by Parliament on a government minister to make a decision on a particular matter that involves advancing the policy and the objects of the statute, because this involves issues of legal construction the court would be entitled to interfere if the decision was to frustrate the underlying policy of the Act. This is on the basis the discretion is conferred by Parliament "*...so that it could be used to promote the policy and objects of the Act which would be determined by the construction of the Act...*"<sup>34</sup>.

4.6. This authority from the House of Lords has been followed on numerous occasions over the years in relation to decisions made under discretionary powers conferred by statute, including in the field of planning law. In Scotland, the First Division expressed the principle in relation to decisions of a planning authority, which applies

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<sup>33</sup> CD003.002

<sup>34</sup> *Padfield v Minister of Agriculture and Fisheries* [1968] A.C. 997 at page 998E

equally to decisions of the Scottish Ministers and Reporters under both the 1989 Act and the 1997 Act. In the well-known case of *Wordie Property Co Ltd v Secretary of State for Scotland*<sup>35</sup> it was held that a decision of a planning authority will be unlawful if it has improperly exercised the discretion confided in it, and, in particular if it is based upon a material error of law going to the root of the question for determination. These legal principles are of relevance to the statutory framework that applies to the decisions in relation to the Applications.

Electricity Act 1989<sup>36</sup>

- 4.7. An electricity application made under section 37 of the 1989 Act engages a number of different statutory provisions in the 1989 Act that place obligations on either the Applicant as the relevant transmission licence holder and owner of the relevant part of the existing transmission system, or, the Scottish Ministers.
- 4.8. Dealing firstly with the obligations on the Scottish Ministers, having regard to the legal principle established by the *Padfield* case referred to in paragraph 4.5 above, the most important statutory provision in relation to the underlying policy that is of general application to the discharge of all of the Ministers' duties under the 1989 Act, is section 3A in Part I of the 1989 Act.
- 4.9. Under section 3A, in carrying out their functions under Part I of the 1989 Act, which includes consenting electricity development under section 36 or section 37 in Part I of the 1989 Act, the Scottish Ministers are obliged to do so in the manner that:
  - (a) they consider is best calculated to further the principal objective to protect the interests of existing and future consumers of electricity conveyed by the transmission system, which includes their interest in the reduction of electricity-supply emissions of targeted greenhouse gases and in the security of the supply of electricity to them (subsection (1A)); and,

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<sup>35</sup> 1984 SLT 345

<sup>36</sup> CD003.001

- (b) wherever appropriate by promoting effective competition between persons engaged in the generation of electricity (subsection 1B).

- 4.10. It will be obvious to the Reporters that these statutory and policy objectives are of direct relevance to the key drivers for the KTR Project as explained in the evidence of Mr Kadar. It is of considerable significance and materiality that the same obligations apply to the Gas and Electricity Markets Authority (GEMA) under the same statutory provision, i.e. section 3A of the 1989 Act. The regulator of the gas and electricity markets is Ofgem which is governed and acts on behalf of GEMA. As a consequence of this legal structure the approval by Ofgem for the proposed investment in, and development of, the KTR Project, should be given significant weight in the decision-making process. Failure to do so would amount to frustration of the underlying policy and objectives of the 1989 Act.
- 4.11. The other statutory obligation upon the Scottish Ministers that is of direct relevance to this decision-making process is the obligation under section 38 of the 1989 Act, which is also contained in Part I of the 1989 Act. It provides that for the purposes of both section 36 and section 37, Schedule 9 to the 1989 Act shall have effect. This is a mandatory obligation which means that the Scottish Ministers must fulfil their obligations under Schedule 9 when considering any relevant proposals for which a transmission licence holder has applied for consent under section 37 of the 1989 Act<sup>37</sup>. This will be discussed further below when addressing the related statutory duties that apply to the Applicant under Schedule 9 as the transmission licence holder making a section 37 application for an electricity consent. In brief, the Scottish Ministers must have regard to the desirability of preserving and/or conserving the environmental receptors mentioned in paragraph 3(1)(a) of Schedule 9, and, the extent to which the Applicant has complied with the duty to do what can reasonably be done to mitigate adverse effects on the identified environmental receptors listed in paragraph 3(1)(a).

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<sup>37</sup> Paragraph 3(2) of Schedule 9 to the 1989 Act



4.12. Under reference to the case law discussed below in paragraph 4.18, in summary if the Reporters and the Scottish Ministers are satisfied that the Applicant has fulfilled its duties under the relevant EIA Regulations, they are entitled to be satisfied that the Applicant has met its obligations under Schedule 9 to have regard to its obligations to preserve amenity and fisheries when formulating relevant proposals. Further discussion as regards the approach to mitigation which would satisfy the Schedule 9 requirement is contained in paragraph 4.17 to 4.19 below. In terms of sub-paragraph (4) of paragraph 3 of Schedule 9, “relevant proposals” has the same meaning as paragraph 1(4) of the same Schedule (which applies to England and Wales), in terms of which it includes “any proposal.....

*(b) for the installation (whether above or below ground) of an electric line; or*

*(c) for the execution of any other works for or in connection with the transmission or supply of electricity.”*

4.13. In relation to the obligations imposed upon the Applicant, it is explained in the evidence of Mr Kadar that the KTR Project has been brought forward in fulfilment of the Applicant’s statutory duties under section 9 of the 1989 Act to:

- (i) develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and,
- (ii) to facilitate competition in the supply and generation of electricity.

4.14. It will be apparent to the Reporters and the Scottish Ministers that these obligations support the attainment of the policy objectives under section 3A, which apply to both the Ministers and GEMA/Ofgem when discharging their obligations under Part I of the 1989 Act. In that regard there is a clear coincidence between the Ministers’ general duties under section 3A and the Applicant’s duties under section 9, both of which can be met through the consenting of the KTR Project; subject to the Applicant demonstrating that a reasonable approach has been taken to the mitigation of adverse environmental effects resulting from the construction and operation of the KTR Project.

4.15. From the outset of the Inquiry Process, the Applicant has explained, and relied upon, the inter-relationship between the Applicant's duties under section 9 and the licence obligations. Once it was decided by the lead Reporter in response to the joint representations made by GWP's Senior Counsel and witness Dr Ford, that there would be an Inquiry Session into the technical and economic justifications, the Applicant produced written detailed evidence from its expert witness in system planning, Mr Kadar<sup>38</sup>. He has also provided evidence to the Inquiry which, on any objective view, supports the written submissions previously made on behalf of the Applicant in the early stages of the Inquiry process. In terms of that evidence (both written and as amplified upon in his oral evidence at Inquiry Session No.1), the Applicant's expert witness makes clear the nature and importance of the inter-relationship between the statutory obligations under section 9 of the 1989 Act and the licence obligations.

4.16. In terms of understanding the statutory framework of relevance to this issue, attention is drawn to the following statutory provisions:

- (i) Section 4(1)(c) – only a person who is authorised by a transmission licence is entitled to participate in the transmission of electricity for the purpose of giving or enabling a supply to premises. In terms of subsection (3A)(b) of that provision, so far as the Applicant is concerned this is for the purposes of making available any part of its transmission system for use by the ESO, including for the connection of generators of electricity. The definitions of “transmission” and “transmission system” in sub-section (4) are relevant to the usage made of those terms in the Applicant's evidence, and in these Closing Submissions.
- (ii) Section 6 – grant of a transmission licence by GEMA under section 6(1)(b) authorising the Applicant to participate in the transmission of electricity for the purpose of giving a supply or enabling a supply of electricity to be given.

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<sup>38</sup> Sections 4 and 5 of Mr Kadar's Inquiry Report (APP001.001)

This is a licenced activity and the objective and purpose of the licenced activity is very relevant to the obligation discussed in the evidence regarding the legal obligation on the Applicant to maintain security of supply. As a matter of legal construction participation in the transmission of electricity is clearly dependent upon the transmission system being fit for the purposes specified in section 4(4). In terms of the references in these Closing Submissions to the areas in south west Scotland in respect of which the Applicant is the transmission licence holder, subsection (6A) is relevant.

- (iii) Section 7 is an important provision in terms of GEMA/Ofgem ensuring that the licensee is able to perform its statutory obligations as a licenced transmission owner and thereby ensure that GEMA fulfils its duties under section 3A. In terms of subsection (1) of section 7, the licence may contain such conditions as appear to the grantor (i.e. GEMA/Ofgem) “*to be requisite or expedient having regard to the duties imposed by [sections 3A to 3C]*”. These are conditions that would be relevant to security of supply, facilitating competition between generators, and, reduction of electricity-supply emissions of targeted greenhouse gases. In addition, as explained in Mr Kadar’s Inquiry Report, when performing their duties under section 3A the Scottish Ministers and GEMA/Ofgem shall have regard to *inter alia* the need to secure that all reasonable demands for electricity are met and the need to contribute to the achievement of sustainable development<sup>39</sup>. The inter-relationship between the Applicant’s licence conditions and the KTR Project are summarised in Mr Kadar’s Inquiry Report in paragraphs 4.2 to 4.9. It is important to note the relevance of the National Electricity Transmission System Security and Quality of Supply Standard (“NETS SQQS”) to the fulfilment of the licence obligations that in turn reflect the Applicant’s statutory duties<sup>40</sup>. These are all relevant to the key drivers for the KTR Project

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<sup>39</sup> Paragraph 5.3 of Mr Kadar’s Inquiry Report (APP001.001) and subsection (2) of section 3A of the 1989 Act

<sup>40</sup> Paragraphs 4.5 to 4.8 of Mr Kadar’s Inquiry Report.

that are rooted in the statutory and licence obligations that the Applicant must adhere to and fulfil, as the holder of the transmission licence for this part of the south west of Scotland. They therefore require to be properly taken into account in the decision-making process, in relation to the section 37 Applications.

4.17. As referenced in paragraph 4.11 above, the obligations imposed on Scottish Ministers in this decision-making process under Schedule 9 to the 1989 Act are based on the obligations that are separately imposed on a licence holder, such as the Applicant, and which require that the licence holder shall:

- (a) have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural interest; and
- (b) do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

4.18. In all of the judgements in the well-known case of *Trump International Golf Club Scotland Ltd v Scottish Ministers* that were issued at first instance in the Outer House, on appeal to the Inner House and then to the Supreme Court<sup>41</sup>, at all levels the Courts rejected the ground of challenge that only a licence holder could apply for a section 36 consent on the argument that the environmental protection afforded by the legal obligations under paragraph 3 of Schedule 9 applied only to a licence holder. The basis of the argument was that relevant proposals formulated by applicants for the purposes of a section 36 application who were not licence holders under the 1989 Act, would not be subject to the same environmental scrutiny. This was consistently rejected by the Courts on the basis that for a generating station that is also EIA development, the statutory regulation that afforded protection to the environment under Schedule 9 to the 1989 Act is essentially also provided under the EIA

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<sup>41</sup> 2014 SLT 406; [2015] SLT 369 and [2016] 1 WLR 85.

consenting regime. It was considered that the EIA requirements replicate the nature of the Schedule 9 obligations on Scottish Ministers to take into account any significant environmental effects that could result from the construction and operation of a generating station for which section 36 consent is required. It is submitted that having regard to the wording of section 38 and Schedule 9, as a matter of legal construction there is no reason in law for the approach to be any different in relation to the consenting of a section 37 electricity development that is also EIA development as regards the inter-relationship with the EIA Regulations.

4.19. A separate issue arises in relation to the obligation on Scottish Ministers to have regard to the extent to which a licence holder has complied with the duty to do what he reasonably can to mitigate an effect on the receptors listed in paragraph 3(1)(a) of Schedule 9. The nature of this obligation is discussed in the first instance decision of Lord Doherty in the *Trump* case in the Outer House<sup>42</sup>. In paragraph [42] of his judgement, under reference to EIA Regulations, he notes the requirements of relevance to electricity developments. Specific reference is made to the requirement to include a description of the measures envisaged in order to avoid, reduce or remedy significant adverse effects. Separately he discusses the approach to mitigation under paragraph 3(1)(b) of Schedule 9 and provided the following analysis in paragraph [40] of his judgement:

*“If an applicant has not availed himself of the mitigation which was reasonably available then the detrimental impact of the development on the factors listed in para.3(1)(a) will be greater than if he had mitigated the impact. The degree of detriment to the matters listed, and the availability and reasonableness of possible mitigation measures, would be matters which the Ministers would be likely to take into account in deciding whether or not to grant consent.”*

4.20. In this regard there is a significant difference that exists as between a relevant proposal that is for the construction or extension of a generating station for which section 36 consent is sought, and, the installation of an electric line for which section

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<sup>42</sup> 2014 SLT 406.

37 consent is sought. Insofar as the Ministers would require to take into account the reasonableness of possible mitigation measures in deciding whether or not to grant consent, in relation to section 37 transmission infrastructure development it would be necessary to have regard to the concept of “reasonableness” in the context of other statutory and licence obligations that are imposed under the 1989 Act on the transmission licence holder, and separately the Scottish Ministers under section 3A.

4.21. A good example of possible conflict (and very relevant) is in relation to the use of underground cables as an alternative to an overhead line design solution. In circumstances in which the landscape and visual effects of the proposed overhead line are **not** assessed as being very significant on sensitive receptors, as identified in the Applicant’s approach to routeing<sup>43</sup>, it is submitted that having regard to the transmission licence holders duties under section 9 of the 1989 Act, the Applicant is obliged to give greater weight to the fact that overhead line technology is the lowest cost design solution by a significant factor. On that basis, notwithstanding the acknowledgement by the Applicant that effective mitigation of the landscape and visual effects associated with an OHL can be achieved through the use of undergrounding, it would not be reasonable to select that alternative in circumstances in which such a design decision cannot be justified on environmental grounds and would result in non-compliance with the duty to develop an economical system of electricity transmission. Similarly, the Ministers in deciding whether or not to grant consent having regard to the Applicant’s decision not to utilise undergrounding as a mitigation measure, would have to consider reasonableness not just from the perspective of the licence holder and its section 9 duties, but also having regard to the manner in which they are carrying out their decision-making function under section 37 and Schedule 9(3)(2) of the 1989 Act in accordance with their obligations to protect the interests of existing and future consumers of electricity conveyed by the transmission system.

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<sup>43</sup> Section 3.6 on page 16 of SPEN’s Approach to Routeing and EIA (2020) – CD006.005.

4.22. From a proper understanding of the statutory framework under which these electricity applications are made, it can be readily understood the rationality behind reserving to Scottish Ministers the decision-making function on applications made under section 37 of the 1989 Act. Because of the national importance of electricity transmission infrastructure, and the public interest associated with protecting existing and future consumers in relation to electricity conveyed by the transmission system, it is not a function that should be fulfilled by local government. This was demonstrated by the decision by Dumfries & Galloway Council to object to the Applications, which was a decision that the local planning authority was unable to defend at the Inquiry that it had forced by reason of its statutory objection under paragraph 2 of Schedule 8 to the 1989 Act. The national importance of the electricity transmission system has very recently been confirmed by the Scottish Government through the approval and adoption of NPF4, in terms of which the KTR Project has the status of a nationally important development.

*Climate Emergency and Net Zero Targets*

4.23. In carrying out their decision-making function, the Scottish Ministers are also obliged to act in accordance with, the following legal obligations and related energy policy objectives:

- (i) Under the Climate Change (Scotland) Act 2009 (“the 2009 Act”) as a Public Body the Scottish Ministers are obliged under section 44(1) to act “*in a way best calculated to contribute to delivery of the targets set in or under Part 1 of this Act*”.<sup>44</sup> The interim target is referenced in the paragraph below.
- (ii) Scottish Government’s national energy policy, together with related statutory obligations on the Scottish Ministers to achieve a 75% reduction in greenhouse gas emissions by 2030 under the Climate Change (Emissions Reduction

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<sup>44</sup> Paragraph 16.10 of SPEN’s Summary of Case.

Targets) (Scotland) Act 2019<sup>45</sup>, in response to the declaration of Climate Emergency<sup>46</sup>.

(iii) Scottish Government's national energy policy and legal obligations under the Climate Change Act 2008 to achieve net zero emissions by 2045, in line with the UK Government's obligation under the Carbon Budget Order 2021 to reduce emissions by 78% by 2035, compared to 1990 levels<sup>47</sup>.

4.24. All of these obligations that are tied in to the national energy policy objectives to achieve rapid reduction in greenhouse gas emissions prior to or by 2030, are reflective of the obligation on Scottish Ministers under section 3A of the 1989 Act when carrying out their decision-making functions under section 37 of Part I of the Act. They are obliged to do so in the manner that they consider is best calculated to further the relevant policy objective stated in subsection (1A) of section 3A. The relevant objective is that contained in sub-paragraph (a) of subsection (1A) which, when read together with subsection (1) requires that the Scottish Ministers protect the interests of existing and future consumers in the reduction of electricity-supply emissions of targeted greenhouse gases, when carrying out their functions under Part I.

#### EIA Regulations

4.25. Reference has already been made to judicial acceptance that the statutory regulation that affords protection to the environment under Schedule 9 to the 1989 Act in relation to applications for consent for a relevant proposal, is essentially also provided under the EIA consenting regime. As summarised above in paragraph 4.10 *et seq*, it was considered by Lord Doherty in his first instance judgement in the *Trump* case that the EIA requirements replicate the nature of the Schedule 9 obligations imposed on the Scottish Ministers to take into account any significant environmental effects that could result from relevant proposals, as defined in Schedule 9 to the 1989 Act.

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<sup>45</sup> Paragraphs 2.4.1 to 2.4.14 of David Bell's Hearing Statement dated August 2022.

<sup>46</sup> *Ibid* section 2.3 and 5.2.

<sup>47</sup> *Ibid* paragraphs 2.3.2 to 2.3.9.



- 4.26. For the reasons that are explained in the evidence of the Applicant’s independent expert witness specialising in the EIA of major infrastructure projects, including both overhead transmission lines and onshore wind farms<sup>48</sup>, Ms Kate Wigley, the EIA for the KTR Project was undertaken in accordance with the transitional provisions set out in Part 12, and in particular Regulation 40, of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (CD003.005)<sup>49</sup>, “the 2017 EIA Regulations”. This has the effect that the substantive requirements as to the content of an EIA Report under Regulations 4 and 5 of the 2017 EIA Regulations have been modified to reflect the substantive requirements of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000, “the 2000 EIA Regulations”. This was accepted by the ECU during the scoping process for the EIA Report, and all of the statutory consultees and non-statutory consultees. In these Closing Submissions, the 2000 EIA Regulations and the 2017 EIA Regulations are referred to collectively as “the EIA Regulations”.
- 4.27. It is submitted that the Reporters and the Scottish Ministers should approach the evaluation of the EIA information presented in the EIA Report as reflecting the substantive requirements of the 2000 EIA Regulations. In any event, the reasoning and comments provided by Lord Doherty in the *Trump* case that are referred to in paragraph 4.24 above are not affected by the coming into force of the 2017 EIA Regulations.
- 4.28. The body of case law on this topic serves to demonstrate that the requirements of the EIA Regulations are a fruitful source of litigation. Objectors seeking to overturn decisions by the relevant competent authority under the EIA Regulations to grant consent for EIA development, regularly fasten upon the requirements of the EIA Regulations as providing grounds of challenge. This has a relevance to the Inquiry process for the KTR Project in light of the evidence led on behalf of the main Objector group GWP.

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<sup>48</sup> Appendix 2 of the Applicant’s Inquiry Statement.

<sup>49</sup> Reference is made to Section 2 and paragraphs 4.1 and 4.2 of Ms Wigley’s Inquiry Report, APP003.001.

- 4.29. Because of the objections related to the EIA process, it was decided by the lead Reporter that an Inquiry Session should be held into the Justification for EIA Methodology (“Inquiry Session No.3”). As matters unfolded during the lead up to the start of the Inquiry, the only Objector who presented evidence in the form of an Inquiry Report was GWP. The evidence led was presented by Dr Ford, who once again claimed to be giving evidence as an expert witness on the topic; notwithstanding that he had no relevant academic or professional qualifications, nor professional experience specialising in EIA work in relation to major electricity infrastructure development; nor indeed any form of EIA developments. He had never been involved in the preparation of an EIA Report.
- 4.30. The professional background and experience of Dr Ford, who sought to challenge the evidence presented by the Applicant’s highly qualified and professionally experienced witness in relation to the EIA of major infrastructure projects (including Schedule 2 EIA electricity developments), is relevant to the Reporters’ evaluation of his evidence. This issue is mentioned in this Chapter because of the need to be aware of the possibility that the Objector whom he represented, GWP, may seek to challenge any grant of consent for the G-T Connection on grounds related to the EIA Regulations.

### **Status of the Development Plan**

- 4.31. There are two important legal issues that arise from the evidence of the Applicant’s independent specialist energy planning consultant, Mr David Bell, both of which are related to the status of the development plan for decision-making purposes. These legal issues are matters which the Reporters and the Scottish Ministers will be obliged to have regard to when carrying out their respective decision-making functions to avoid errors of law. Both of these issues have been foreshadowed in David Bell’s Hearing Statements dated August 2022 and February 2023.
- 4.32. The first issue relates to the grant of deemed planning permission under section 57(2) of 1997 Act and the interplay between section 37 of the 1989 Act, read together with

section 57(2) of the 1997 Act, on the one hand, and, section 25 of the 1997 Act. The controversial issue that has previously been addressed in case law is how these provisions impact on the relevance of the section 25 presumption under the 1997 Act<sup>50</sup>. The view that has been stated by Mr Bell to the Reporters is contained in paragraph 1.6.7 of his August 2022 Hearing Statement and is in the following terms:

*“It is important to note however, that section 25 of the 1997 Act is not engaged as there is no “primacy” of the Development Plan in an application made under section 37 of the 1989 Act, for decision-making purposes”*

4.33. There is authoritative judicial support for this analysis provided in the case of *William Grant v Scottish Ministers* [2012] CSOH 98<sup>51</sup>. The reason it was necessary for the Lord Ordinary to consider the inter-relationship between the different consenting regimes for the consenting of a generating station that falls within the ambit of section 36 of the 1989 Act, was that the Petitioner was seeking reduction of the development consents on the basis that the Scottish Ministers did not consider that the obligation under section 25 of the 1997 Act<sup>52</sup> applied to the decision to grant deemed planning permission under section 57(2) of the 1997 Act. In rejecting that ground of challenge, at paragraph 17 of his Opinion Lord Malcolm stated that it was clear that Parliament intended that the relevant provisions of the 1989 Act would provide a self-contained code. This analysis was relatively recently adhered to by Lord Ericht in the case of *North Lowther Energy Initiative Ltd v Scottish Ministers*.<sup>53</sup>

4.34. Of particular relevance to Parliament’s intention Lord Malcolm stated that: *“In my view it is clear that the purpose of a section 57(2) direction is to allow circumvention of the process of a planning application, including any need for a determination in terms of section 37 of the 1997 Act (which does specify that regard is to be had to the development plan). By contrast, section 25 applies to decisions under the planning acts when it is a requirement that*

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<sup>50</sup> This is raised and discussed in sections 1.6, paragraph 4.1.2 and section 5.4 of Mr Bell’s August 2022 Hearing Statement CD004.004.

<sup>52</sup> Section 25 applies to planning determinations under the 1997 Act, in terms of which the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

<sup>53</sup> [2021] CSOH 104 at paragraph 16.

*regard is to be had to the development plan. There are several provisions in the 1997 Act where one finds such a requirement. Section 57(2) is not one of them.”*

- 4.35. On the basis of the legal principles contained in this case law, the Applicant’s position is that when carrying out the balancing exercise that is the hallmark of the final stage of decision-making under section 37 of the 1989 Act, and indeed in all planning decisions, the Reporters and the Scottish Ministers should treat the provisions of the development plan as a material consideration that require to be taken into account where relevant. The weight to be applied to particular policies and provisions of the development plan will depend upon a range of factors that will be discussed in the Chapters VI and XI addressing the planning policy framework and decision-making outcome.
- 4.36. The second issue of law that has been raised in the evidence of Mr Bell is the inter-relationship between NPF4 and the development plan. This is addressed in section 2.1 of Mr Bell’s February 2023 Written Submissions in response to Procedure Notice No. 4, which provided the further information requested by the Reporter on “Matter 1: National Planning Framework 4”. Mr Bell explains in paragraphs 2.2.3 to 2.2.6 of those written submissions, the nature of the amendments to the provisions of the 1997 Act to give effect to the Scottish Government’s intentions as to the status that should be afforded to NPF4, and the statutory inter-relationship that it should have with the development plan. In summary, the national planning framework is no longer to be viewed only as a material consideration in the decision-making process. For development management purposes, by the virtue of the legislative amendments referred to in the evidence of Mr Bell, NPF4 is to be treated as part of the development plan. As a consequence, the statutory Development Plan that is relevant to the KTR Project consists of NPF4 and the Dumfries and Galloway Local Development Plan<sup>54</sup>.
- 4.37. This potentially gives rise to other legal issues associated with the interpretation of national development management planning policy and related development plan

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Paragraph 2.2.4 of Mr Bell’s February 2023 Written Submissions.

policies that apply to the same planning policy topic. The Government has anticipated the possibility of conflict between the more up-to-date NPF4 and more dated development plans that need to be replaced or are in the process of being replaced. There has been a two-pronged approach to addressing the potential issues, as explained in the evidence of Mr Bell.

- 4.38. The first is a legal response and in terms of section 24 of the 1997 Act there is now a statutory presumption in relation to incompatibilities between NPF 4 and local development plans (LDPs). Section 24 of the 1997 Act has been amended to include a new subsection (3), in terms of which it is provided that in the event of any incompatibility between the provisions of NPF4 and the provisions of a LDP, the more up-to-date policy provisions are to prevail. The second response has been that the Chief Planner issued advice by letter dated 8 February 2023 (CD003.047) on transitional arrangements on NPF4 becoming part of the statutory development plan alongside the LDPs. Mr Bell addressed this in his February 2023 Written Submissions, which is included in the Applicant's Summary of Case at paragraphs 19.16 to 19.18 and that evidence is not repeated here. It is, however, adopted and relied upon in Closing Submissions when addressing issues of relevance to the development management policy framework that applies for the purpose of determining the Applications for section 37 consents in respect of the KTR Project.
- 4.39. In addition to the issue of incompatibility, another issue with potential legal ramifications is the weight to be applied in the decision-making process to policies within NPF4 and policies in the LDP. Apart from the direction from the Chief Planner's letter that is referred to in Mr Bell's February 2023 Written Submissions, within NPF4 itself further guidance is provided in Annex A, entitled "How to use this document"<sup>55</sup>, which covers the issue of weight. It is made clear that it is for the decision-maker to determine what weight to apply to different policies on a case by case basis. Helpfully, specific guidance is given as to the policy statements made

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Pages 94 to 98.

within individual policies as to whether or not the specific development proposal is supported. It is made clear that this is to be treated as “in principle” support and the decision-maker will have to take into account all other relevant policies<sup>56</sup>. This approach is consistent with case law.

### **Expert Evidence**

- 4.40. In the evidence that has been presented to the Inquiry by the Applicant, the various topics have required the use of expert evidence from appropriately skilled witnesses. It is, however, an idiosyncratic feature of public inquiries held in relation to development proposals under the 1989 Act, and also under the 1997 Act, that the public are encouraged to participate in the proceedings irrespective of their background knowledge and possession of necessary professional experience to underpin the opinions that they might express in relation to the specialist evidential topics that are being examined in relation to a proposed development. It has come to be accepted that this is an established feature of public inquiries but there are checks and balances also incorporated into public inquiry procedure that serve to ensure the Reporter is properly informed as to the evidence that can or cannot be relied upon in relation to a topic that involves expert opinion. One such safeguard is the fact that the procedures normally ensure that the representative(s) of other parties to the Inquiry, who are usually legally qualified and experienced in testing the credibility and reliability of evidence, are given the opportunity to test that evidence either through cross-examination or asking questions in a hearing session through the Reporter chairing the session.
- 4.41. Appropriately qualified expert witnesses can provide considerable assistance to a tribunal or court when the issues for determination require specialist knowledge and experience in order to assist the tribunal or court in reaching its own conclusion on controversial issues. The public inquiry forum is treated as a tribunal for decision-making purposes, and this is confirmed by section 210 of the Local Government

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<sup>56</sup>

*Ibid* page 38.

(Scotland) Act 1973 that applies to public inquiries<sup>57</sup>. It has also been confirmed by the Outer and Inner Houses of the Court of Session in proceedings related to the lawfulness of Reporters' findings and recommendations, or the decisions of Scottish Ministers, following public inquiries under the 1989 Act or the 1997 Act, in which the public inquiry forum is referred to as a specialist tribunal. The case law that applies to expert witnesses in civil cases, does also apply in relation to civil evidence being given in a public inquiry.

- 4.42. The leading case is the decision of the Supreme Court in *Kennedy v Cordia (Services)* 2016 UKSC 6. It is explained in the *Kennedy* case by Lord Reed and Lord Hodge (now respectively the President and Vice-President of the Supreme Court), that "*Skilled witnesses, unlike other witnesses, can give evidence of their opinions to assist the court.*"; paragraph [39]. They go on to expand on the role of the skilled witness in paragraphs [40] and [41] in the following terms:

[40] "*Experts can and often do give evidence of fact as well as opinion evidence. A skilled witness like any non-expert witness, can give evidence of what he or she has observed if it is relevant to a fact in issue.....There are no special rules governing the admissibility of such factual evidence from a skilled witness.*

[41] *Unlike other witnesses, a skilled witness may also give evidence based on his or her knowledge and experience of a subject-matter, drawing on the work of others, such as findings of published research or the pooled knowledge of a team of people with whom he or she works. Such evidence also gives rise to threshold questions of admissibility, and the special rules that govern the admissibility of expert evidence also cover such expert evidence of fact.*"

- 4.43. It is therefore clear from the *dicta* of the Justices of the Supreme Court that an appropriately qualified skilled witness can give factual evidence, expert evidence of fact and expert opinion evidence. In addition, the Justices of the Supreme Court also approved the following rule from the US Supreme Court's Federal Rules of Evidence:

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<sup>57</sup> Paragraph 1 of the Code of Practice (CD003.002).

*“If scientific, technical or other specialised knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”*<sup>58</sup>

4.44. In order to assist the tribunal in deciding whether or not to treat a witness as a skilled witness it is necessary that the witness sets out his or her qualifications, by education, training and experience to give expert evidence<sup>59</sup> on the particular subject matter being addressed in the evidence. In that regard before admitting the evidence the tribunal should consider *“whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court”*.<sup>60</sup>

4.45. These considerations all bear upon the admissibility of expert opinion evidence. As summarised by Lord Reed and Lord Hodge in their judgement, there are four considerations which govern the admissibility of skilled evidence<sup>61</sup>:

- (i) whether the proposed skilled evidence will assist the court;
- (ii) whether the witness has the necessary knowledge and experience;
- (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.

4.46. In circumstances in which a party to the Inquiry puts forward an expert witness, it is incumbent upon counsel and/or solicitors representing the party to ensure that the proposed witness has the necessary expertise<sup>62</sup>. The responsibility of a party’s legal team is to make sure that the expert keeps to his or her role of giving the tribunal

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<sup>58</sup> Paragraph [46] in *Kennedy*.

<sup>59</sup> Paragraph [42] *supra*.

<sup>60</sup> Paragraph [43] *supra*.

<sup>61</sup> Paragraph [44] of *Kennedy*.

<sup>62</sup> Paragraph [57] *supra*.



useful information<sup>63</sup>. It is not just the legal representatives of the party leading an expert witness who have responsibilities, but the expert witness does also have duties and responsibilities when giving evidence as an “expert” in civil cases. These are summarised by the Supreme Court in paragraph [52] of the judgement and those considerations of relevance to the expert evidence given during the public inquiry into the KTR Project include the following:

- (i) expert evidence should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation (i.e. uninfluenced by the pressing need to achieve a particular outcome for the party being represented by the expert);
- (ii) the expert witness should provide independent assistance to the court by way of an objective unbiased opinion in relation to matters within the witness’s expertise, and, should never assume the role of an advocate;
- (iii) an expert witness should state the facts or assumptions on which the opinion is based and should not omit to consider material facts which could detract from his concluded opinion, and should explain why any material relevant to conclusions is ignored or treated as unimportant<sup>64</sup>; and,
- (iv) an expert witness should make clear when a particular question falls outside his area of expertise.

4.47. The principal reason for setting out the case law of relevance to accepting expert testimony from a particular witness claiming expertise in relation to particular subject matters that bear upon the issues of controversy raised during the public inquiry, is that Senior Counsel for the Applicant has challenged the claims by GWP’s sole external witness, Dr Ford, that he has given evidence at the public inquiry as an “expert witness”. This has been done by scrutinising Dr Ford’s basis for claiming he is an expert witness in relation to a wide range of topics in relation to which he gave

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<sup>63</sup> Paragraph [38](ii) *supra*.

<sup>64</sup> Additional comment provided by the Supreme Court in paragraph [53]

evidence on behalf of GWP. Based on the list of topics covered during the Inquiry in Appendix 2 to these Closing Submissions, these were:

- Technical Justification and Economic Justification (Inquiry Session No.1);
- Strategic Alternatives including undergrounding (Inquiry Session No.2);
- Statutory Context and National Energy and Planning Policy (Hearing Session No. 1);
- Strategic Route Selection, Design Strategy and Consultation (Hearing Session No.2);
- Justification for EIA Methodology (Inquiry Session No.3);
- Development Plan and other relevant planning guidance, existing and emerging (Hearing Session No. 5);
- Conditions and legal agreements (Hearing Session No. 6); and,
- NPF4 and other policy matters covered by Procedure Notice No.4 (Hearing Session No. 7).

Dr Ford confirmed that he had written GWP's Inquiry Statement on all of these topics<sup>65</sup>. He claimed expertise on all these topics and presented himself as an expert witness on all of these topics.

4.48. Although Dr Ford was not led as a witness on LVIA, impacts on forestry or socio-economic, tourism and recreation impacts, the Reporters will recall that this did not restrain him from expressing opinions on those matters for the purposes of discussing related planning policy issues, and in the context of discussing strategic route selection. It is submitted that although Dr Ford presented himself as GWP's "expert" witness on all of the above topics he was, and is, expert in none when his background and evidence is objectively examined. The reasons for this stark conclusion will be explained when addressing his evidence on each of the topics. It is, however, self-evident to anyone experienced in public inquiry work that no one individual could acquire the necessary expertise in all these areas in order to claim

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<sup>65</sup> Pages 72 to 73 of the transcript of evidence for Day 2.

the mantle of “expert” witness for them all. This was confirmed by comparing and contrasting Dr Ford’s claimed areas of expertise to that of the Applicant’s skilled witnesses on these topics, whose whole careers and expertise centred around a specific subject-matter. There is some cross-over in certain areas such as planning which traverses Hearing Sessions Numbers 1, 5, 6 and 7. However, when dealing in these Closing Submissions with each of the topics in respect of which Dr Ford gave evidence as an “expert witness”, further consideration will be given to Dr Ford’s self-proclaimed expertise under reference to the general legal principles from the *Kennedy* case.

- 4.49. The main reason for taking this approach in Closing Submission, which involves extensive reference to case law, is that GWP’s Senior Counsel has characterised the criticisms made of Dr Ford in the Applicant’s written submissions (such as those that followed after Hearing Session No.7 on NPF4), or during the oral sessions, as gratuitous personal insult. This is an unjustified and unprofessional criticism to levy in circumstances in which it is well-known to GWP’s Senior Counsel that one of the responsibilities of counsel is to make submissions on the credibility and reliability of any witness’s evidence, and, that this is particularly important when the witness concerned presents himself as an “expert” witness. By referring the Reporters to the case of *Kennedy* this makes it clear that there is an objective benchmark against which to measure the performance of Dr Ford as an “expert”. The *dicta* from the Justices in the Supreme Court provides this objective benchmark, together with their learned analysis as to what a court or tribunal is entitled to expect from an expert witness.
- 4.50. There were some specific traits exhibited by Dr Ford when giving evidence, irrespective of the particular topic that he was addressing in evidence, which bear upon the admissibility of, and/or confidence that the Reporters can have in relation to, his evidence. The written evidence presented by Dr Ford in the Inquiry Statement, Inquiry Reports, Hearing Statements and precognitions lodged on behalf of GWP were composed by Dr Ford to suit the case that he was arguing on behalf of GWP. By way of example, reference should be made to the Closing Submissions for the

Applicant in Chapter VII below in relation to Dr Ford's evidence on the technical and economic justifications for the KTR Project, when he describes his role in giving evidence as involving "painting a picture"<sup>66</sup>. Separately, and in contrast to the Applicant's expert witnesses, Dr Ford took up the mantle of acting as advocate when presenting evidence to the Inquiry. This is evident from the number of occasions in his written and oral evidence when he asserted that GWP (he) had shown that certain facts and/or conclusions being asserted by him in his evidence had been established. Such conclusions involve the exercise of judgement by the Reporters as the fact finders and not by the expert witness.

- 4.51. Further, insofar as he took it upon himself to assert in both his written and oral evidence that particular conclusions had been established through his evidence, he was seeking to supplant himself into the role of the tribunal on matters that are central to the outcome of the case. As made clear in the *Kennedy* decision, "...expert assistance does not extend to supplanting the court as the decision-maker. The fact-finding judge cannot delegate the decision-making role to the expert"<sup>67</sup>. There are many examples in the transcripts of Dr Ford's evidence that serve to demonstrate that on a number of occasions, Dr Ford disregarded the duties and responsibilities of an expert witness that are set out in *Kennedy* and summarised above. Apart from the fact that he does not have the necessary qualifications from education, combined with the relevant professional training and experience to qualify as an expert witness on the various topics on which he gave evidence, he displayed such a cavalier attitude in giving evidence that demonstrated his opinion evidence was neither objective nor unbiased.
- 4.52. In summary, Dr Ford regularly crossed into the role of either advocate or the fact-finding role of the Reporters. All of these features of his evidence lead to the inescapable conclusion that Dr Ford did not understand that his primary role as an expert witness was to assist the tribunal in reaching sound and reliable conclusions on the evidence, which in turn depended upon him respecting and adhering to the

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<sup>66</sup> Chapter VII, paragraph 7.84. See transcript of Day 2 of the Inquiry, pages 107 – 108.

<sup>67</sup> Paragraph [49] on page 73 of *Kennedy*.

duties of an expert witness. In contrast, he was a dangerous witness in that he sought to pass himself off as an expert witness on topics in respect of which he knew that he did not have the necessary academic and/or professional training and experience. His evidence was shown to be unreliable and often shown to be unsound.

4.53. It was clear when he crossed over into the role of advocate that his evidence was motivated by his clients' objective, which he had adopted, of seeking to influence the outcome of the case by securing recommendations from the Reporters to refuse the G-T Application and thereby prevent the development of the KTR Project. He was neither independent of his clients, nor impartial in his assessment of the Applicant's expert evidence. Similarly when he crossed over into the role of the Reporters as fact-finder and formulating a recommendation to Scottish Ministers, he was seeking to supplant himself into the role of the tribunal on matters that are central to the Scottish Ministers' decision. These issues are returned to in the Chapters below when examining his evidence but the primary submission is that **none** of Dr Ford's evidence should be admitted as expert evidence. In the nature of a public inquiry in which it is accepted that third parties participate irrespective of their expertise on the topic being addressed through the inquiry process, the Applicant does not go so far as to invite the Reporters to exclude his evidence from their consideration. But, for the reasons submitted in the following Chapters in relation to his evidence on the various topics listed above, the weight to be attached to his evidence is very significantly adversely affected by his lack of credibility and reliability, even as a non-expert witness.

#### **Material Considerations and the Weighing of Evidence**

4.54. Reference has already been made to the general legal principle that is so established in this field of administrative law that it is akin to a maxim. The legal principle that stems from case law is that it is for the decision-maker to reach conclusions as to the weight to apply to particular material considerations that are taken into account for decision-making purposes.

- 4.55. However, before getting to the question of weight there is an equally important common law legal principle that the fact-finding Reporters, and ultimately the Scottish Ministers, should have regard to, in order to ensure that the decisions on the five Applications are not unlawful. The well-known case that originated from the field of planning law is the case of *Wordie Property Co Ltd v Secretary of State for Scotland*<sup>68</sup>. The First Division held as long ago as 1984 that a decision of a planning authority will be unlawful if it has taken into account irrelevant considerations or has failed to take into account relevant and material considerations, including if it is one for which a factual basis is required and there is no proper basis in fact to support it. The principles established by that case have now been followed for nearly four decades.
- 4.56. A helpful example from this Inquiry that engages those principles is based on the closing submissions for LSKE that focus on adverse impact on the setting of listed buildings. Senior Counsel for LSKE is inviting the Reports to accept his own conclusions on this planning issue, in respect of which there is no proper basis in fact to support the conclusions he draws on the factual issues that have to be addressed; i.e. there is no admissible evidence before the Reporters on the crucial factual issues. Consequently, there is no proper basis upon which to reach conclusions in relation to the relevant legal principles, insofar as the application of the law depends upon lawful factual findings. All these considerations bear upon the question of whether or not the issue raised in closing submissions can be lawfully taken into account as a material consideration.
- 4.57. In essence, a material consideration is one that is relevant to the decision-making process. The exercise of judgement on this issue is reviewable and if the court concluded that a matter was left out of account and that it was fundamental to the decision, or, that there is a real possibility that consideration of the matter would have made a difference to the decision, the court may hold that the decision was not validly

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<sup>68</sup> 1984 SLT 345 at pages 347 – 348.

made<sup>69</sup>.

- 4.58. Turning to the question of weight, although it is an established principle that the weight to apply to material considerations is a matter of planning judgement, it is also an established principle that ultimately it is for the Court to determine what should be treated as a material consideration<sup>70</sup>. It has been expressed as being a consideration that is a factor that has some weight in the decision-making process, although it need not be determinative<sup>71</sup>.
- 4.59. Separately, the Court may be entitled to interfere with a decision-makers' judgement as to the weight to apply to a particular material consideration if it offends against the principles of *Wednesbury* unreasonableness, which is another well-established case law principle from the field of administrative law. Examples are where the planning judgement as to the weight to apply to a particular material consideration is absurd, insofar as it defies logic having regard to other material considerations that require to be taken into account. It has also been expressed as being the exercise of judgement that no sensible person who had applied his or her mind to the question to be decided could have arrived at such a judgement and/or decision<sup>72</sup>.
- 4.59 Finally, in relation to expert evidence, for the purposes of reaching a judgement on the weight to apply to a particular witness's evidence, the specialist tribunal would be expected to evaluate the evidence from any professional expert witness, and particularly a self-proclaimed "expert", in accordance with legal principles explained in *Kennedy* (paragraphs 4.44 and 4.45 above). Before reaching any conclusion on the weight to apply to that evidence, it would be necessary for the tribunal to make appropriate findings as regards both the reliability, and credibility, of that expert's evidence and also, whether or not the evidence of a particular witness should be treated as the admissible evidence of an expert.

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<sup>69</sup> *Bolton Metropolitan Borough Council v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority* (1991) 61 P. & C.R. 343 at 352.

<sup>70</sup> *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at page 780

<sup>71</sup> *R (on the application of Kites) v South Cambridgeshire DC* [2003] 1 P.&C.R. 19 at paragraph 121

<sup>72</sup> *Axa General Insurance v Lord Advocate* [2012] 1 AC 868

### The Use of Conditions

- 4.60. The Reporters have already received the Applicant's Summary of Case, within which Chapter K provides a summary of the Applicant's evidence and position on the proposed section 37 conditions, and, the conditions that it is proposed would be attached to the deemed planning permissions. To assist the Reporters the Summary of the Applicant's Case was structured around the Hearing Agenda.
- 4.61. It is primarily for that reason Chapter X was included in these Closing Submissions to provide a clear statement as to the Applicant's position as regards the purpose of particular planning conditions (i.e. the mitigation measure being addressed), and the link to the mitigation strategy as explained in the EIA Report and summarised in Chapter X below. The majority of the conditions are related to the proposed mitigation measures to reduce and minimise predicted likely significant effects and, in some instances, to ensure that significant adverse effects are avoided. There are also a number of conditions relating to enhancements aimed at leaving a positive legacy of the KTR Project, such as GNS, as discussed in Chapter X. This approach also accords with the guidance from the DPEA in the Code of Practice for Inquiries in relation to electricity applications under the 1989 Act as to the content of closing submissions<sup>73</sup>. In this Chapter of the Closing Submissions this topic is also returned to for the purpose of providing clear and detailed reasoning on particular legal issues that have arisen in relation the proposed Conditions.
- 4.62. The legal issues have primarily emerged from the discussions during Hearing Session No.4 on Traffic and Transport, at which GWP members were particularly active in expressing their concerns. Subsequent correspondence with the DPEA after that Hearing Session contains further elaboration over the question of "dedicated" conditions. Separately, the evidence and closing submissions for GWP gave rise to another legal issue related to the enforcement of conditions. The first of those issues is in relation to the Reporters' position on suggested dedicated planning conditions

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<sup>73</sup> CD003.002 - see paragraph 34 as regards covering all topics on which evidence was heard at hearing sessions, and, paragraph 36 as regards significant effects on the environment, taking account of the mitigation proposed.



for: (i) Laurieston; and, (ii) the Gatehouse and Kirkcudbright Angling Association (“GKAA”) providing angling facilities. The second legal issue that requires to be addressed arises from complaints by members of GWP who participated in Hearing Session No. 4, and the GWP representatives at Hearing Session No. 6 on Conditions, to the effect that planning conditions would not provide the necessary protection through mitigation measures because it is claimed that the Council officials cannot be relied upon to enforce the conditions due to the physical distance between the Laurieston area and Dumfries, where the officials are based at the Council’s Headquarters.

4.63. The detailed factual background to the first issue, with a summary of the respective positions of the lead Reporter and the Applicant’s solicitors on the debate over “dedicated” conditions, is provided in paragraphs 10.56 to 10.66 of Chapter X below. The specific legal issues arising from those exchanges are:

- Compliance with Government policy on the use of conditions;
- Taking into account an irrelevant consideration for decision-making purposes; and,
- Procedural fairness.

4.64. In order to consider the lawfulness of proposed conditions, the starting point is the statutory power to impose conditions and thereafter, consistency with Government policy and legal principles. In relation to the conditions that it is proposed should be attached to the section 37 consents, the power is contained in subsection (3)(a) of section 37 of the 1989 Act. It is provided that consent granted by Scottish Ministers under section 37 “*may include such conditions..... as appear to the [Scottish Ministers] to be appropriate*”. As regards the deemed planning permission, the power is contained in section 57(2) of the 1997 Act, which provides that on granting a consent under section 37 of the 1989 Act, the Scottish Ministers “*may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction*”.

4.65. The discretionary power for the imposition of conditions under section 37 of the 1989

Act is wide and involves the Ministers considering whether or not a condition is considered “appropriate” for the particular consent. There are no separate limits to the exercise of the discretion to impose conditions under section 57(2) of the 1997 Act, other than the requirement that such conditions must be specified in the direction for planning permission to be deemed to be granted. It is submitted that by necessary implication, based on the rules that relate to the legal construction of statutory provisions, the discretion would be exercisable on the same basis as the section 37 discretion. However, this would be subject to the qualification that whether or not a planning condition would be deemed “appropriate” will also be subject to the legal and policy principles that apply to the use of conditions in planning permissions.

- 4.66. In both cases the power conferred is a discretionary power that is for the clear purpose of controlling the manner in which the proposed electricity development is constructed and operated under the section 37 consent and related deemed planning permission. The legal principles discussed in paragraphs 4.4 and 4.5 above apply to the exercise of this power. This can involve questions related to whether or not the discretion has been improperly exercised (e.g. procedural unfairness) or if it is based on a material error of law. When addressing errors of law it is relevant to consider the planning purpose of any such condition that may be attached to a section 37 consent or deemed planning permission in the context of the relevant statutory framework; i.e. the 1989 Act. The statutory framework would be relevant to the legal and policy tests contained in Circular 4/1998 (CD015.001).
- 4.67. Relevant Government policy provides guidance not just on the validity of proposed conditions but also on the appropriateness of particular conditions. The only guidance from the Scottish Government that is specific to the use of conditions by the ECU for electricity applications under section 37 of the 1989 Act, is that issued in August 2019 by the Scottish Government, produced as Inquiry Document No. CD015.005, (“the August 2019 Guidance”). The guidance was referred to during the Hearing Session on Conditions for the standard template conditions contained in Annex D. Whether or not a particular condition would be considered “appropriate”

for a section 37 consent and/or deemed planning permission is addressed through the use of examples produced in Annex D.

- 4.68. Annex D contains template, or standard, conditions that the ECU, in consultation with the Heads of Planning from planning authorities in Scotland and Scottish Government planning officials, consider are appropriate for either the section 37 consent or the deemed planning permission<sup>74</sup>. It should be noted that it is emphasised that the selection of a particular condition should depend on the particular circumstances of the section 37 application being considered<sup>75</sup>. It is also noteworthy in relation to the question of whether or not a condition is necessary, that in the footnotes to specific conditions in Annex D that it is emphasised that particular conditions should only be imposed where relevant to a “demonstrable requirement”.
- 4.69. It was accepted by all parties to the Inquiry, and the lead Reporter, that the content of Circular 4/1998 is relevant to the conditions proposed to be attached to the deemed planning permissions for the different Connections that comprise the KTR Project. Both of the solicitors acting separately for the Council and the Applicant, independently reached the same view that the lead Reporter’s suggestion of dedicated planning conditions to address the concerns expressed by the members of the GWP who participated in the Hearing Sessions, would not comply with the Government’s policy as expressed in Circular 4/1998. This was a view that they had each independently formed having regard to their own client’s interests, as they were professionally obliged to do. The Reporters would therefore have to give very strong and persuasive detailed reasons to recommend to the Scottish Ministers that their representations should be disregarded. This submission is reinforced by the fact that both Circular 4/1998 and the August 2019 Guidance, emphasise the importance of receiving representations from both the Applicant and planning authority to assist the Scottish Ministers’ consideration of whether or not a condition is appropriate and, for that purpose, a collaborative approach between the planning authority and the

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<sup>74</sup> See first un-numbered paragraph on the un-numbered eighth page of CD015.005

<sup>75</sup> *Ibid* see the box in red print at the tops of page 34 and the various footnotes to particular specimen conditions in the table that forms Annex D

Applicant is encouraged.

- 4.70. The principal reason that both the Applicant and the Council have not pursued the lead Reporter's suggestion of dedicated conditions for Laurieston and the GKAA is that it is considered that such conditions would not meet the tests in Circular 4/1998. Under reference to paragraph 10.56 of Chapter X below, it is understood by the Applicant's legal advisers that it is the alleged lack of any dedicated mitigation measures and "dedicated planning condition wording" for Laurieston or the GKAA that is the issue being raised by the lead Reporter. The legal question that arises in response is what private interests require to be protected in the public interest, which have not been addressed in the proposed draft conditions? The planning authority is satisfied that such private interests have been satisfactorily addressed through the proposed conditions. The Reporters have declined to answer the Applicant's direct questions as to the private interests of the GKAA and sectors of the Laurieston village community that require to be addressed, and, which have not subsequently been addressed through the revisions to the draft conditions for the G-T Connection that have been made since Hearing Session No.6 and agreed with the Council's solicitor.
- 4.71. Consequently, in the absence of a meaningful response, it would be difficult for both the Council and the Applicant to draft any such conditions in circumstances in which is entirely unclear as to the need for such conditions. This in turn causes difficulty in satisfying the policy requirement to state the planning purpose for a proposed condition in the reason for the condition and adhering to the Guidance only to impose a condition in response to a "demonstrable requirement". All of these considerations give rise to real concerns as to the risk of legal challenge if the Scottish Ministers' decision to grant consent includes a proposed condition that is recommended by the Reporters, but which does not meet the requirements of Circular 4/1998 or accord with the August 2019 Guidance.
- 4.72. Even worse from the Applicant's perspective (and from that of the planning authority), would be if during the construction phase of implementing the statutory consents, the third party objectors sought to stop the project through arguing non-

compliance with a planning condition that had no lawful or policy basis for its imposition, but in respect of which the private interests of the Objectors were referenced<sup>76</sup>. In marked contrast to the Objectors' interests, the Applicant's interests in securing legally robust statutory consents are founded in the public interest that is associated with the KTR Project. These stem from the Applicant's legal obligations as the holder of the transmission licence for this part of south west Scotland and in recognition of the urgent need for delivery of the KTR Project. The major issue with conditions that have as their purpose the private interests of third parties, that cannot be justified under reference to a wider public interest, is that it creates a sense of entitlement to the third party objectors that can become entirely divorced from the public interest aspects of the proposed development. This then gives rise to concerns over enforcement issues, in respect of which the planning authority has also expressed concerns in relation to dedicated GKAA and Laurieston conditions.

4.73. It is clear from the August 2019 Guidance that when considering whether condition attached to the section 37 consent or deemed planning permission are necessary, it is essential that consideration is given to whether or not in the circumstances of a particular case there is a demonstrable requirement for the condition. This is also addressed in Circular 4/1998 as the test of the need for a condition<sup>77</sup>. It is submitted under reference to paragraphs 4.18 to 4.20 above, that the relevant issues are the degree of detriment and the availability and reasonableness of possible mitigation measures. The discussion in Circular 4/1998 places particular emphasis on the requirement for conditions to "tackle specific problems, rather than impose unjustified control"<sup>78</sup>. The only advice from the lead Reporter as to the planning purpose of such dedicated conditions is contained in the emails dated 1 March and 4 May 2023 from the Case Officer, referred to in paragraphs 10.56 and 10.62 in Chapter X below. In both emails the Case Officer made reference to the Reporters' request

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<sup>76</sup> See for example the circumstances involving an enforcement appeal that was subsequently appealed to the Court of Session; *cf Community Windpower Ltd v Scottish Ministers & Others* [2020] CSIH 17 at paragraphs [48] to [50]

<sup>77</sup> Paragraph 13 of CD015.001

<sup>78</sup> *Ibid* paragraph 15

being based on the views of the community members of Laurieston and the GKAA that had been made known before and during the inquiry and which are related to the Objectors' concerns about the adverse effects/impacts of the proposal.

4.74. These statements simply confirm to the Applicant's legal advisers, and their independent consultants who have been involved in the EIA work (LUC), that there is no longer any outstanding requirement for any other "dedicated" conditions, which would be in addition to those new proposed conditions that have been referred to in the Applicant's correspondence with the DPEA since March 2023. The adverse effects and impacts being referred to by members of GWP, or more generally "the community of Laurieston", during the Inquiry have been addressed through the EIA work carried out by LUC together with other appropriately qualified experts. The lead Reporter is well aware that the Applicant and their legal advisers gave careful consideration to the views being expressed by third party objectors during Hearing Session No.4 during which residents of Laurieston and the surrounding area were the most active, and vocal. The Applicant's legal advisers gave careful consideration to the views of both the GKAA and members of the community of Laurieston as expressed during the Inquiry, when considering revisions to the table of draft conditions for the G-T Connection and suggested additional conditions, as discussed in Chapter X below.

4.75. Based on advice in Circular 4/1998 on the test of need, and the advice referred to from the August 2019 Guidance in relation to there being a "demonstrable requirement" before a condition is imposed, it is submitted that there can be no doubt but that the Scottish Government's policy is **not** to place unjustified burdens on Applicants for statutory consents under section 37 to construct and operate electricity infrastructure. It is clear that the lead Reporter has suggested "dedicated" conditions in relation to adverse environmental impacts/effects. It is therefore necessary to have regard to the statutory obligation on the Applicant which is of relevance for the purposes of evaluating the legality of that request. This is contained in paragraph 3(1)(b) of Schedule 9. For the reasons explained in the judgement of Lord Doherty that is

referred to in paragraph 4.18 above, this involves factual issues such as the reasonableness of possible mitigation measures. It is the Applicant's position that the duty to provide mitigation measures also has to be considered in the context of the EIA obligations with which the Applicant also has to comply. Those duties are focussed on likely **significant** effects, and not to guard against every possible contingency<sup>79</sup>, which is what some of the Objectors at the Hearing Session were arguing for.

- 4.76. The Applicant's position is that mitigation has been considered for all likely significant effects (which has not been seriously challenged during the Inquiry), with the exception of landscape and visual impacts where embedded mitigation through design was the primary mitigation of significant effects. As explained in Chapter X there are a few examples where mitigation has been proposed for impacts that have not been assessed as causing significant effects, but are considered appropriate on a precautionary basis where there is a wider public interest involved, and reflecting best practice. Under reference to Lord Doherty's decision, the Reporters have not identified to the Applicant **any** detrimental (adverse) impacts discussed at Hearing Sessions in relation to Laurieston or the GKAA that have not been the subject of EIA work, or, in respect of which the Reporters consider that additional mitigation measures are required. This is despite a number of requests that they should provide notice of any significant adverse impacts/effects in respect of which the lead Reporter appears to consider that there is an unresolved issue in relation to the adequacy of the mitigation measures that would be provided through the proposed conditions.
- 4.77. As explained in the evidence of both Mr Jack and Ms Wigley, they had carried out extensive consultation with communities and local businesses/organisations that could potentially be adversely affected by the proposed development, including the Laurieston community, and, GKAA. The GKAA's representations have been the subject of post-Inquiry procedure with the lead Reporter requesting more

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<sup>79</sup>

Paragraph 13 of Circular 4/1988

information in relation to the GKAA, but which has not caused her to raise any specific issues as regards mitigation measures.

- 4.78. In drawing together the legal reasoning on this issue, based on Lord Doherty's first instance decision in the *Trump* case, it is submitted that the persistence by the lead Reporter in her request that the Applicant should bring forward either "dedicated" planning conditions, or, dedicated mitigation measures for these two receptors is unreasonable. It is contrary to the existing policy of the Scottish Government in relation to the use of conditions for both a section 37 consent and deemed planning permission, and, unlawful on the basis that the approach runs counter to the advancement of the policy and objects of the 1989 Act that provides the statutory justification for the KTR Project. The legislative basis for addressing adverse environmental effects associated with an electricity development are all centred around the receptors listed in paragraph 3(1)(a) of Schedule 9, **all of which involve receptors in respect of which there is a clear public interest**. This is understandable given that the statutory justification for the KTR Project is in the public interest so if adverse environmental effects are to be balanced against the grant of a section 37 consent then on the basis of comparing like with like, the protection of "amenity" receptors should also be in the public interest.
- 4.79. It is accepted that the requirements of the EIA Regulations are more onerous than the Schedule 9 duties; hence Lord Doherty's reasoning that if the EIA Regulations have been complied with then it can be assumed that the Schedule 9 duties have also been complied with. In terms of the EIA Regulations, developers and the Scottish Ministers as competent authority in granting development consent, are obliged to consider the effect on the "population", i.e. people<sup>80</sup> before determining a section 37 application. However, it requires to be fully understood by the decision-makers that the requirement to identify specific mitigation measures is only in relation to "significant adverse effects on the environment"; not **any** adverse effects<sup>81</sup>.

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<sup>80</sup> Regulation 4(1)(b) read together with paragraph 2 of Schedule 4 to, the 2000 EIA Regulations

<sup>81</sup> Paragraph 4 of Part I of Schedule 4 to the 2000 EIA Regulations.



- 4.80. On the basis of this legal reasoning, it is submitted that if the lead Reporter does act in the manner contemplated in the email correspondence from the DPEA of 1 March 2023, such action would be challengeable. It is assumed from the email correspondence that the Reporter is contemplating making a recommendation that there is an inadequacy in the mitigation measures proposed through the conditions agreed with the planning authority (which would have to be based on a clear finding for which there is no disclosed justification from the lead Reporter), which should weigh against the grant of the G-T section 37 consent and deemed planning permission. Such a recommendation would frustrate the public interest objects that form the statutory purpose of the 1989 Act, and, established national energy and planning policy objectives of the Scottish Government. It would be unlawful and aggravated by the lack of a sound factual justification for reaching a conclusion that there is a demonstrable requirement for “dedicated conditions” that is in the public interest.
- 4.81. In the event that this approach is adopted by the lead Reporter in the report to Ministers, either in her own name or in the name of both Reporters, the officials of the ECU advising the Scottish Ministers, and the Scottish Ministers, are formally requested to place no weight on any related findings or recommendation. There is no factual basis upon which such findings and/or recommendation can be supported. Such a course of action would frustrate both the policy objectives and the statutory purpose of the consenting scheme under the 1989 Act. It would involve giving greater weight to private interests over public interest in circumstances in which it has not been established in evidence that there are separate private interests in respect of which public interest can be claimed, which have not already been addressed by the Applicant through appropriate mitigation measures.
- 4.82. Separately another legal error would be committed if the Ministers followed a recommendation by the Reporters to place significant weight on the rejection by both the Applicant and planning authority of the lead Reporter’s approach to the need for additional dedicated conditions for Laurieston and the surrounding environs, and,

the GKAA. The lead Reporter has no evidential basis upon which to make a finding of need for dedicated conditions that provide mitigation measures that would be additional to those proposed by the Applicant, and, which have been accepted as adequate by the planning authority. There would require to be findings of significant adverse effects on people that should be protected in the public interest, for which there is not any proposed mitigation. The members of the community and the GKAA have expressed their strong beliefs and concerns, mostly in relation to the construction phase of the KTR Project, but that does not translate into an objective assessment of significant adverse effects that should be addressed in the public interest.

4.83. In the absence of such findings, the Reporters would be taking into account an irrelevant consideration, and in respect of which there is no reliable factual basis before the Reporters. Such an approach would be unlawful<sup>82</sup>. The stated factual basis for a negative finding and/or recommendation as contained in the email of 1 March 2023, and repeated in the email of 4 May (with the continued reference to “dedicated planning conditions), appears to ignore the fact that since Hearing Sessions Nos. 4 and 6 the Applicant has proposed and agreed with the Council some additional conditions to address certain issues that were raised during Hearing Session No.4, and which they both consider are appropriate in the circumstances. These are in respect of the proposal for a PMO, a Community Liaison Officer, the mitigation related to the Beech Tree Avenue and the formation of a Community Liaison Group. In light of the lead Reporter’s refusal to provide any indication as to perceived gaps in the mitigation for these receptors, the Applicant can do no more. The suggestion that the Applicant should contact third party objectors for this purpose would only serve to blur the necessary distinction between private interests and public interest, and in that sense is absurd in the *Wednesbury* sense. If proper consideration was given to the statutory framework for the purposes of considering what might be

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<sup>82</sup> *Wordie Property (supra)*; see paragraph 4.53 above

appropriate, it would be understood that correct legal approach to the provision of appropriate mitigation does not involve putting third party private interests above public interest projects.

4.84. The apparent unwillingness, or reluctance, on the part of the lead Reporter to place any weight on the views of the legal representative of the Council and the Applicant's solicitor, Mr Moray Thomson, as regards the fact there is no need for additional "dedicated" conditions has not been satisfactorily addressed or justified by the Reporters in correspondence from the DPEA. Both of those parties' legal advisers are experienced planning lawyers regularly involved in advising their clients on the use of planning conditions. In correspondence the DPEA and Reporters have been advised that prior to qualifying as a solicitor, the Applicant's solicitor, Mr Thomson, was a qualified planning officer employed by planning authorities and whose responsibilities included advising on the use of planning conditions on a range of different types of development. It is clear from both the August 2019 Guidance and Circular 4/1998 that the Applicant and planning authority are encouraged to provide their views on the use of particular conditions, which they both consider to be appropriate in the circumstances relating to the application. It is stated in that policy and guidance that the Ministers will take account of their representations when considering what conditions might be considered appropriate. There is no mention in any of the guidance in relation to the views of individual businesses/Associations or sectors of a community, for whom it is assumed that the planning authority will give appropriate consideration to the protection that should be afforded to their interests.

4.85. Finally, in relation to the question of the unlawfulness of the approach being taken by the lead Reporter on this issue, if the Reporters pursue the course of action intimated in the email of 1 March 2023, this would give rise to procedural unfairness having regard to the Reporters' unwillingness to give the Applicant notice of what additional mitigation measures they consider are required. This has been addressed in some detail in the correspondence from Shepherd and Wedderburn, which is

adopted for the purposes of these Closing Submissions and not repeated herein. In any event, the important issues raised in that correspondence is referred to in Chapter X below.

4.86. The second legal issue that it is necessary to address in this part of the submissions, arises from the representations from GWP to the Reporters, including from their Senior Counsel, that the proposed conditions would not provide the community of Laurieston with sufficient protection because it should be assumed that the Council will fail to enforce the conditions effectively. This line of argument is flawed in law and is therefore not only an irrelevant consideration but if followed by the Reporters or Scottish Ministers would result in a fundamental error of law in the decision-making process. There is case law authority that supports the legal proposition that in circumstances in which different decision-makers are separately required to authorise a particular activity at a particular place that each decision-making authority will exercise its powers within its sphere of competence with a view to achieving its relevant objectives. This issue was considered by Lord Doherty in his decision at first instance in the *Trump International* judicial review previously referred to above. In paragraph [32] of his judgement he stated the following: *“It is unremarkable that more than one type of regulatory authorisation may be required to perform a particular activity at a particular place.....Each decision making authority requires to exercise its powers within its sphere of competence with a view to achieving its relevant objectives. The controls under each regime should complement rather than duplicate each other.....The different decision makers ought to be able to approach matters on the assumption that, if and when an application is made under the other régime, that régime’s requirements will be properly applied and enforced.”*

4.87. Although not directly in point in that the separate consent of the planning authority is not required to authorise the construction and operation of the KTR Project, which is the purpose of the Ministers’ direction that planning permission be deemed to be granted, but the legal reasoning is in point. As a consequence of the Ministers specifying the planning conditions to be attached to the deemed planning

permission, there is no duplication of controls but it is deemed to be within the planning authority's sphere of competence to apply and enforce such conditions. This authority has particular relevance to the concerns being expressed at the Traffic and Transport Hearing Session at which the criticisms of the Council were made by GWP members and their Senior Counsel in relation to the willingness and/or capability of the Council's officers to enforce planning conditions by reason of the fact their base is physically distant from Laurieston. That is an irrelevant consideration as it should be assumed by the Scottish Ministers that the Council would apply and enforce relevant conditions if considered appropriate. In any event, the Applicant does not just rely upon legal argumentation. As explained in Chapter X below, the main reason for making provision in the conditions for the appointment of a Planning Monitoring Officer ("PMO") is to ensure that the Council has effective representation and "eyes" on the ground during the construction phase. The physical remoteness issue has therefore been separately addressed. This is further discussed in Chapter X below.

## 5. HEADLINE SUBMISSIONS & STRUCTURE

- 5.1. The Reporters are invited to recommend to the Scottish Ministers that they should grant consent for the five Applications under section 37 of the 1989 Act for the installation and operation of the five overhead line Connections that together form the KTR Project, and, the related ancillary development as described in Chapters 4 and 5 of the EIA Report<sup>83</sup>. The Reporters are also invited to recommend that deemed planning permission should be granted under section 57 of the 1997 Act for each of the Connections, and the related ancillary development.
- 5.2. It is the Applicant's position that the grant of the necessary statutory consents for the construction and operation of the five Connections should be subject to the draft Conditions that have been tendered by the Applicant<sup>84</sup>, in accordance with the arrangements set out in the PEM Note. As discussed in greater detail in Chapter X below, the Applicant and their legal advisers have made extensive efforts to develop a set of conditions for each Connection which will appropriately safeguard the environment, local settlements, businesses, and, residential amenity, which may be adversely affected by the installation and operation of the KTR Project. The planning authority has agreed to over 90% of the proposed draft conditions and the remaining differences are relatively minor, and in respect of which the Applicant is content that the Reporters and/or the ECU can resolve the differences.
- 5.3. In carrying out their decision-making function under section 37 of Part I of the 1989 Act as to whether or not to grant consent for the transmission infrastructure proposal, the Scottish Ministers must act in accordance with, and/or have regard to, a range of different statutory obligations and legal requirements. These are summarised in the Closing Submissions presented above in relation to the statutory framework, which forms the first part of Chapter IV. For the purposes of ensuring that the decisions do not frustrate the policy and statutory objectives of the 1989 Act, the main provision to which the Scottish Ministers must have regard in terms of their obligations is

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<sup>83</sup> CD001.010 and CD001.011

<sup>84</sup> APP011.003 to APP011.007

section 3A in Part I of the 1989 Act.

- 5.4. The Applicant's position is that the determining issues provide compelling reasons and very substantial support to grant the necessary statutory consents for the construction and operation of the KTR Project.
- 5.5. The Applicant is promoting, and seeking electricity consents for, the KTR Project, in compliance with its statutory duties under section 9 of the 1989 Act:
- (i) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and,
  - (ii) to facilitate competition in the supply and generation of electricity.
- 5.6. As presented to Ofgem, and approved by Ofgem, the KTR Project has two key investment drivers which are:
- replacement of the end-of-life existing 132kV transmission assets between Polquhanity and Tongland to maintain reliability and security of supplied to consumers, and which is the primary investment driver for the G-T Connection; and,
  - the provision of already overdue and much needed additional transmission capacity to facilitate the connection of the NGENSO<sup>85</sup> contracted renewable generation, which is the primary investment driver for the P-G via K Connection, but also of relevance to the timely delivery of the G-T Connection.
- 5.7. When determining the applications under section 37 of the 1989 Act, the Scottish Ministers are obliged under section 3A to do so in the manner that they consider is best calculated to protect the interests of existing and future consumers in:
- (i) the reduction of electricity-supply emissions of targeted greenhouse gases;
  - (ii) the security of supply of electricity to them; and,
  - (iii) the effective competition between the generators of electricity.
- 5.8. GEMA, governing and acting through Ofgem as the UK Government's appointed

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<sup>85</sup> National Grid Electricity System Operator

regulator of the electricity market<sup>86</sup>, is placed under the same obligations in terms of section 3A of the 1989 Act as the Scottish Ministers. It is therefore clear that the Ofgem approved investment drivers for the G-T Connection and P-G via K Connection, are material considerations for the consenting of the KTR Project. Not least because they are directly linked to the fulfilment of the Scottish Ministers' obligations under section 3A(1A) and (1B) of the 1989 Act, when determining the section 37 Applications for the KTR Project. Those statutory objectives reflect the main aims of the 1989 Act and current Government energy policy objectives.

- 5.9. The Scottish Government's Net Zero energy policy and strategy to achieve the 100% Net Zero greenhouse gas emissions target by 2045 at the latest, reflects the declaration of climate emergency by the Scottish Government in April 2019, and the subsequent legislative changes to reflect that emergency with the requirement increased to 75% reduction by 2030.
- 5.10. It is therefore clear that the Applicant's interests that are involved in the development and delivery of the KTR Project are coincident with the Scottish Government's national energy policy objectives and statutory obligations to achieve Net Zero in the wider public national interest and global interests of society. These also reflect the obligations on the UK Government in relation to net zero targets.
- 5.11. In addition the KTR Project is consistent with, and supportive of, the Scottish Ministers' statutory obligations under section 3A to consider the manner in which determining the section 37 Applications can best protect the interests of consumers through facilitating effective competition amongst generators, and delivering in respect of the consumers' interests in the reduction of electricity-supply emissions of targeted greenhouse gases, and, the interests of consumers in this part of south west Scotland in the maintenance of security of the supply of electricity to them and that all reasonable demands for electricity are met.
- 5.12. The Scottish Government, in recognition of the urgent need for a very significant

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<sup>86</sup> Section 5 of the Inquiry Report for Mr Diyar Kadar (APP001.001) and section 2.6 of the Hearing Statement prepared by Mr David Bell dated August 2022.



increase in both onshore and offshore renewables generation, and, the related expansion of the capability of the transmission system, has brought forward and adopted strong national planning policy support for electricity development such as the KTR Project. The KTR Project requires to be treated as national development as it falls within the description of strategic transmission infrastructure and supports the delivery of sustainable places<sup>87</sup>. The statement of need is that additional transmission capacity of scale is “*fundamental to achieving a net zero economy and supports improved network resilience in rural and island areas*”<sup>88</sup>.

5.13. The balancing exercise that requires to be carried out for the purposes of determining electricity applications is reflected in the development management policy framework in NPF4. Specifically in Policy 11 which is the lead policy for decision-making on electricity transmission infrastructure applications, in terms of which adverse environmental effects require to be considered. The Applicant’s conclusion from the EIA work carried out for the proposed design of the KTR Project is that there are no adverse effects of such significance that led to any conclusion that an alternative design to the proposed continuous overhead line Connections should be considered. Nor was it considered that alternative routes required to be considered. It is the Applicant’s position that the residual significant effects after the implementation of proposed mitigation measures are acceptable. The adverse effects are considered proportionate as regards the nature and extent of adverse effects to be expected from the installation of 132kV overhead transmission lines. In terms of Policy 11 of NPF4 the Applicant has demonstrated effective mitigation through routing decisions and the proposed mitigation measures that can be secured through conditions attached to the statutory consents.

5.14. Furthermore, through the EIA work the Applicant has also demonstrated that it has fulfilled the duties imposed by paragraph 3(1) of Schedule 9 to the 1989 Act and, in particular, has identified suitable mitigation measures in accordance with the

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<sup>87</sup> Page 7 of NPF4 (CD003.042)

<sup>88</sup> Page 103 of NPF4

requirement of paragraph 3(1)(b) of Schedule 9.

- 5.15. Although a number of Objectors have argued that the only suitable mitigation is the undergrounding of the proposed Connections, particularly from GWP and Mr Kerr in relation to the G-T Connection, the Applicant has demonstrated through reliable evidence that there is a sound basis for the decision taken at a senior management level to proceed with the selected design solution of a continuous overhead line between Polquhanity to Tongland. The Applicant's design solution is compliant with the statutory obligations to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.
- 5.16. The remainder of these Closing Submissions address in greater detail the relevant and material considerations that require to be taken into account in the determination of the Applications. Specific guidance is given in the Code of Practice in paragraphs 34 to 49 as to the content of closing submissions. The matters which are considered relevant to the Applicant's position in Closing Submissions are:
- (i) the substantive Inquiry topics upon which the Applicant has made representations, including the submission of evidence (Chapters VI to X);
  - (ii) the need to draw attention to any relevant statutory provisions, which for the purposes of these Closing Submissions are assumed to be those statutory provisions that have either been discussed in evidence or bear upon the approach taken in closing submission on legal issues (Chapters IV, VII, VIII and IX);
  - (iii) likely significant environmental effects, taking account of mitigation proposed for the project (Chapter IX & X);
  - (iv) the relevant provisions of the development plan and any other material considerations that are relevant to the grant of deemed planning permission (Chapter VI & XI);
  - (v) the reasons that support the grant of consent under section 37 of the 1989 Act and deemed planning permission under section 57 of the 1997 Act, having

- regard to consistency with legal obligations and duties on the Scottish Ministers, and, with Government policy (Chapters V, VI and XI); and
- (vi) the decision-making outcome in terms of the recommendation of the Reporters to the Scottish Ministers and, the conditions and legal obligations which should be attached to the section 37 consent and deemed planning permission (Chapters X & XI).

## 6. POLICY FRAMEWORK

- 6.1. This Chapter covers both of the policy Topics that were identified for Hearing Sessions by the lead Reporter, namely Topic 4 and Topic 11. The evidence in that regard was the subject of discussion at Hearing Sessions Nos 1 and 7 in relation to national energy policy and national planning policy, and, Hearing Session No. 5 in relation to the development plan. In closing submission the focus is primarily on Topic 4 because the most up-to-date policy framework is contained in national policy (both energy and planning policy), rather than the LDP. Of particular significance to the determination process is the fact that LDP 2 does not address through development management policies, or indeed any other relevant planning policy provisions, the policy approach to delivering essential transmission or distribution infrastructure.
- 6.2. Moreover, as discussed in Chapter IV above, for the purposes of making a determination on electricity applications for development consent under the 1989 Act it is now an established legal principle that the obligation on decision-makers under section 25 of the 1997 Act to determine applications for planning permission in accordance with the provisions of the development plan unless material considerations indicate otherwise does not apply. Mr Bell accepts in his evidence that the provisions of the development plan remain as material and relevant considerations, but that this changes the weight that should be given to the provisions of the development plan. This is considered to be in accordance with the legal principles discussed in Chapter IV above.
- 6.3. The Closing Submissions in this Chapter seeks to draw together the many and varied policy considerations that should form the basis of the Scottish Ministers' decision on the section 37 Applications.

### **General Considerations**

- 6.4. Because of the fact that the Applications before the Scottish Ministers for determination are made under the 1989 Act in relation to the consenting of electricity

development, there is a multi-faceted policy framework that applies. This involves:

- the inter-relationship with the 1989 Act;
- the inter-relationship with national planning policy and energy policy; and,
- the inter-relationship between NPF4 and the development plan.

6.5. The first of these considerations requires to be considered having regard to the legal submissions on the statutory framework under the 1989 Act. It is the primary consideration in the decision-making process because the policy objectives of the statute cannot be lawfully undermined by the determination of the Applications. This is addressed in the submissions in Chapter IV above. Consequently, when considering planning policy issues that are reflected in NPF4 (and to a lesser extent the development plan) in relation to competing interests, it is necessary to exercise planning judgement on those issues having regard to the broader societal and public interest issues that are reflected in the statutory duties and obligations contained in the 1989 Act.

6.6. As regards the second of these considerations, the public interest is also reflected in the broader national planning policy and national energy policy objectives. The same principles apply as summarised in the above paragraph. However, another important general policy consideration is that although the statutory obligations in the 1989 Act reflect the principles of national energy policy, the specific statutory obligations in terms of achieving legally fixed targets for the reduction of green gas emissions is contained in separate legislation that is linked to national energy policy. This is also referred to and relied upon in Chapter IV of these Closing Submissions, and likewise in the evidence of the Applicant's expert. It is summarised in Section 16 of Chapter C of the Applicant's Summary of Case.

6.7. The third inter-relationship has also been addressed in Chapter IV above in paragraphs 4.30 to 4.38. It is acknowledged and accepted that the development management policy framework that is provided between NPF4 and the provisions of LDP 2 contain policy provisions that are relevant and material considerations for the purposes of the decision-making process. This part of the policy framework is of

particular relevance to the balancing exercise that will require to be carried out in relation to the objections to the electricity applications, and the public interest that is strongly founded in both statutory policy and objectives, and, national planning policy.

- 6.8. The other general consideration that requires to be addressed in this introductory part of the Chapter, to avoid repetition, is the nature of the evidence that has been presented to the Reporters.
- 6.9. The Applicant's evidence on these Topics has been provided by a well-respected and undoubted expert in the field of both energy and planning policy and, also, in the decision-making functions of both planning authorities and the Scottish Ministers. It is respectfully submitted that his careful and considered analysis of the policy issues and his well-reasoned conclusions should be afforded very considerable weight by the Reporters and the Scottish Ministers. The case for the Applicant on these Topics is summarised in Chapters C and J of SPEN's Summary of Case, and the Summary on both Topics is adopted for the purposes of these Closing Submissions and not repeated.
- 6.10. In contrast, the witness for GWP on both these Topics cannot lay claim to such a pedigree as an expert witness on these Topics. Although it is acknowledged that from the summary of his professional background that was given on Day 1 of the Public Inquiry, it is said that he has a relevant academic qualification in that he acquired a degree in Town and Country Planning, he has very limited professional experience in that field of practice over the course of his working life. This background is relevant to his claim of being an "expert witness" on this Topic. There can be no doubt that he cannot get close to the Applicant's expert witness in terms of day-to-day involvement in the application of planning policy for the purposes of evaluating compliance with all levels of planning policy. This is particularly relevant in relation to electricity applications, in respect of which he has only previously been involved in objecting to renewable wind farm generating proposals on behalf of third party objectors.

- 6.11. Whilst acknowledging that in relation to these Topics the evidence of Dr Ford appears to be based on the possession of relevant academic and professional qualifications, notwithstanding, he displayed all the same failures discussed in Chapter IV in respect of his lack of ability to fulfil the role of an expert witness. These same considerations that are of equal importance in relation to these Topics are relied upon for the purposes of submitting to the Reporters that they should reach the conclusion that in relation to the policy framework he failed to achieve the standards expected of an expert witness. Against that background, the evidence of Mr Bell on issues related to the policy framework should be preferred, which for the various reasons provided in these Closing Submissions the Reporters are encouraged to do for the purposes of providing sound findings and recommendations to the Scottish Ministers. In that regard, it should be noted that Mr Bell's approach accords with the legal principles discussed in Chapter IV above.
- 6.12. There are separate issues of relevance to Dr Ford's evidence on the interpretation of planning policy and also his more recent written submissions on NPF4 that are of direct relevance to the needs case that is addressed in Part 1 of Chapter VII. These will require to be addressed in this Chapter.
- 6.13. It is a well-established principle of planning law that the interpretation of planning policy is ultimately a question of law, in respect of which the Courts will interfere if the decision-makers err in their interpretation. There have been a number of issues that have arisen during the Hearing Sessions in relation to the correct interpretation of either national planning policy, national energy policy, or, provisions of the development plan. This is primarily as a consequence of the flawed interpretation of policy, particularly national energy and planning policy, which Dr Ford has sought to persuade the lead Reporter during the Hearing Sessions that she should adopt. Against that background the Reporters should be aware that Dr Ford is potentially leading both the Reporters and Scottish Ministers into an error of law. His "expert opinion" is not based on an objective and unbiased interpretation of policy but is driven by his clients' objective to achieve refusal of the G-T Connection. In that

regard his conclusions from his interpretations of policy are counter to the statutory policy objectives of the 1989 Act, in respect of which the Scottish Ministers have obligations under section 3A of that statute, the Climate Change legislation, and, separately under NPF4.

- 6.14. The principal submission in relation to the interpretation of planning policy from an evidential perspective is that the Reporters should treat the written submissions from Mr Bell in his various Hearing Statements as the evidence to be preferred. The more controversial issues were the subject of discussion during the various Hearing Sessions on these Topics and in that regard it is submitted that the oral evidence of Mr Bell should be preferred. The transcripts of evidence for Hearing Session No.1 (Day 5), Hearing Session No.5 (Day 15) and Hearing Session No.7 (Day 16), should be referred to in that regard.
- 6.15. The evidence of Mr Bell has had regard to the inter-relationships between the different levels of policy referred to above, as was evident from his Hearing Statements, Written Submissions and oral evidence at the different Hearing Sessions in which he participated. The Reporters can therefore have confidence that his expert evidence was framed with a proper understanding of the whole of the wider context, including the relevant statutory frameworks. In contrast Dr Ford's evidence on behalf of GWP was typically selective for the purposes of building an argument that fitted with his objective of arguing a case for refusal of the section 37 Application for the G-T Connection. The other representatives of Objectors who participated in these Sessions and Mr Kerr, did not have regard to the broader statutory and policy frameworks but focussed on the individual issues raised in their own grounds of objection.
- 6.16. The statutory framework is addressed in the first part of Chapter IV and it encompasses the 1989 Act, and the Climate Change primary and secondary legislation that is relevant to the targets in greenhouse gas emissions. The evidence presented by Mr Bell in relation to this framework is summarised in Sections 15 to 17 of Chapter C of the Applicant's Summary of Case, which are adopted for this Chapter



of the Closing Submissions. In this Chapter, the main focus is on the development management policy framework in respect of which the main policies are contained in NPF4.

#### **National Planning Framework 4**

- 6.17. Throughout the lengthy history of the application process associated with the KTR Project, as discussed in Chapter II, there has been one constant. Although there have been changes in the national planning policy position, the statutory development plan, and the statutory framework (specifically in relation to the net zero targets), the KTR Project has always had national development status in terms of national planning policy. This is set out in the evidence contained in Mr Bell's Hearing Statements that have been produced between August 2022, when his first main Hearing Statement was produced, and March 2023, when his last Hearing Statement in response to Procedure Notice No.4, was produced. This evidence is referred to in Chapter C of the Summary of Case for SPEN, which should be read together with the relevant parts of his Hearing Statements.
- 6.18. Under reference to the chronology related to the development of national planning policy in Section 18 of Chapter C of SPEN's Summary of Case, it will be appreciated by the Reporters that at the time of the Applications being made to Scottish Ministers considerable reliance was placed on NPF3<sup>89</sup> and the statement of need for transmission infrastructure upgrades for the transmission network; i.e. overhead lines and cabling in excess of 132kV. This was discussed in detail in Mr Bell's Hearing Statement at paragraphs 3.2.1 to 3.2.13. It is noted in paragraphs 18.5 to 18.7 of Chapter C that at the Hearing Session Mr Bell agreed with the lead Reporter that both national planning policy documents discussed in his evidence (NPF3 and SPP) had to be considered in the context that they lagged behind the more recent increases in the targets for reduction of greenhouse gases. He observed that this was expected to be addressed in NPF4 but that the recognition of the need for enhanced transmission

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<sup>89</sup> CD003.010.

infrastructure in NPF3 confirmed that the KTR Project should be treated as national development. Mr Bell also provided a further explanation as to the remaining relevance of NPF3 and SPP to the planning history during Hearing Session No.7<sup>90</sup>

- 6.19. Dr Ford attempted to argue that any support from NPF3 had to be considered as support for the wider DGSR Project, but Mr Bell rejected that approach as not being justified in terms of the wording of the relevant extract from NPF3 that he had produced in paragraph 3.2.10 of his Hearing Statement. The Reporters are invited to prefer the evidence of Mr Bell as it is more objective and involves an interpretation of policy that is legally supportable, whereas Dr Ford's interpretation is not. In any event, it is now beyond doubt that the KTR Project is to be treated as having national development status in terms of NPF4.
- 6.20. It is noted in Section 19 of Chapter C that the national planning policy position was evolving throughout the Inquiry process and that at the time of Hearing Session No.1 the Parliamentary adoption process was just commencing. As previously recognised in these Closing Submissions, this is what resulted in the written submissions procedure covered by Procedure Notice No.4 and Hearing Session No.7. Unexpectedly, and unwelcome, there was then a need for further written submissions between the end of March until the beginning of May 2023, to address Dr Ford's new documents GWP22 to GWP24 and his new evidence in his Hearing Statement that was prepared for Hearing Session No.7, but in terms of which he sought to revert back to his previous attempts at undermining the needs case. The issues related to the needs case are addressed in Part 1 of Chapter VII below, it is necessary to address in this Chapter the relevance that Dr Ford claims in his written submissions dated 28 April 2023, his new evidence on the needs case has to national planning and energy policy which is related primarily to NPF4 and the OWPS.
- 6.21. The Reporters are invited to base their findings in relation to NPF4, and the related OWPS, on the evidence of Mr Bell which is contained in his February 2023 Written

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<sup>90</sup> Page 170 to 171 of the transcript for Day 16.

Submissions and his March 2023 Response to Other Parties, together with his oral evidence at Hearing Session No.7. It is adopted for the purposes of these Closing Submissions, together with the summary of that evidence contained in Section 19 of Chapter C.

- 6.22. Particular attention is drawn to the very significant strengthening of national planning and energy policy through the recently adopted NPF4 and OWPS, which Mr Bell describes as being “.....unambiguous as regards the policy imperative to combat climate, the crucial role of further onshore wind in doing so, and the scale and urgency of onshore wind deployment required.”<sup>91</sup> Throughout his evidence produced in response to Procedure Notice No.4, he has emphasised that there is a clear recognition by the Scottish Government in the new national planning and onshore wind energy policy that climate change must become a primary guiding principle for all plans and decisions. As noted in paragraph 19.6 of the Summary of Case, NPF4 came into force on 13 February 2023 and should be treated as the most up-to-date statement of Scottish Government policy that is directly applicable to the determination of the section 37 Applications. The identification of the KTR Project as national development is directly linked to the importance of the policy objective to support essential transmission infrastructure development in order to achieve a large and rapid increase in electricity generation from renewable sources to meet targets for both renewable generation and reduction in greenhouse gas emission<sup>92</sup>. Mr Bell explains in his evidence the linkage to the delivery of the Spatial Strategy, and in respect of which the Reporters are invited to place considerable weight on all of these considerations.
- 6.23. Dr Ford’s refusal to face up to the policy and decision-making significance of NPF4 being adopted without any significant revisions to its terms from the Revised Draft laid before the Scottish Parliament on 8 November 2022<sup>93</sup>, clearly shows his inability

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<sup>91</sup> Paragraph 6.3.4 of Mr Bell’s February 2023 Written Submissions, which is reproduced in paragraph 19.7 of Section 19 in Chapter C of SPEN’s Summary of Case.

<sup>92</sup> Paragraph 19.8 to 19.10 of Section 19 in Chapter C.

<sup>93</sup> Section 2.1 of Mr Bell’s February 2023 Written Submissions.

to fulfil the duties and responsibilities of an expert witness. The way in which Dr Ford has sought to argue against the policy imperatives from both NPF4 and the OWPS that cannot be interpreted as providing anything other than strong national policy support for the KTR Project, has been to indulge in his favourite tactic of conflating different policy issues. This he has attempted to do through the introduction of GWP22 to GWP24 and the related lines of argument in his Hearing Statement No.7, as developed upon in the “Dr Ford’s Submissions” dated 28 April 2023.

6.24. The Reporters will recall that prior to the extended procedure occasioned by Procedure Notice No.4, the position of Dr Ford on national planning and energy policy was that the G-T Connection was not required as there was little prospect of new renewable generation seeking a connection to Tongland Substation as the area was unsuitable for renewable generation and, in any event, Scotland’s indigenous electricity supply demands could be met by existing renewable electricity generation. Leaving aside the many different and inherently flawed lines of argument that are based on, and related to, the needs case, which are addressed in Chapter VII below, it is submitted that all of Dr Ford’s pontificating that there is no requirement for additional renewable generation in Scotland, and therefore no need for additional transmission infrastructure, is irrelevant in terms of the determining issues before the Reporters and Scottish Ministers. His evidence on Locational Marginal Pricing (“LMP”) and penalising Scottish renewable generation that is exported to England to meet demand, and market changes that might result from REMA, are all irrelevant to the consideration that requires to be given by the Reporters and Scottish Ministers to the most up-to-date statements of the Scottish Government’s recently adopted national planning and energy policy.

6.25. The Reporters have detailed submissions provided in paragraphs 7.22 to 7.39 of Chapter VII below as to the basis upon which it is submitted that these issues are irrelevant to their examination of the needs case. Considered in the context of national planning and energy policy, they have no relevance to the outcome of this

Inquiry for the simple reason that the Scottish Ministers, and therefore the Reporters, are legally obliged to evaluate the section 37 Applications under reference to NPF4 and OWPS. For Dr Ford's theories to have any relevance there would have to be a clear national planning and energy policy basis for the issues that he raises to be entertained for the purposes of determining the section 37 Applications; and there is no such policy basis. The Reporters and Scottish Ministers are obliged to address their decision-making responsibilities on the basis of the existing, and very recently adopted, national planning and energy policy of the Scottish Government and not speculate as to any changes that may occur in the future either in the electricity market or in the regulation of transmission infrastructure planning. This is a desperate attempt by Dr Ford to go behind the clear and very recent updates to the Scottish Government's policy on both onshore renewable energy and the combined need for essential transmission infrastructure.

- 6.26. Dr Ford's evidence on these topics and the way in which he seeks to introduce them into the Reporters' assessment against NPF4 and the OWPS is totally misleading to the Reporters and dangerous from a legal perspective. Apart from the fact that his policy approach cannot be reconciled with any reasonable reading of the Scottish Government's policy position, it would draw the Reporters into errors of law if they follow his flawed interpretation and application of Government policy. His attempts to persuade the Reporters to follow him into the world of government energy policy according to Chris Ford are irresponsible. Leaving aside the fact that it represents a clear departure from the reality of the Scottish Government's up-to-date planning and energy policy, it is also an attempt to rewrite Government energy policy to reflect his own unsubstantiated theories as to how the electricity industry should operate, both in relation to the siting of renewable generating stations and transmission businesses of the TOs. His approach cannot be reconciled with any reasonable interpretation of Scottish Government policy. Significantly in that regard, his theories as to there being no need for any more renewable generation in Scotland are not in any way supported by the up-to-date and relevant policy documents of the

Scottish Government which must be preferred for decision-making purposes.

- 6.27. The Reporters will recall that Mr Bell responded to a number of Dr Ford's lines of argument in relation to NPF4 and the OWPS in section 5 of his March 2023 Response to Other Parties, written submission. He described Dr Ford's overall interpretation of the policy approach from these documents as being "*wrong, misconstrued and simply not tenable*"<sup>94</sup>. Mr Bell amplified upon this in his oral evidence at Hearing Session No. 7 when issues were raised by the lead Reporter that involved the interpretation and application of policy within NPF4. By way of example Mr Bell was asked by the lead Reporter for a response on the assertion by Dr Ford on behalf of GWP that Scotland could achieve net zero targets without the KTR proposals and he explained the reasons for the Applicant's position of strongly disagreeing with that statement<sup>95</sup>. This led into another related assertion by Dr Ford that there is no need for additional renewable generation because the electricity generation sector has generally decarbonised. It was explained by Mr Bell that approach was simplistic and ignored the fact that NPF4 and the OWPS address the clear policy objectives to meet the requirement for a huge increase in electricity production to support net zero delivery across all sectors, including heat, transport and industrial processes<sup>96</sup>.
- 6.28. Mr Bell emphasised the legal obligation that lay behind the policy target of 20GW of installed renewable technologies by 2030 and stated the following in his evidence:

*"That 2030 is not just a nice to have: we know it's set in the Climate Change Act 2009 as a statutory target to be met by 2030. So in light of that policy and legislative framework, the proposition that this project is not needed and that that renewable capacity can simply fall away is not accepted."*

- 6.29. The Reporters will be aware that the reference by Mr Bell to the statutory targets set in the 2009 Act is a reference to his evidence in his August 2022 Hearing Statement which is summarised in paragraphs 4.22 to 4.23 of Chapter IV above, in which the

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<sup>94</sup> Paragraph 2.5.3 of the March 2023 Response to Other Parties

<sup>95</sup> Pages 125 to 128 of the transcript for Day 16

<sup>96</sup> *Ibid* pages 128 to 131

statutory framework of relevance to the targets for reduction in greenhouse gas emissions is discussed. The Reporters and the Scottish Ministers are requested to note how these legal obligations tie into the Scottish Ministers separate obligation under section 3A of the 1989 Act to protect the interests of consumers in the reduction of electricity-supply emissions of targeted greenhouse gases.

- 6.30. When Dr Ford's evidence on this issue is considered in this legal and policy context it is absurd for him to suggest that the KTR Project is not needed to deliver on the net zero targets. This is also in the context that it is regarded as an essential electricity infrastructure project by Ofgem who has approved the load related investment driver for the P-G via K Connection, and, a non-load related investment driver for the G-T Connection, which is of a technical design that will deliver additional capacity for connections by renewable generators at Tongland and Glenlee, as discussed below in paragraph 7.54 to 7.64 of Chapter VII, and also in paragraph 2.3 to 2.3.6 of the Applicant's Further Written Submission dated May 2023.
- 6.31. Despite these points being made in such forceful terms by Mr Bell during Hearing Session No. 7, this did not stop Dr Ford from continuing to refer to the challenge of decarbonising homes, heat, transport and industry as though it was unrelated to an increase in demand for electricity that would have to be met by renewable generation if the net zero targets were to be met for the purpose of the Dr Ford Submissions dated 28 April 2023, to add to paragraph 2.3 of his Hearing Statement-7 produced for the Hearing Session on 29 March. This evidence was addressed in section 4 of the Applicant's April 2023 Written Submissions and in paragraphs 2.7 and 2.8 of the Applicant's May 2023 Further Written Submission. This evidence from Mr Kadar entirely supports Mr Bell's evidence referred to above as regards the planned for substantial increase in onshore and offshore generation from renewable sources.
- 6.32. Dr Ford sought to overcome the response from Mr Bell by reverting to one of misconceived lines of argument used in relation to the needs case and misrepresented the evidence from Mr Kadar in relation to the derogation granted by Ofgem. This is addressed in paragraphs 7.73 to 7.79 of Chapter VII below, which also includes a

response to the closing submissions from GWP's Counsel on this topic. Both of them fail to understand the nature of the derogation or even the part of the transmission system for which it has been granted. Mr Bell went back to the OWPS and section 8.2 on network planning and delivery. He highlighted that Government expects the network businesses to be investing now and quickly to enable new onshore wind to connect to the grid system as soon as possible. In that regard he pointed to the identified need by the system operator for £21 billion of investment in transmission infrastructure to meet the 2030 targets, over half of which will involve the Scottish TOs, SSEN and SPEN<sup>97</sup>.

6.33. This came to be disputed by Dr Ford later in the Hearing Session when he criticised Mr Bell for the evidence summarised in the above paragraph on the basis that it was his contention to the Inquiry that the £21 billion of investment was to support offshore wind development and the Holistic Network Design strategy and not onshore wind development and that it was "*absolutely not concerned with onshore wind*"<sup>98</sup>. Mr Bell requested a document source for Dr Ford's claim as he was, and is, clear in his mind that the quotation that he read out at the Inquiry was from the OWPS and that it was clearly related to onshore wind development<sup>99</sup>. Despite Dr Ford asserting that there was support for his position is possibly a UK Government policy document, the only documentary reference that was given after a break so that it could be looked for, was to GWP19. There is no mention in that document to £21 billion of investment to support offshore wind development through the HND.

6.34. It was agreed that this would be addressed through closing submission to save Inquiry time. The lead Reporter is asked to conclude that Mr Bell's evidence was entirely accurate and that Mr Ford's assertion that is referred to above that the investment was "*absolutely not concerned with onshore wind*" has been shown to be wrong. Furthermore, his own evidence that this figure related to the level of investment envisaged to support offshore wind development and not onshore wind

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<sup>97</sup> Pages 137 to 138 of the transcript for Day 16

<sup>98</sup> Page 182 of the transcript

<sup>99</sup> *Ibid* pages 183 to 185



development has not been substantiated by him or GWP's Counsel. The document he cited during his evidence, namely GWP19 does not provide any support and no other document has been brought forward, even although he did produce another new document between Hearing Session No.7 and his Submissions dated 28 April 2023, but it was unrelated to this point. The Reporter is invited to conclude that he was unable to make good his assertion and once again sought to mislead the Reporter through poorly prepared evidence that he could not substantiate. This is another indicator that he was not a witness who understood the importance of his responsibility to provide the Reporters and Scottish Ministers with reliable evidence.

6.35. The Reporters are invited to accept all of Mr Bell's detailed and carefully prepared evidence on the policy imperatives that stem from NPF4 and the OWPS, and which lead to the conclusions that the global climate emergency will result in:

- (i) a large and rapid increase in electricity generation from renewable sources in Scotland, both onshore and offshore, to meet the ambitious 2030 net zero targets; and,
- (ii) the Scottish transmission owners having to respond quickly ahead of 2030, through investment in essential transmission system upgrades and reinforcement to ensure swift and efficient connections for onshore wind development<sup>100</sup>.

These are the conclusions contained in paragraph 20.1 of Section 20 of Chapter C of Applicant's Summary of Case, which underpin the Applicant's case not only in relation to the national development importance of the KTR Project but, also, in relation to the strategic importance of the development proposals in terms of facilitating the connection of contracted new renewable onshore wind generation.

6.36. The Reporters are invited to reject the evidence from Dr Ford that seeks to lead the Reporters to the opposite conclusions. The Reporters and Scottish Ministers are advised that to do so would involve committing numerous errors in law. Based on

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<sup>100</sup> Pages 129 to 138 of the transcript for Day 16 with Mr Bell's evidence on these issues

the legal principles explained in Chapter IV these would include:

- taking into account irrelevant considerations (i.e. future possible changes in transmission planning with Ofgem and REMA);
- leaving out of account relevant considerations (i.e. all of the considerations outlined in Mr Bell's evidence on NPF4 and OWPS; and, the materiality and relevance of the alignment between these national planning and energy policy objectives with the Scottish Ministers' obligations under section 3A of the 1989 Act);
- misinterpreting national planning and energy policy (i.e. that the KTR Project does not support the main policy objectives of NPF4 and the OWPS and that there is no policy driver for new and additional renewable generation in Scotland or related transmission infrastructure development);
- adopting an approach in decision-making that would be contrary to the policy objectives contained in section 3A of the 1989 Act and the Climate Change Act 2009; and,
- reaching a planning judgement as regards the weight to be applied to the policy objectives of NPF4 which if based on Dr Ford's evidence, would be absurd and involve the exercise of planning judgement that no sensible person applying his or her mind to the policy question to be decided could have arrived at for the particular decision-making purposes<sup>101</sup>.

6.37. It is submitted that when one combines the policy objectives in paragraph 6.32 above, with the conclusions from the evidence of Mr Kadar that there is contracted renewable onshore wind generation proposals that cannot connect to the grid until the KTR Project is delivered, the policy imperatives from NPF4 and the OWPS are obvious. The case for the consenting of the KTR Project is overwhelmingly positive when considered from the perspective of the statutory framework provided by the 1989 Act and the 2009 Act, together with related and aligned national planning and

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<sup>101</sup> Paragraphs 4.53 to 4.54 and 4.56 to 4.59 in Chapter IV above

energy policy. It is not difficult to understand the strategic importance of such transmission infrastructure upgrades and reinforcement to the national interest. Hence the reason that the decision-making function is with the Scottish Ministers and not the local planning authority.

6.38. Notwithstanding the strong policy support for the KTR Project as a national development, as with all planning decisions the balancing of competing interests has to be carried out. The requirement to have regard to the adverse effects of such electricity development is acknowledged and accepted not just by Mr Bell, but also by all of those who have represented the Applicant in this Inquiry Process. Although it is established through reported case law that this requirement stems from both Schedule 9 duties and obligations and duties under the EIA Regulations, both of which are imposed on the Applicant and the Scottish Ministers (the latter as decision-makers under section 37 of the 1989 Act)<sup>102</sup>, it is also the case that such adverse effects have to be considered as a result of the principal development management policy in NPF4 that is of relevance to the consenting of development proposals for enabling grid transmission infrastructure. This is Policy 11 – Energy and which is referred to and discussed in Section 8 of the February 2023 Written Submissions produced by Mr Bell.

6.39. The remainder of this Chapter focuses on those provisions and where relevant to the specific environmental or other adverse effect being considered, any relevant provisions of the LDP will be referred to. There is already a sound body of evidence before the Reporters on these development management issues, which has been produced either by Mr Bell from a planning policy perspective or, from the Applicant’s specialist consultants who have been involved in the EIA work for the KTR Project. Mr Bell’s evidence relies upon the conclusions drawn by them in their work, which is the same approach that is taken in Closing Submission in this Chapter. The consultants’ EIA work is discussed in greater detail in Chapter IX on the

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<sup>102</sup> Paragraph 4.17 of Chapter IV above

consideration of the environmental impacts. In addition, the Applicant's position in respect of each of the Policies of NPF4 that has been identified by the Applicant as being of relevance to the proposed KTR Project is addressed in the Applicant's Summary of Case in Section 19 of Chapter C. Where relevant to particular adverse impacts on specific environmental receptors, the LDP policies of relevance are discussed in Section 67 of Chapter J. These are adopted for the purposes of the Closing Submissions.

### **Policy 1 of NPF4**

- 6.40. Scottish Government's national planning policy commitment to combat the global climate emergency and the nature crisis is reflected in the lead policy in NPF4, Policy 1. As stated in the Ministerial Foreword to NPF4: *"Putting the twin global climate and nature crises at the heart of our vision for a future Scotland will ensure the decisions we make today will be in the long-term interests of our country."* The urgency associated with these twin nationally important policy outcomes is reflected in the significant weight to be given to development proposals that address and contributes to the transition to zero carbon and promoting nature recovery and restoration. It is at the heart of the spatial strategy within NPF4.
- 6.41. In recognition that it is of more general application than other Policies in NPF4, and that in relation to the global climate crisis the same policy objectives have already been addressed in the first main part of this Chapter, there is not much to add to the planning evidence provided by Mr Bell on this Policy in his February 2023 Written Submissions. Although at the time that this Policy was discussed at Hearing Session No. 7, Dr Ford sought to criticise Mr Bell's oral evidence to the lead Reporter on the basis that he alleged that Mr Bell had given relatively little weight in his answer to the nature crisis, this is unjustified and another example of Dr Ford's selective references to evidence. Mr Bell had made reference to the contributions made by the Applicant's EIA witnesses at the Hearing Session, who had addressed the main receptors in respect of which significant adverse effects were predicted as a result of

the KTR Project. The main receptors of relevance to the nature crisis are forestry and ancient woodland, in respect of which Mr O'Neill had explained in detail the Forest Design Concepts (FDC), together with Mr Jackson Matthews, a consultant with LUC specialising in nature conservation issues who addressed the ecological and ornithological benefits associated with the FDC and the Green Networks Scheme (GNS). These are considered further in relation to Policies 3 and 6.

#### **Policy 11 of NPF4**

- 6.42. As referred to above, Mr Bell's position is that Policy 11 of NPF4 is the main development management policy of relevance to electricity transmission infrastructure applications under the 1989 Act. The policy support for enabling works for all forms of renewable, low carbon and zero emissions technologies is positively expressed in sub-paragraph (a) of Policy 11. This includes grid transmission infrastructure. This is not surprising given the stated policy intent and policy outcome for this Policy, when considered together with the submissions made above in relation to the policy imperatives of NPF4.
- 6.43. However, as Mr Bell acknowledges in his evidence, that policy support is not unqualified. The Reporters and the Scottish Ministers will require to address in their decision-making functions the caveats that are also contained in Policy 11 as regards the considerations that may weigh against that clear policy support. The detailed closing submissions on environmental impacts in Chapter IX have been structured having regard to the Policy 11 development management approach.
- 6.44. It is relevant to note that there is no indication in the wording of sub-paragraph (e) of Policy 11 that adverse impacts on the list of receptors contained in that sub-paragraph would result in withdrawal of the general policy support for essential transmission infrastructure contained in subparagraph (a). This is even in relation to the potential for significant adverse impacts, as acknowledged by the wording of criterion (ii) of subparagraph (e).
- 6.45. From the wording of the preamble to sub-paragraph (e), the policy requirement

appears to be an expectation that an applicant will be in a position to demonstrate how the project design and mitigation strategy has addressed the list of receptors upon which there may be potential adverse impacts. As a matter of interpretation, which can involve legal issues/considerations as well as involving planning judgement, it is noted that this approach is reflective of the approach to Schedule 9 duties as expressed in paragraph 3 of Schedule 9 to the 1989 Act. The main difference being that the list of receptors is longer than in paragraphs 3(1)(a) and (b) of Schedule 9.

- 6.46. In terms of design it is noteworthy that potential impacts upon two nationally and internationally important environmental assets that are identified in sub-paragraphs (b) and (d) of Policy 11 have been avoided. These receptors are: NSAs, which is relevance to the Fleet Valley NSA and the East Stewarty NSA; and, sites with international or national designations, which is of relevance to the Loch Ken and River Dee Marshes SSSI/SPA/Ramsar Site, Laughengie and Airie Hills SSSI and Woodhall Lochs SSSI. All of these areas have been avoided by deliberately avoiding routeing through these nationally, and internationally, important areas. This approach has a bearing upon criteria (b) and (d), in respect of which there is no conflict as a result of the careful routeing and design of the OHL routes for the Connections and in that regard as adverse effects have been avoided through design.
- 6.47. The policy requirement to maximise socio-economic benefits from the development proposal in sub-paragraph (c) of Policy 11 is addressed in Part 4 of Chapter IX, and the Applicant has shown that this requirement is met.
- 6.48. The criteria in sub-paragraph (e) of Policy 11 are all related to potential adverse environmental and technical effects. It is the Applicant's position that it has demonstrated through the evidence presented to the Inquiry in relation to the EIA work carried out for the KTR Project, as reported upon in the EIA Report and additional information, that most potential significant adverse effects have been avoided through the design and routing strategy. In addition, the unavoidable adverse effects from the construction and operation of the KTR Project can be

managed through the Applicant's mitigation strategy that effectively combines embedded mitigation measures and additional mitigation measures, which can be secured through appropriate planning conditions. There are some residual significant adverse effects in relation to: the assessed landscape and visual effects as explained in the evidence of Mr Walker; and, impacts on forestry and ancient woodland as explained in the evidence of Mr O'Neill. Although the second of these two adverse impacts are in relation to the receptors listed in sub-paragraph (e)(x) of Policy 11 they are addressed in greater detail in the context of Policy 6 below that is specific to impacts on forests, woodlands and trees.

- 6.49. In relation to residual likely significant landscape and visual effects, for the purposes of addressing criterion (e)(ii) reference is made to paragraphs 2.8.16 to 2.8.20 of Mr Bell's February 2023 Written Submissions in which he addresses this criterion and explains under reference to Mr Walker's evidence the approach to minimising such adverse effects. The evidence from Messrs Walker and Bell is adopted for the purposes of these Closing Submissions upon which the Reporters are invited to place weight on the basis that their evidence clearly has the hallmarks of being the reliable, independent and objective, evidence of appropriately qualified expert witnesses. No appropriately qualified landscape architect gave evidence on behalf of the Objectors with the one exception in relation to Mr Mark Steele who gave evidence in relation to the interests of Knocknalling Estate. During his evidence at Inquiry Session No.4 on Day 10, he frankly conceded that he had not looked beyond the interests of Knocknalling Estate, in respect of which it is submitted that his main focus was on the driveway entrance that is distant from the residential properties on the Estate which are well screened from the section of the P-G via K Connection that crosses the Estate at that point. In relation to Knocknalling Estate, Mr Walker's assessment was that the impacts were of a scale and extent that he would expect from a 132kV OHL and were to be categorised as localised in his judgement.
- 6.50. To the extent to which there was a difference of opinion between both landscape architects in relation to the suggestion by Mr Steele that undergrounding should be

considered for Knocknalling Estate, this will be addressed in the submissions in Part 2 of Chapter VII in which undergrounding as an alternative is addressed. Undergrounding is addressed by Mr Bell in the context of paragraph (e) of Policy 11 in paragraph 2.8.13 of his February 2023 Written Submissions. The careful analysis by Mr Bell of the evidence considered at Inquiry Session No.2 in relation to Strategic Alternatives is adopted without qualification for the purposes of these Closing Submissions. The evidence in relation to the landscape and visual effects on the RSAs will be addressed under reference to Policy 4 and Mr Bell's evidence in paragraphs 2.10.4 to 2.10.11 of this February 2023 Written Submissions.

- 6.51. However, for the purposes of an assessment against the development management criteria in Policy 11, the requirement is for consideration to be given to underground connections where possible. It is submitted that for grid transmission infrastructure development proposals the qualification of "where possible" should, as a matter of law, be interpreted having regard to the statutory framework under which the section 37 application is being made. In that regard it is submitted that it would be challengeable in law to reach a judgement that the Applicant had failed to meet that policy requirement if a conclusion had been reached by the Applicant that such mitigation was not possible because it would place the TO in conflict with its statutory obligations under section 9 of the 1989 Act. The circumstances in which such a judgement would be likely to be reached were addressed in the evidence of Mr Pearse Murray at Inquiry Session No. 2 on Day 3. His evidence was that the Applicant's internal policy approach<sup>103</sup> is that undergrounding is generally not considered necessary, and therefore from an economic perspective not possible, unless required to mitigate very significant adverse landscape and visual effects in relation to a receptor that had been identified as preferably being avoided in routeing decisions<sup>104</sup>. Other circumstances where undergrounding would be considered in line with the Applicant's internal policy document include (i) where from a review of the

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<sup>103</sup> CD006.004 and CD006.005

<sup>104</sup> Please refer to the specific criteria as per CD006.004 and CD006.005



relevant environmental information it is concluded that the combination of likely adverse effects is very significant and that this cannot be satisfactorily avoided, reduced or offset; or (ii) where technical and/or environmental constraints are such that no suitable overhead line route can be identified. The reasoning in relation to the KTR Project is summarised by Mr Bell in paragraph 2.8.13 of his February 2023 Written Submissions.

- 6.52. Some of the Objectors who were in attendance at Hearing Session No. 7 took a more simplistic approach to the use of the wording “where possible” in relation to underground connections as discussed in criterion (e) of Policy 11. Mr Kerr focussed on the evidence of the Applicant’s witnesses at Inquiry Session No.2, who generally agreed that undergrounding sections of the KTR Project was technically feasible and, therefore, possible. This line of argument was addressed based on the reasoning set out in the paragraph above. In addition, both Mr Kerr and Dr Ford cited different examples of where TOs were carrying out undergrounding in scenic areas from which they concluded that undergrounding existing overhead line connections was not just possible but that it was becoming a more accepted method of installation. On behalf of the Applicant, Mr Walker explained that in relation to scenic areas, so far as the Scottish TOs are concerned the Applicant has participated in the “Changing the VIEW” initiative in their licence area in the south of Scotland and SSEN has participated in a similar VISTA initiative for their licence area in the north of Scotland, the areas targeted are specifically nationally designated landscape. He explained that there is a fund available only to fund visual mitigation through the use of undergrounding to improve visual amenity in relation to such designated area. Mr Walker confirmed that his professional opinion had not altered and he did not consider it was appropriate mitigation for the KTR Project<sup>105</sup>. In addition, Counsel for the Applicant reminded the Reporter of the evidence from Mr Lloyd and Mr Young at Inquiry Session No.2 that there were also significant differences in relation

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<sup>105</sup> Pages 155 to 156 of the transcript for Day 16

to the ease of operations and the nature of the cables involved in undergrounding distribution lines when compared to transmission lines and, also the relative cost differentials.

- 6.53. The issue is covered in Part 2 of Chapter VII in the context of Strategic Alternatives. However, for the purposes of considering whether or not there is a conflict with that part of Policy 11, it is submitted that in addition to the issues covered by Mr Bell in his evidence the Reporters should take into account the legal issue that is addressed in paragraph 6.48 above and conclude that based on all of these considerations, it has not been demonstrated by the Objectors that underground connections are possible for the KTR Project. In contrast, the Applicant has led detailed evidence from appropriately qualified expert witnesses and have demonstrated that it is not possible having regard to the investment drivers that have been approved by Ofgem.
- 6.54. In relation to criterion (i) of subparagraph (e), during the design process specific consideration has been given to impacts on communities and individual residential properties for the purposes of taking into account visual amenity. Although there have been complaints from some of the Objectors in relation to adverse impacts on the residential amenity currently enjoyed at properties in relatively close proximity to the proposed Connections, a detailed Residential Visual Amenity Assessment (RVAA) has been carried out as discussed in Chapter IX. As reported in the evidence of Mr Walker on the RVAA there are no adverse visual effects that breach the threshold laid down in the relevant guidance CD009.008. In addition he explains the design approach that was followed in Chapter 9 of his Inquiry Report<sup>106</sup> to seek to ensure that significant adverse effects were avoided for most residential properties. The Applicant has also agreed an appropriately worded condition with the Council in relation to micro-siting (Condition 8 in the set of Conditions for the G-T Connection), to ensure that micro-siting would avoid breaching the threshold referred

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<sup>106</sup>

APP004.004

to above. Mr Walker's evidence also makes reference to the improvement in residential amenity for a number of residents who would benefit from the removal of existing towers on the N and R routes<sup>107</sup>. The Applicant's position based on the evidence of Mr Walker is that these impacts have been satisfactorily addressed through both the design approach and mitigation measures.

- 6.55. Under reference to criterion (e)(iii), the potential impacts on public access, including those referred to during Hearing Session No. 3 in relation to recreational public access associated with walking and cycling routes and scenic routes have been addressed. The Applicant's expert witness, Mr Graeme Blackett, gave evidence on these issues from the perspective of recreational access, and the lead Reporter is invited to accept his evidence on this topic. Moreover, as explained in the evidence of Mr Dooley this is an issue that will be addressed through mitigation applied under the approved Construction Traffic Management Plan.
- 6.56. Separately under sub-paragraph (vi), the management of impacts on road traffic and on the road network can be effectively achieved through the use of a suite of mitigation measures that are discussed in Chapters IX and X below. The Applicant has demonstrated that those impacts have been satisfactorily addressed and that conclusion is supported by the Council. Despite the fact that the Council's initial decision to object to the five Applications was a political decision, having regard to GWP's position on this issue it is submitted that it is very significant that traffic and transport impacts were not given as a reason for that decision. The Applicant has had a good working relationship with the Council's roads officer who has worked closely with the Applicant in formulating the relevant planning conditions that secure the proposed mitigation. The Reporters can conclude that these impacts have been addressed through proposed mitigation to ensure that there would be no unacceptable impacts resulting from construction traffic.
- 6.57. The overall conclusion that should be reached is that based upon the EIA Report, the

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<sup>107</sup> Paragraphs 9.14 and 9.15 in APP004.004

proposed planning conditions and mitigation measures, and the evidence given by the relevant witnesses involved in the EIA work carried out for the EIA Report, the KTR Project can be considered to be acceptable in terms of the environmental related criteria (b) to (e) within Policy 11 of NPF4. The Applicant has also thereby demonstrated that it has fulfilled the duties imposed by paragraphs 3(1)(a) and (b) of Schedule 9 to the 1989 Act and, in particular, has identified suitable mitigation in accordance with paragraph 3(1)(b) of Schedule 9.

### **Policy 3 - Biodiversity**

- 6.58. Policy 3 of NPF4 on Biodiversity represents a significant innovation on the previous policy framework in relation to the protection and enhancement of biodiversity through development management decisions. It is one of the cross-cutting policies and is intended to be linked with the Scottish Biodiversity Strategy. In that regard the Chief Planner's letter emphasises the embryonic nature of that policy, as has David Bell in his February 2023 Written Submissions on NPF4. Mr Bell discusses this Policy in Section 2.9 of those Written Submissions and highlights that there is at present a lacuna in terms of policy related guidance as to how the policy requirement, which is contained in sub-paragraph (b)(iv), will be measured and assessed. In particular he questions the lack of clarity as to the methods that should be used to carry out both the assessment in order that "significant biodiversity enhancements" are provided in addition to any proposed mitigation, and how that will be measured. He amplified upon these issues in his evidence at the Hearing Session<sup>108</sup> and the Reporter is invited to accept that there is a prematurity issue that is highly relevant to the application of this policy requirement to the KTR Project.
- 6.59. As previously mentioned, at the Hearing Session No.7 on Day 16 there was a suggestion from Dr Ford that the Applicant could not meet this requirement and that Mr Bell had not covered it adequately in his evidence on NPF4. This complaint had already been answered by Mr Bell in paragraph 2.5.37 of his March 2023 Response to

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<sup>108</sup>

Pages 24 to 25

Written Submissions from other parties, including GWP. Particular reliance was placed on the FDC and the fact that at that stage the Applicant felt able to be confident that agreement would be reached with Forestry and Land Scotland (FLS). This was explained by Mr Bell and Mr O'Neill at the Hearing Session on Day 16, and a summary of the Applicant's position as stated in evidence at that Session is provided in paragraphs 19.23 and 19.34 of Section 19 of Chapter C of the Applicant's Summary of Case. By the Hearing Session, Mr O'Neill and Mr Bell were able to treat the delivery of the FDC on land managed by FLS on behalf of Scottish Ministers, as a proposed strategy that could be secured through the appropriately worded condition that is now been put before the Reporters with the updated proposed conditions lodged with the Summary of Case on 26 April 2023.

- 6.60. It is the Applicant's position in relation to this Policy requirement is that there would be enhancement of biodiversity through the FDC and GNS initiatives that are both being proposed as separate, and in addition to, the proposed mitigation measures to mitigate in full the areas of forestry and woodland that would be felled. In relation to the FDC, it will be clear to the Reporter from the inclusion of the details of the FDC in the EIA Report that was lodged with the section 37 Applications, that these biodiversity measures were being proposed by the Applicant at a time when the policy requirements from Policy 3 in NPF4 were not in contemplation. That is to say that it was not envisaged that NPF4 would be in force at the stage of the KTR Project being assessed for decision-making purposes because it was so far down the line at the time of the Applications being met. The reason for including the FDC at the time of the application was that it was brought forward having regard to the Applicant's Schedule 9 duties when considering the formulation of the relevant proposals having regard to duty to address the desirability of conserving flora and fauna.
- 6.61. Both Mr O'Neill and Mr Jackson-Matthews explained in their evidence the initiatives associated with the FDC would deliver ecological benefits that would provide

additionality to the compensatory planting proposed as mitigation.<sup>109</sup> As stated in the Applicant's Summary of Case in paragraph 19.24, what can be taken from this evidence is that crucially the FDC establishes a mechanism by which individual location specific interventions are targeted to the specific needs of localised biodiversity species such as nightjar and red squirrel, as discussed in the evidence. It is submitted that these measures clearly address the policy intent of delivering positive effects from the KTR Project and strengthening, or rather developing, nature networks through the creation of the wayleave through forestry, as explained by Mr Jackson-Matthews.

- 6.62. In addition, the Reporters are invited to also have regard to the Applicant's commitment to the GNS, which is discussed in Chapter X. The particular relevance of this initiative was also discussed by Mr Jackson-Matthews when he explained that they are not a new concept to planning policy and such networks have been developed with other forms of development. This s explained in Mr Bell's February 2023 Written Submissions in Section 9.
- 6.63. In the absence of any specific guidance from the Scottish Government or its agencies, the Reporters are respectfully encouraged to address the policy requirement to provide significant biodiversity enhancement by considering whether the policy intent and outcomes would be addressed by the nature-based solutions proposed and through the intended strengthening and development of nature networks through the initiatives. These initiatives would help deliver the aspirations of Policy 3. It is submitted that such an approach accords with the guidance in Annex A at page 98 of NPF4 as to how to use the policy framework provided in NPF4. It also reflects the advice contained in the Chief Planner's letter as regards the approach to applying Policy 3 without the guidance that is not yet available.
- 6.64. Separately at the Hearing Session, the Reporter was keen to be clear about the extent to which the policy requirement in sub-paragraph (b)(iii) had been met in relation to

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<sup>109</sup> Pages 17 to 27 of the transcript for Day 16

forestry. Although the full detail has been adopted by the Applicant in relation to Policy 6, Mr O'Neill explained the considerations that should be taken into account in answer to the Reporter's question on Policy 3<sup>110</sup>. These were firstly, avoidance through routeing decisions, the proposed compensatory planting in line with the Scottish Government's Policy on Control of Woodland Removal<sup>111</sup> that had been agreed with Scottish Forestry and which would provide full compensation in terms of replanting the same areas of forestry and woodland that had been felled, together with the additional opportunity through the FDC to address the loss of areas of higher value ancient semi-natural woodland. The Reporter confirmed that Mr O'Neill had answered her question.

- 6.65. It will be recalled that Mr Kitching on behalf of Scottish Forestry advised the Reporter that they considered compensatory planting to represent a very poor option for ancient woodland that was not being retained but removed. Mr Bell in response highlighted that both Mr O'Neill and Mr Jackson-Matthews had highlighted that there were other initiatives that would have broader ecological benefits<sup>112</sup>. These have been addressed in relation to Policy 6.

#### **Policy 4 – Natural Places**

- 6.66. The Reporters are invited to accept and place weight on the evidence provided by Mr Bell in Section 2.10 of his February 2023 Written Submissions, and the relevant part of the Applicant's Summary of Case in Section 19 of Chapter C. The LDP Policy NE2 is also considered in those submissions. It is respectfully submitted that there is no conflict with the policy objectives in relation to designated landscapes. The evidence of both Mr Walker and Mr Bell supports that conclusion in relation to the Galloway Hills RSA and Solway Coast RSA. In addition, they have both given evidence explaining the policy significance in terms of Policy 4 as regards the design approach in routeing the KTR Project in order to avoid designated national and

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<sup>110</sup> Page 17 of the transcript for Day 16

<sup>111</sup> CD010.007

<sup>112</sup> Pages 22 and 23 of the transcript for Day 16

international sites discussed in paragraph 6.43 above. It is submitted that this is an environmental benefit of the KTR Project that should be given weight when considering the extent to which the transmission infrastructure proposal does not conflict with the policy framework in NPF4.

**Policy 6 – Forestry, woodland and trees**

- 6.67. Scottish Forestry’s position in relation Policy 6 is that they are supported in their position of objection to the KTR Project as a consequence of the terms of subparagraph (b)(i) and (ii), which they say makes clear that development proposals that result in loss of ASNW/NWSS/PAWS, will not be supported. It is submitted that such an approach is unrealistic in relation to a linear transmission infrastructure project. The unrealistic and unreasonable nature of that approach is particularly apparent when the transmission infrastructure project that involves replacing an existing transmission line that has to maintain connections to established Substations long the route, through a geographical area that is heavily afforested with commercial plantations.
- 6.68. Mr Bell’s submissions on this policy in Section 2.11 of his February 2023 Written Submissions are adopted together with the Summary of the Applicant’s Case in relation to this Policy contained in paragraphs 19.32 to 19.38. The acceptance by Mr Bell of there being conflict with the terms of this Policy is fair and serves to emphasise his independence and objectivity as an independent expert witness.
- 6.69. The Reporters are respectfully encouraged to follow his advice that regard must be had to the terms of the letter from the Chief Reporter<sup>113</sup> that NPF4 must be read and applied as a whole for the purposes of guiding decision-making. It is confirmed that the policy intent of each policy should be used to guide decisions, conflicts should be expected but that these would be weighed in the balance when considering factors for and against development in the exercise of planning judgement. It is submitted that this is consistent with the guidance contained in Annex A, page 98, of NPF4.

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<sup>113</sup> CD003.047



- 6.70. It is submitted that these considerations confirm that Scottish Forestry's position that it is obliged to object to the Applications because the infrastructure development would result in the loss of ASNW/NWSS/PAWS, should not be given substantial weight by the Reporters. The loss that Scottish Forestry contends is unacceptable, does not involve considering that loss in the context of the relevant planning policy framework of NPF4 when considered and applied as a whole. Policy 11 provides policy support for the proposed KTR Project, which as noted on page 98 of NPF4 should be read as an in principle support, taking into account all other relevant policies. It is clear that the representatives of Scottish Forestry have not done this when deciding to maintain their objection solely on the basis of loss of ancient woodland and semi-natural woodland, which conflicts with the terms of Policy 6.
- 6.71. When one considers that policy intent and policy outcomes, the KTR Project cannot be considered as wholly in conflict with Policy 6. The compensatory planting proposals, together with the FDC initiative would result in the expansion of forests, woodlands and trees in the longer term. On that basis it could be concluded that the proposed mitigation measures that are the subject of appropriate conditions would be supportive of the policy intent and not undermine that principle. This would be a reasonable and proportionate judgement to make which is encouraged by the Chief Planner in her letter that provides guidance on applying the policy framework in NPF4 for decision-making purposes.
- 6.72. Separately, the Reporters are also obliged to have regard to the Scottish Minister's obligations under section 3A of the 1989 Act and the 2009 Act in relation to the reduction of emissions of greenhouse gases. If a recommendation and/or decision was taken on these section 37 Applications solely on the basis of the loss of ancient woodland and semi-natural woodland, the strong policy framework of support in NPF4 for this type of electricity transmission infrastructure in order to deliver on the policy imperatives discussed in the first part of this Chapter and that are directly relevant to the obligations under section 3A, would crumble and become meaningless almost as soon as it has come into force.

### Galloway and Southern Ayrshire Biosphere Partnership

- 6.73. The Galloway and Southern Ayrshire Biosphere Partnership (GSAB) objected to the proposed development on 12 January 2021 primarily on grounds related to environmental impacts. In its objections it sets out that the organisation objects to the proposed development on the grounds that it is *“not supportive of developments in the Buffer Zone that would have a negative impact on the core of the Biosphere, the ecology of the buffer or its sense of place”*.
- 6.74. The proposed development would run through two zones, the Transition Area and the Buffer Zone. GSAB contend the development would also present significant risk to various ornithological interests and unacceptable impact in relation to woodland, tourism interests and recreational amenity. The GSAB makes reference to the buffer zone that covers an area of 845 sq km. In the August 2022 Hearing Statement prepared by Mr Bell, he put the scale of the Biosphere into perspective by explaining that it covers almost all of Dumfries and Galloway west of Dumfries and most of South Ayrshire (as shown on page 31 of the LDP)<sup>114</sup>. Mr Thomson on behalf of GSAB made it clear in his Hearing Statement that the boundaries of both the buffer and transition zones were driven largely by *“arbitrary consideration of land ownership”* and that the extent of the buffer zone was *“predominantly dictated by the limits of state-owned forest”*. He explains that the approach was useful as a *“management tool”*, but that the boundaries were not reflective of the environmental value of the land within those zones<sup>115</sup>.
- 6.75. In the Hearing Statement the GSAB reference one planning policy from the LDP, as being relevant to their objection, as Policy ED10 ‘Galloway and Southern Ayrshire Biosphere’. Mr Bell carried forward that erroneous reference into this Hearing Statements and the Reporters will note from the transcript of the evidence on Day 15, which was the LDP Hearing Session No. 6, that the LDP Policy that continued to be referred to was ED10. However, the Reporters are requested to note that this is an

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<sup>114</sup> Paragraph 4.4.21 of the August 2022 Hearing Statement

<sup>115</sup> Paragraph 5 of Mr Thomson’s Hearing Statement

obvious referencing error as the policy of relevance to the GSAB is **Policy ED11 on page 36 of the LDP**<sup>116</sup>.

6.76. Policy ED11 states:

*“The Council supports the designation and aims of the Biosphere and will encourage development that demonstrates innovative approaches to sustainable communities and the economy, and supports the enhancement, understanding and enjoyment of the area as a world class environment. Development must be appropriate to the role of the different zones within the Biosphere.”*

6.77. The GSAB objection seemed to infer that the proposed development would be contrary to the Development Plan. However, GSAB did not present an overall policy appraisal and did not acknowledge the benefits of the proposed development in relation to other aspects of national planning policy within SPP and NPF3, which were in force at the time of the objections from GSAB and when Mr Thomson’s Hearing Statement was prepared. It was clear from Mr Thomson’s involvement in the Inquiry process that he believed that the GSAB’s position was founded on planning policy because the Hearing Sessions that he attended were Hearing Sessions Nos. 1, 5 and 7 that were all related to planning policy.

6.78. Mr Bell’s position was developed further in the Supplementary Hearing Hearing Statement that was lodged when the GSAB intimated its intention to participate in the Hearing Sessions related to planning policy. Under reference to the plan in the LDP that shows the geographical locations and extent of the three different zones, Mr Bell challenged Mr Thomson’s reference to a “three-fold zonation that underpins their management” insofar as it was suggested that some form of “sliding scale of environmental protection” applied to these different zones<sup>117</sup> and that they were all deserving of protection. The Reporters are invited to accept Mr Bell’s analysis as contained in his Supplementary Hearing Statement that was not challenged at the Hearing Session on the LDP.

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<sup>116</sup> CD 005.002

<sup>117</sup> Paragraph 2.2.12 of Mr Bell’s September 2022 Supplementary Hearing Statement.

- 6.79. GSAB's position was largely based on their own internal "policy documents" that are listed at the end of Mr Thomson's Hearing Statement. Mr Bell pointed out in his response that the "policy" contained in the "GSAB Zone Development Position Statement issued in December 2019, and, did not accord with SPP or the draft NPF4<sup>118</sup>. In relation to the GSAB Windfarm Position Statement, Mr Bell provided persuasive reasons for his analysis that this internal "policy" position did not reflect the approach taken in national planning policy or the LDP toward the need for electricity development that would support the achievement of the renewable energy targets.
- 6.80. The GSAB's opposition to wind farm development within its management zones became apparent from the contributions made by Mr Thomson during the Hearing Sessions when he referred to the reasons for the objection to the Clauchrie Wind Farm. This was in response to the lead Reporter's question in relation to paragraph 10 of the GSAB's Hearing Statement<sup>119</sup> and the statement that within the designated area there was a sensitivity of its landscapes to tall structures associated with windfarms. Although he acknowledged that turbines used in wind farm developments are substantially taller structures when compared to electricity pylons, his position was "that sort of electricity infrastructure is something that is regarded as being incompatible with high quality landscapes and high quality environment in a more general sense".<sup>120</sup> This was reinforced even more strongly by Mr Thomson at the final Hearing Session No.7 on NPF4 when he gave more strident evidence, and unfounded, evidence that the pylons that would be used in the KTR Project could be compared in scale to the tall structures used in wind farms<sup>121</sup>. However, his change in emphasis at that stage may have been due to the fact that he intended to place reliance on the terms of Policy 11 in which mention is made of the need to give consideration to undergrounding grid connections. This is addressed in greater

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<sup>118</sup> *Ibid* Section 2.2

<sup>119</sup> Page 65 of the transcript for Day 14

<sup>120</sup>*Ibid* pages 68 to 69

<sup>121</sup> Pages 108 to 110 of the transcript for Day 16

detail in Part 2 of Chapter VII.

- 6.81. During this debate at Hearing Session No.6, Mr Bell reiterated on a few occasions the importance of tying such expressions of opinion based on the organisation's own internal policy documents that had not been the subject of public consultation, to either national or local planning policy of, respectively, the Scottish Government and the Council. He also highlighted that the Biosphere's position of either support or objection to a proposed development is based in part on "*some sort of local plebiscite*" to reflect the views of the local community, which as he correctly stated has no place in the planning system<sup>122</sup>. It is submitted that this statement of principle has even greater force when contemplating setting aside national planning policy support for particular forms of development in the wider public and societal interest.
- 6.82. Although the discussion at the Hearing Session did focus much more on landscape and visual effects, it should be noted by the Reporters that at the beginning of Hearing Session No.6, Mr Thomson did state that in terms of biodiversity issues the main concern for the GSAB related to impacts on the nightjar population within Dumfries and Galloway. This issue demonstrates that Mr Thomson did have a very incomplete understanding of the evidence before the Inquiry and was clearly unaware of the initiative that the Applicant was proposing with FLS in terms of the enhancement of habitat to support nightjar populations in areas within their management.
- 6.83. Mr Bell's evidence concludes that the KTR Project would not have unacceptable impacts in terms of the environment and is in accordance with the relevant policies of the Development Plan intended to protect the environment. This included LDP Policy ED11. The proposed development would not hinder the aims of the Biosphere and the use would be appropriate in the transition and buffer zones. Mr Bell emphasised that there is no mention of landscape considerations in the LDP definition of the Biosphere. He is supported in this conclusion in relation to the

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<sup>122</sup> *Ibid* page 49 and in paragraphs 2.2.7 and 2.2.18 of Mr Bell's Supplementary Hearing Statement

concerns that Mr Thomson has expressed on behalf of the GSAB in relation to landscape impacts by the evidence of Mr Walker. He had identified in his evidence that the GSAB was identified through its designation but that it was not designated for landscape or scenic value and was therefore not considered in the LVIA. The Reporters are asked to note that this was not challenged by statutory consultees, including the Council.

- 6.84. The GSAB sought undergrounding of the KTR Project on the basis that would be a preferable option. The Applicant has set out its position with regard to the identification of the preferred OHL route and has set out the technical and economic needs case justification for an OHL solution. This was covered in extensive written and oral evidence in relation to its consideration of undergrounding, and the reasons why this option was not selected. The basis upon which GSAB sought to justify that position is addressed in Part 2 of Chapter VII.
- 6.85. SPP is now, as previously noted, revoked. NPF4 acknowledges (page 138) in its description of the “South” that the UNESCO Galloway and Southern Ayrshire Biosphere is a crucial environmental asset “which can contribute to the area’s future sustainability, liveability and productivity”. However, the description goes on to add that the South of Scotland is important for renewable energy generation and that proposals for grid improvements associated with wind farm development will require careful planning.
- 6.86. However, it is the development management policies that are to be applied for the purposes of achieving careful planning. NPF4 Policy 11 makes it clear that outside of National Parks and NSAs that renewable and low carbon development together with essential electricity transmission capacity is to be supported.
- 6.87. Paragraph e) refers to “ii. significant landscape and visual impacts, recognising that such impacts are to be expected for some forms of renewable energy.” Such impacts have been addressed (as per the Applicant’s landscape and visual evidence as set out in its February 2023 Written Submissions in relation to NPF4).
- 6.88. Policy 11 adds that “Where impacts are localised and/ or appropriate design

mitigation has been applied, they will generally be considered to be acceptable". Whilst some significant adverse landscape and visual effects are identified, these are generally localised. As Policy 11 in NPF4 states, such effects "will generally be considered to be acceptable". Evidence presented by the Applicant in respect to 'Strategic route selection, design strategy and consultation', and the landscape architect's position is that the identified significant adverse landscape and visual effects are localised in nature and have been minimised through the design and routeing processes (being design mitigation forming part of the KTR Project).

- 6.89. The GSAB assertions that the landscapes within which the KTR Project are proposed are "very largely unspoilt character and high overall quality of the landscapes that would be impacted by this proposed powerline" are not supported by evidence. As demonstrated and presented in the evidence of Mr. Walker, the landscapes within which the KTR Project Connections are proposed have successfully assimilated the existing N Route, R Route (north and south) and other (e.g. BG route) similar scale electricity transmission infrastructure over many years. The presence of this infrastructure did not prejudice or prevent the designation of much of the affected area at a local level (e.g. the Galloway Hills and Solway Coast Regional Scenic Areas (RSAs)). In that regard, it should be noted that although RSAs fall within the terms of Policy 4, there is no reference to the Biosphere. Even although Mr Thomson argued at the Inquiry Session that it is a nationally important designated area and that it is recognised within NPF4, no specific policy protection was considered necessary and it remains as the subject of local development policy.
- 6.90. Moreover, it needs to be recognised that there would be some positive effects arising for the wider landscapes of the Galloway and Southern Ayrshire Biosphere as a result of the removal of the existing overhead line proposed as part of the KTR Project. In short, the Biosphere and the KTR Project can satisfactorily co-exist and there is no conflict with the overall policy framework of NPF4.
- 6.91. Notwithstanding the significant changes to the national planning policy framework that Mr Bell had regard to when he produced both his August 2022 Hearing

Statement and his September 2022 Supplementary Hearing Statement, it is submitted that the conclusions that he presented within his Supplementary Hearing Statement remain valid. In summary, the evidence presented by Mr Thomson on behalf of the GSAB does not weigh against the granting of consent for the KTR Project. The objection is not based on grounds that are founded in either national planning policy or the LDP. The opinions that have been expressed by Mr Thomson are not supported by expert evidence. It is therefore respectfully submitted that little weight should be given to the GSAB objection.

### **Conclusion**

- 6.92. When the Project history is taken into account and properly understood, the inevitable conclusion is that the KTR Project has been subject to a meticulous design process that has satisfied the industry regulator, Ofgem. The detailed design of the project has been carried out under the 2000 and 2017 EIA Regulations, and the Scottish Government has led the requirements of the EIA process through the provision of a Scoping Opinion which has formed the basis of the EIA Report. Considerable effort and careful analysis has gone into the design process for the routing and alignment stages of design that has sought to ensure potential, as opposed to predicted, likely significant effects are avoided or reduced. Through the EIA process, the Applicant has sought to make use of not just embedded project mitigation but also where necessary, additional mitigation measures for the purposes of minimising likely significant environmental impacts. It is inevitable that with a major EIA infrastructure development that there will be some likely significant environmental effects during the construction and/or the operational stages.
- 6.93. The consenting issue is whether or not those significant residual effects are outweighed by the benefits of the project, when considered in the relevant legal and policy frameworks. Those frameworks provide the objective lens through which to appraise the residual likely significant effects, as opposed to being influenced by subjective, often self-serving, opinion that is not necessarily based upon an objectively verifiable factual basis. The limited significant environmental effects of



the KTR Project that have been identified by the Applicant's experts must be considered in the context of Policy 11. In terms of Policy 11(e) the decision makers are obliged to place significant weight on the national development status of the KTR Project, and, on the nationally important contribution to renewable energy generation and greenhouse gas emissions targets.

- 6.94. The benefits that would result from the KTR Project are not benefits that flow to the Applicant but are benefits that are being pursued in the wider public interest. As noted by Mr Bell in his conclusions to his February 2023 Written Submissions, the delivery of this essential transmission infrastructure will substantially assist in facilitating existing and future transmission of energy generated from renewable sources and thereby help deliver on both the renewable generation and Net Zero legislative targets and policy imperatives contained in NPF4. There is a sound and persuasive evidential basis upon which to conclude that the KTR Project is acceptable and that the obligations under Schedule 9 of the 1989 Act have been met. The consenting of the KTR Project would enable the Scottish Ministers to fulfil their obligations under section 3A of the 1989 Act.
- 6.95. GWP harbours a hope that there is an answer to the extremely strong case for SPEN in relation to both the technical and economic justifications, and also to the equally strong case based on national energy policy and, the Scottish Government's new national planning policy framework. The Objectors now cling to the wording in the paragraph in sub-paragraph (e) of Policy 11, which contains the policy direction that grid capacity should not constrain renewable energy development, which encourages consideration of underground connections where possible. The Applicant has fulfilled that responsibility and concluded that in the circumstances that apply in relation to the KTR Project, underground connections are not possible.
- 6.96. If the approach of the Objectors on undergrounding is given any credence at all through this decision-making process then that would represent a nail in the coffin for both the UK and Scottish Governments' targets of reducing greenhouse gases by delaying the rapid expansion of renewable energy generation development. Such a

decision on this project that is clearly acceptable in terms of environmental effects and has been designed to avoid the most sensitive receptors that NPF4 seeks to protect, would have ramifications that are much greater than for just this project. It would also be contrary to the Ministers' obligations under section 3A of the 1989 Act.

## 7. DESIGN SOLUTION

- 7.1. This Chapter covers Topics 1, 2 and 5 as listed in Appendix 2 to these Closing Submissions. This encompasses the Technical and Economic Justifications, the Strategic Alternatives including Undergrounding, and, Strategic Route Selection, Design Strategy and Consultation, respectively. There is an obvious inter-relationship between all of these Inquiry Topics that it is helpful to address in an all-encompassing submission on the evidence presented on behalf of the Applicant in relation to the design solution selected by the Applicant.
- 7.2. The approach in closing submission is to broaden out deliberately the discussion and combine the first two topics that were the subject of Inquiry Sessions Nos 1 and 2. Both of these Topics are concerned with the selection of the overhead design solution for the replacement and reinforcement of the Connections that comprise the KTR Project. This encompasses both the Technical and Economic Justifications for the Project (referred to hereafter as “the needs case” unless the context dictates otherwise), and also, the strategic alternatives that were considered in relation to the SPEN design solution for the KTR Project. Both of these topics underpin the justification for the design solution selected by the Applicant, and support the rejection of other design solutions that feature in the cases for the Objectors. Related to this evidence is the decision-making on the strategic route selection and detailed design strategy, as informed by the pre-application and post-application consultation processes (Hearing Session No.2). That stage of the design process was fundamental to the final decision-making by SPEN on whether the proposed overhead line Connections were environmentally acceptable, when considered in the context of SPEN’s own well-developed internal policy on overhead line routeing and other relevant planning policy. This included a detailed study in relation to underground cable alternatives.
- 7.3. The Applicant relies upon a raft of evidence in relation to these three Topics. This includes the Inquiry Reports, precognitions, and Hearing Statements, for the relevant witnesses, as amplified upon in the oral evidence at the Inquiry and Hearing Sessions,

together with the supporting Core Documents and Applicant's Documents. The evidence is summarised in the Applicant's Summary of Case but it should be emphasised that where there are controversial issues to be resolved from the parties' closing submissions, recourse to the transcripts of evidence by the Reporters may be required. The Summary of SPEN's Case on these Topics is adopted for the purposes of these submissions on the evidence and the Reporters are invited to base their findings and conclusions on SPEN's Summary, under reference to the supporting documentary evidence and transcripts of oral evidence. Within the Summary Case, these Topics are covered in Chapter A for the needs case (pages 7 to 16), Chapter B for Strategic Alternatives, including Undergrounding (pages 17 to 32), and, Chapter D on Strategic Route Selection, Design Strategy and Consultation (pages 52 to 73).

- 7.4. The remainder of this Chapter has been structured to reflect the order in which the relevant Inquiry and Hearing Sessions were held during the course of the Inquiry. Part 1 contains the submissions on the evidence in relation to the needs case, Part 2 contains the submissions on Strategic Alternatives, and Part 3 addresses the issues that arose in relation to Strategic Route Selection, Design Strategy and Consultation.

## **PART 1 - TECHNICAL AND ECONOMIC JUSTIFICATIONS**

### *Background*

- 7.5. As a result of a decision taken by the DPEA, and notified to the parties on 16 August 2022, Mr David Buylla was appointed as the Reporter with responsibility for the Inquiry Session into this Topic, and also Topic 6 on the Justification for the EIA Methodology. There is a cross-over in relation to both of these Topics as GWP's witness sought to argue that there has been a flawed approach to the EIA methodology because the dismantling of the existing transmission OHL between Tongland and Dumfries Substations ("the S Route") was not included for EIA purposes as part of the KTR Project.
- 7.6. The Applicant's position in Closing Submission on the needs case is reinforced by the fact that it has not altered since the preliminary procedural steps that took place in

July 2022. Prior to Mr Buylla's appointment, in accordance with the PEM Note produced by the lead Reporter for the Inquiry Process, Ms Rice, the Applicant and GWP produced further written submissions in July 2022 on whether or not a hearing or inquiry session was necessary on this Topic<sup>123</sup>. In the written submissions for the Applicant, considerable emphasis was placed on the fact that the technical and economic justifications for the KTR Project are both rooted in the statutory duties and licence obligations imposed on the Applicant as the holder of the transmission licence granted under section 6 of the 1989 Act. It was emphasised that there had already been approval of both the technical and economic justifications for the KTR Project. This was as a result of Ofgem's approval of the KTR Project as part of the RII0-T2 Price Control process, which included a cost benefit analysis with input from NGENSO, (National Grid Electricity System Operator for Great Britain).

- 7.7. Reliance was also placed upon the anticipated confirmation within NPF4 that for the purposes of decision-making on the section 37 Applications, the KTR Project would be treated as a project that had national development status. In that context, the statement of need in NPF4 is directly related to the needs case for the KTR Project that was approved by Ofgem and considerable emphasis was placed on the fact that there was a shared strategic planning purpose. Those submissions were borne out by the terms of the final Revised Draft of NPF4 that was adopted in January 2023, which were consistent with the draft NPF4 published in July 2021; (see section 7 of the Applicant's July 2022 written submission).
- 7.8. Notwithstanding this positive regulatory and policy support for the KTR Project, it is understood that Ms Rice gave greater weight to the written submissions produced by GWP's Senior Counsel and witness, Dr Ford, on 27 July 2022, rather than the Applicant's submissions. It was intimated that GWP intended to challenge the Applicant's position of reliance on Ofgem's approval of the technical and economic justifications. A decision was therefore taken by Ms Rice that there should be an

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<sup>123</sup> Paragraph 1.4 of the Applicant's July 2022 written submission in relation to the Technical Justification and Economic Justification for the KTR Project.

Inquiry Session on this Topic. Having regard to the nature of the evidence produced by Dr Ford, the Applicant considers that an Inquiry Session was preferable to a Hearing Session as it allowed for proper cross-examination and testing of the evidence being presented by Dr Ford, which was flawed in many respects. Moreover, and of greater significance to the decision-making process, it is submitted that the theories and conjecture that Dr Ford sought to promote through challenging the needs case has had a negative influence not just on his evidence in relation to this Topic, but also on the credibility and reliability of his evidence on Strategic Alternatives, Strategic Route Selection and Design Strategy, the methodology for the EIA work, and his assessment against planning policy.

7.9. The Reporters will recall that the cross-examination of GWP's witness on the needs case was split into the following 4 main chapters: (i) statutory framework and obligations; (ii) licence obligations and the regulatory role of Ofgem; (iii) issues related to the technical justification, and (iv) issues related to the economic justification. It is submitted that these are the building blocks of the needs case and it was considered that it was necessary to test the extent to which Dr Ford had, or did not have, a sound understanding of these building blocks when he framed his written evidence pontificating in his elaboration of his criticisms of both the technical and economic justifications for the KTR Project. It is submitted that this is of equal relevance to the review of both the credibility and reliability of his oral evidence during Inquiry Session No.1 and his subsequent written submissions for Hearing Session No.7 insofar as they touched on issues raised during Inquiry Session No.1. The Reporters' findings in respect of these issues have implications as regards the weight to be placed on his related evidence during other Inquiry and Hearing Sessions of the Inquiry.

7.10. However, the way in which Dr Ford presented his evidence both in writing and during his oral evidence in Inquiry Session No.1 does not assist in adhering to those divisions that were used in the cross-examination of his evidence. He had a tendency to "flip-flop" between different subject-matters to distract from the fact that his

understanding of the building blocks was generally flawed, incomplete, and, applied in a self-serving manner that was not reflective of reality in the field of system planning for a transmission licence holder. It is not instructive to go through the detail of the many misguided lines of argument that Dr Ford presented in his evidence.

- 7.11. In order to address this difficulty, the approach taken in closing submissions in order to assist the Reporters, and the ECU and the Scottish Ministers, in their decision-making roles is to address the main controversial issues that emerged from Dr Ford's written and oral evidence in relation to these building blocks. It is considered that these will be the issues that will be of relevance when carrying out the balancing exercise that requires to be undertaken by the Reporters and Scottish Ministers for the purposes of making a determination on the section 37 Applications. Particular focus will be placed on those issues of relevance to the evidence also given by Dr Ford on Strategic Alternatives, Strategic Route Selection and Design Solution, the methodology for the EIA work, and his assessment against planning policy. A general criticism made of Dr Ford at the beginning of his cross-examination during Inquiry Session No. 1 is that he conflates his flawed theories in relation to the needs case with the material considerations that arise in relation to these other topics.
- 7.12. Before leaving the submissions that are of more general relevance to the evidence of Dr Ford, it is necessary to highlight the significance of the fact that is now stated unequivocally that the GWP Objection relates only to the section 37 Application for the G-T Connection. This is addressed in paragraphs 3.18 to 3.19 of Chapter III above. This should allow for the Closing Submissions on specific Topics to focus on the issues related to the G-T Connection. Unfortunately in relation to the needs case this is not possible because GWP's Senior Counsel introduces a line of argument in closing submission that is of direct relevance to the needs case for the P-G via K Connection, or possibly the whole of the KTR Project. This will therefore require to be addressed in this Part of the Closing Submissions.
- 7.13. Against that background, the structure to Part 1 of this Chapter of the Closing

Submissions is as follows:

- (i) Admissibility of Expert Evidence;
- (ii) Rulings in relation to Relevancy (in relation to specific issues raised in Dr Ford's evidence on this Topic);
- (iii) Relevancy of particular Statutory and Licence Obligations to the evidence; and,
- (iv) Relevant Controversial Issues.

Admissibility of Expert Evidence

7.14. Under reference to the Closing Submissions contained in Chapter IV above (paragraphs 4.46 to 4.51), the Reporters are invited to reject the evidence of Dr Ford on the needs case as inadmissible expert evidence. On behalf of the Applicant, the Reporters are invited to reject the suggestion by GWP's Senior Counsel that Dr Ford should be treated as an expert witness on this Topic. It is submitted that the cross-examination of Dr Ford during Inquiry Session No.1 served to expose his significant shortcomings as an expert witness, not just in relation to this Topic but, more generally, in relation to his complete inability to perform the role of an independent expert witness.

7.15. It will be recalled by the Reporters that at the beginning of the cross-examination of Dr Ford's evidence during Inquiry Session No.1 that he was specifically asked if he was presenting himself as an expert witness in relation to the Topic<sup>124</sup>. Having confirmed that he was appearing as an expert witness, he was then asked if he understood that the obligations of an expert witness are:

- (i) to be unbiased and independent;
- (ii) in carrying out research in relation to the factual basis for the professional expert opinion, it is the responsibility of the expert to ensure that the factual basis is accurate; and,

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<sup>124</sup> Day 2, 25 October 2022, pages 67 to 68 of the transcript of evidence



- (iii) the expert has an overriding duty to assist the tribunal before whom he appears.

- 7.16. Although Dr Ford confirmed that he understood these responsibilities, it is submitted that the cross-examination not only on the needs case but also in relation to other topics referred to in paragraphs 7.7 and 7.10 above in respect of which he was also giving evidence as an “expert witness”, created a very different impression. This submission is made not only in relation to the obligations summarised in the above paragraph but also those referred to under reference to the *Kennedy* case in Chapter IV above. As noted in paragraph 4.43 above, the accepted way in which a tribunal can be assisted in deciding whether to treat a witness as an expert is for the witness to set out his qualifications, by education, training and experience on the particular subject-matter.
- 7.17. It will be recalled by the Reporters that there was nothing in any of the Inquiry Statements, Inquiry Reports or precognitions submitted in the name of Dr Ford and spoken to by him in evidence, that provided that information. His background was led out by Mr Campbell at the start of his evidence-in-chief during Inquiry Session No.1 when he was introduced as “an expert retained by Galloway Without Pylons for the purpose of this inquiry”<sup>125</sup>. Whether this was by design to give the cross-examiner limited opportunity to scrutinise the claimed basis of professional expertise, or by mismanagement of the case, in any event it did not reflect well on Dr Ford that it apparently had not occurred to him that he should set out the basis upon which he was claiming expertise in a particular specialist Topic.
- 7.18. The “summary” of Dr Ford’s background given at the beginning of his oral evidence in Inquiry Session No.1 did not include any relevant educational qualifications, training or professional experience that placed him in the same position as the Applicant’s expert witness, Mr Diyar Kadar. There was no aspect of his educational qualifications, or training and professional experience, which would entitle him to

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<sup>125</sup>

claim any expertise in system planning, or, in the application of relevant statutory and licence obligations under which Mr Kadar, Mr Young, and the Applicant, operate on a daily basis<sup>126</sup>.

7.19. In contrast, there can be no doubt in relation to the relevant academic qualifications and professional training and expertise of the Applicant's expert witness on the needs case, Mr Diyar Kadar. His academic and professional background is set out in Appendix 2 of his Inquiry Report<sup>127</sup>. The years of experience that he has gained working as a system planning engineer for the Applicant as transmission owner for its licence area and specifically for this part of SW Scotland, serves to more than surpass Dr Ford's attempted claim of expertise in this evidential Topic. By way of observation it is of interest that Dr Ford and his Counsel were overly keen at the beginning of the Inquiry process to make reference to the fact that Dr Ford had acquired a doctorate in a subject-matter that did not vouch his expertise in system planning and the needs case, but which was referred to in order to justify his use of the title of "Doctor". In contrast the Applicant's expert witness had acquired both his undergraduate degree and doctorate in Electrical and Electronic Engineering, of obvious relevance to the subject-matter of his evidence<sup>128</sup>, but stated at the beginning of his evidence that he did not like to make use of the title<sup>129</sup>. This was typical of the attitude displayed by the Applicant's expert when giving evidence as regards his lack of any arrogance, despite his obvious superiority as an expert witness when compared to Dr Ford.

7.20. Under cross-examination, Dr Ford confirmed that he did not have any relevant academic qualifications or professional work experience in electrical engineering or system design for transmission systems<sup>130</sup>. Dr Ford sought to claim his recently acquired PhD in Civil and Environmental Engineering enabled him to carry out

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<sup>126</sup> Pages 4 to 9 of the transcript for Day 2

<sup>127</sup> APP001.001

<sup>128</sup> Paragraph 1.6 of Mr Kadar's Inquiry Report

<sup>129</sup> Page 22 of the transcript for Day 1

<sup>130</sup> Page 71 of the transcript for Day 2

informed research on the needs case<sup>131</sup>. However, it is clear from the evidence given to Mr Campbell during his evidence-in-chief that Dr Ford's main interest in relation to renewables energy development is based on his background in planning and asking the questions related to whether or not the right development happens in the right place<sup>132</sup>. It will be self-evident to the Reporters that that issue is essentially a planning/land-use issue and not a system planning issue, but this is a distinction that was clearly lost on Dr Ford. This background to his main area of interest is also relevant to the fact that, as Dr Ford confirmed, he has only given evidence at public inquiries on behalf of objectors to wind farm renewable energy generation projects<sup>133</sup>. He also confirmed that he had not previously had any involvement in public inquiries into transmission infrastructure developments.

7.21. It was established in cross-examination that Dr Ford had prepared the Inquiry Statement for GWP on all of the topics in respect of which he gave evidence, as listed in paragraph 4.47 above. The Reporters will be aware from Dr Ford's evidence that he then reproduced the text from the Inquiry Statement into his various Inquiry Reports and Hearing Statements. It was put to Dr Ford in cross-examination that there was a danger when acting as the expert witness in as many different subject-matters covered by him in evidence on behalf of GWP, that he conflated the issues relevant to the different subject-matters. An example was put to him in cross-examination on his evidence on the needs case in which he criticised Mr Kadar, and the Applicant, in relation to the needs case on an EIA methodological issue. This was in respect of his claim that there was an omission from the EIA Report in not including the proposed decommissioning of the S Route (the existing Tongland to Dumfries 132kV connection)<sup>134</sup>. Dr Ford had to accept that an EIA methodological issue could not call into question the needs case in the circumstances relied upon by him in his evidence; i.e. by conflating the issues. Notwithstanding that concession in

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<sup>131</sup> Page 71 of the transcript for Day 2

<sup>132</sup> Page 4 of the transcript for Day 2, lines 13 to 20.

<sup>133</sup> Page 68 of the transcript for Day 2

<sup>134</sup> Pages 73 to 75 of the transcript for Day 2

cross-examination, GWP's Senior Counsel continued to conflate those issues through the course of the Inquiry and in closing submissions. There were a number of instances in which Dr Ford conflated different issues, which will be discussed in greater detail below when addressing the relevant material considerations.

7.22. It is submitted that when Dr Ford's evidence on the needs case is subject to critical examination, as occurred during cross-examination and as set out further below, it is apparent that he blatantly disregards the obligations incumbent upon him when giving evidence as an "expert" witness. This will be apparent to the Reporters when considering the closing submissions below on the particular determining issues that he sought to address through the needs case. It is submitted that his evidence on this Topic should be rejected by the Reporters as the evidence of an expert witness and they should rule that it is inadmissible on the basis that it is tendered as the evidence of an "expert" witness. Insofar as consideration will require to be given as to what weight to apply to his evidence as a non-expert on the Topic, the submissions provided below on his evidence on this Topic provide the basis for preferring the evidence of Mr Kadar. The Reporters are therefore requested to make a clear ruling that Dr Ford has not demonstrated that he can, or should, be treated as an expert witness on this Topic.

*Relevancy of Dr Ford's Evidence*

7.23. Another preliminary evidential issue that should logically be addressed in closing submission before turning to the substantive material and relevant considerations upon which the Reporters' findings are required, is the question of relevancy. The Reporters will recall that during Dr Ford's cross-examination on the needs case during Inquiry Session No.1, Counsel for the Applicant made it clear that there were significant parts of Dr Ford's evidence that were simply irrelevant to the determining issues that the Reporters required to address. On that basis Inquiry time was not wasted in cross-examination on those parts of Dr Ford's evidence but the Applicant's

position was reserved in relation to the entitlement to make closing submissions on the relevancy issues.

- 7.24. The main topics in that regard were related to Dr Ford's desire to go into the possible future changes in the UK Government's policy as regards: (i) the future structure of the electricity market; and, (ii) possible changes to the roles of the ESO and TOs in future system planning for the replacement/reinforcement of existing transmission infrastructure and for the development of new transmission infrastructure in Great Britain. It is considered helpful to address this as a preliminary issue because it is clear from an examination of the relevant transcripts of evidence and more recent written submissions following Hearing Session No.7 on 29 March 2023, that this is a topic that Dr Ford likes to have recourse to when either the Applicant's witnesses or Counsel for the Applicant demonstrates that the evidence he is presenting to the Reporters on issues related to the needs case is wrong and misleading.
- 7.25. What became more obvious during the course of the Inquiry (particularly when addressing NPF4 and other policy matters under Procedure Notice No.4), was that Dr Ford is attempting to go behind the substantial national planning policy support for the KTR Project in NPF4, through his fundamentally flawed understanding of issues that had been addressed in his evidence related to the needs case. As became clear from the new evidence presented by Dr Ford in his Hearing Statement 7, the main lines of argument that he has been seeking to establish through the Inquiry process and have the Reporters adopt as findings are:
- (i) That there is no need for the G-T Connection on the basis that he argues that there is no requirement for an increase in the capacity of the transmission connection between the Glenlee and Tongland Substations. He now argues that the driver for the design of the G-T Connection was load related and **not** non-load related and, therefore, that such load-driven transmission investment would fall within the

“centralised planner’s scope” and not to the TO under any revised arrangements for transmission planning that Ofgem might propose.

(ii) In that connection he sought to develop his argument that the G-T Connection should be treated as the wrong development in the wrong place, based on his understanding of the changes in policy that **might** occur through the REMA consultation process. This theory was foreshadowed in his evidence presented for Inquiry Session No. 1 that the REMA consultation, linked to locational marginal pricing, indicates that there is no longer a requirement for any new onshore renewables generation in Scotland as based on his theory the only requirement is to meet Scotland’s indigenous need. Based on that theory he argues that this removes the need for increased transmission capacity in Scotland<sup>135</sup>.

(iii) That based upon his reliance on the previous draft Onshore Wind Policy Statement 2017 and Refresh<sup>136</sup>, which he now contends is also supported by the more recent draft of that policy statement and the Climate Change Committee (CCC) report (GWP24), Dr Ford argues that makes clear that there is no requirement for any increased renewables generation in Scotland. This appears to be on the basis that due to the success of the Scottish Government’s policy support for renewable generation of electricity, the current indigenous demand is effectively met from renewable generation sources.

7.26. The position that has been maintained throughout the Inquiry by Senior Counsel for the Applicant is that the possibility of change in the role of the ESO and possibly also Ofgem in transmission system planning, and also the issue of locational marginal pricing (LMP), are irrelevant to the Reporters’ findings, and the Scottish Ministers’

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<sup>135</sup> See paragraphs 13 to 16 in GWP’s Inquiry Statement, as replicated in paragraphs 14 to 17 in Dr Ford’s Hearing Statement on Statutory Context, National Energy Policy and National Planning Policy.

<sup>136</sup> Discussed in paragraphs 12 and 13 of GWP’s Inquiry Statement, as replicated in paragraphs 13 and 14 of Dr Ford’s Hearing Statement on Energy Policies referenced above.

determination of the Applications, based on the needs case. The arguments depend on possible future changes to the structure of the electricity industry. The Applicant's position is that the Reporters and Scottish Ministers are obliged to address the needs case having regard to the same legal and policy framework under which the Applicant has been obliged to operate for the purposes of formulating the relevant proposals that are the subject of the section 37 Applications.

- 7.27. Dr Ford accepted in cross-examination that the needs case should be evaluated under reference to the statutory and licence obligations that applied at the time of the Ofgem approval, which are the same obligations that still apply now.<sup>137</sup> He refused to accept, however, that the possible future changes in energy policy that might alter the roles carried out by the ESO and Ofgem to transmission system planning are irrelevant for the purposes of this Inquiry. Although these issues are referred to in the closing submissions by GWP, this has been done in a very superficial way and based almost entirely on the new documents lodged by Dr Ford for Hearing Session 7 (GWP 22-24).
- 7.28. During that part of Dr Ford's cross-examination, Dr Ford also sought to introduce the possible restructuring of the electricity market through "locational marginal pricing" ("LMP") as being a relevant issue. This has more recently been referred to by both him and GWP's Senior Counsel as coming under the umbrella of "REMA"<sup>138</sup>. He accepted in cross-examination that the ability to gauge the direction of future changes in policy for the purposes of reaching decisions that are based on planning and related energy policy, can be difficult<sup>139</sup>. He explained that his reason for referring to both of these issues was to point out that the energy and planning policy framework might change in the future "over the next few years"<sup>140</sup>. These issues had relatively limited prominence in the case for GWP during Inquiry Session No.1 and

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<sup>137</sup> Page 126 of the transcript for Day 2.

<sup>138</sup> Paragraphs 15 and 16 of GWP's Inquiry Statement, as replicated in paragraphs GWP's Hearing Statement 3 on Statutory Context, National Energy Policy and National Planning Policy and paragraphs 2.7 to 2.18 of Dr Ford's Submissions dated 28 April 2023, and, page 16 of GWP's closing submissions, respectively.

<sup>139</sup> Page 125 of the transcript for Day 2

<sup>140</sup> Page 130 of the transcript of evidence

it was the Applicant's primary position that they are irrelevant for the purposes of evaluating the needs case. This point was made clear to Dr Ford and GWP, and the Reporters, on a number of occasions during Inquiry Session No.1. It is a view expressly stated by Mr Kadar when giving his evidence.

7.29. Against that background, it is submitted that it was a cynical move on the part of Dr Ford to introduce new "policy" documents on the pretext that they were relevant to the issues that were to be addressed in evidence in response to Procedure Notice No.4 that related to the Scottish Government's new adopted NPF4 and draft national planning and energy policy. He knew, and GWP's Senior Counsel knew (or should have understood and known), that these documents related to issues that had been discussed during Inquiry Session No.1 in the context of evaluating the weight to apply to Ofgem's approval of the Applicant's needs case. They are documents and issues that are relied upon by Dr Ford in his further written submissions of 28 April 2023, for the purposes of restating his principal position that the Applicant has failed to establish the need for the proposed double circuit 132kV G-T Connection. There is considerable focus in Dr Ford's new evidence on the need for "the substantial three-fold increase in transmission capacity in the G-T proposal"<sup>141</sup>.

7.30. The contention by Dr Ford and GWP is that these new documents corroborate Dr Ford's very limited evidence on these topics that was produced for Inquiry Session No.1. Moreover, and of greater concern, is that this last minute addition to GWP's case is aimed at undermining the justification provided by the Applicant for the technical design of the G-T Connection that has been selected by SPEN as TO, and approved by Ofgem as regulator. It represents a clear attempt to shore up what can fairly be described as a weak case that was presented by Dr Ford for the purpose of challenging the Applicant's solid needs case. It was done in a manner that was designed to avoid scrutinisation and the cross-examination of Dr Ford on these issues. This procedural misdemeanour was further compounded by the way in

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<sup>141</sup> Paragraphs 2.3 to 2.6, 2.8 to 2.18 of Dr Ford's Submissions dated 28 April 2023



which GWP's Counsel has relied upon these new documents in closing submissions that are completely linked to the needs case for the G-T Connection, and not related to national energy or planning policy.

7.31. These developments post-Inquiry demonstrate that GWP's previous submissions to Ms Rice at Hearing Session No.7 that these documents, together with Dr Ford's related written evidence, are concerned only with energy and national planning policy are not just disingenuous, but go further and involve duplicitous actings on the part of Dr Ford. These actings are for one purpose only, which is to attempt to secure a particular outcome from the Reporters' consideration of the issues based on irrelevant evidence. This is not the behaviour or standard of conduct that one would expect from an expert witness, having regard to the obligations which such a witness is expected to respect when giving evidence; (as summarised in Chapter IV of these submissions and in the opening paragraphs of Part 1 of this Chapter). The Applicant's position is that the new evidence introduced by Dr Ford through Hearing Session No.7 on matters that were previously addressed in Inquiry Session No.1, were introduced by GWP and Dr Ford in a manner that was both professionally irresponsible and contrary to the purpose of Procedure Notice No. 4.

7.32. As previously stated, these energy policy issues, as Dr Ford referred to them, are all related to future possible changes within the electricity industry which are considered by the Applicant's team to be irrelevant to the needs case. That position has not changed despite the recent attempts by GWP's witness and Counsel to present them as having more substance and relevance than they in fact do. This issue is addressed in this part of the Closing Submissions insofar as it relates to the needs case, but the claimed relevance of these new documents and new evidence from Dr Ford to the conclusions drawn by Mr Bell on national energy and planning policy are addressed in the Applicant's Closing Submissions on those planning policy issues. It is noted in the Applicant's Summary of Case that this is an issue that would have to be returned to in Closing Submissions because the additional written procedures process that was outlined in the email from Colin Bell of the DPEA of 30 March 2023,

was not officially concluded until 5 May 2023 when the Applicant's final comments were lodged on the issues raised by Dr Ford in his Hearing Statement 7 and his subsequent written submissions dated 28 April 2023. This was a deadline that post-dated the procedural deadline for the lodging of SPEN's Summary of Case that was 26 April 2023. The Applicant's legal team therefore reserved its position as to its entitlement to respond on those further written submissions from Dr Ford in these Closing Submissions.

7.33. As previously referred to in these Closing Submissions, Senior Counsel for GWP continued to disregard the Reporter's procedural rulings by introducing in his closing submissions yet further submissions on Dr Ford's new documents and the needs case. He does so under the pretext that the DPEA had exhibited "*generosity.... over time limits for submissions*", as a result of which GWP's Counsel assumed that it was therefore "*possible now to tender a brief response to this tendentious document*"; (the latter reference being understood to be a reference to the Applicant's Further Written Submissions of 5 May 2023). The Applicant's legal advisers have not understood the Reporters or any Case Officer in the DPEA to have advised GWP that they had the opportunity to respond to the Applicant's final concluding comments submitted on 5 May 2023, in their closing submissions. They have no idea as to what is being referred to as the generosity of the Reporters/DPEA in relation to time limits as there is no indication as to any procedural ruling to that effect. It is therefore assumed that this is yet another opportunistic attempt by GWP's Inquiry team to have the last say on the subject and to yet again go out with the procedural arrangements set down by the DPEA, for the perceived advantage of GWP.

7.34. It is the Applicant's position that there has been no material change in policy or the structure of the electricity market that has a bearing upon the issues before the Reporters. The documents lodged in relation to such possible changes, GWP22 and 23, contain proposals. Contrary to the assertions made in Dr Ford's Submissions of 28 April 2023 these are not concrete proposals. The Reporters will have appreciated that Dr Ford makes submissions on the assumption the proposals discussed in those

documents will be introduced.

- 7.35. However, the position remains the same as it was in October 2022 when Inquiry Session No.1 took place. There is before the Inquiry an approval from Ofgem in relation to the G-T Connection that recognises in express terms that the driver for the G-T Connection is based on a non-load driver. The Reporters are invited to have regard to the fact that Dr Ford's position as to the nature of the driver for the G-T Connection has changed as between Inquiry Session No.1 and Hearing Session No.7, and the subsequent written submissions procedure during April to May 2023. This is for no other reason than for the purposes of developing his new line of argument that a Future System Operator would take over the role of the TO in planning for new transmission infrastructure development. This consideration is an irrelevant consideration for the purposes of addressing the Applicant's needs case which already has the approval of the regulator, and which confirms the primary investment driver is non-load related.
- 7.36. In relation to the new evidence on the driver for the G-T Connection from Dr Ford, he includes a remark that is gratuitously offensive to both Mr Kadar and the Applicant which is in these terms: "*... perhaps because transmission owners (such as the Applicant) are spending time and resources on trivial transmission reinforcement projects (such as G-T), that is the reason why Ofgem is taken the transmission planning role away from transmission owners*"<sup>142</sup>. Given the undoubted professionalism associated with Mr Kadar's evidence and appearance at the Inquiry, and the fact Ofgem has reviewed and approved the needs case for the G-T Connection, such a comment is not only unwarranted but smacks of desperation on the part of Dr Ford. As Mr Kadar pointed out in his response in paragraph 2.6 of the Further Written Submissions dated 5 May 2023, "*Ensuring security of supply to customers and communities in south west Scotland is far from "trivial", as Dr Ford suggests ....*". This is yet another indicator that Dr Ford did not adhere to the expected standards of an expert witness.

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Paragraph 2.6

7.37. The written submissions that have been lodged on behalf of the Applicant on 14 April and 5 May, 2023, are adopted for the purposes of the Applicant's Closing Submissions on the issues in relation to the possible future changes in the electricity industry. The evidence from Mr Kadar explains the reasons behind the Applicant's position that these new issues raised by Dr Ford are irrelevant to the needs case. The various flaws and lack of understanding in the new evidence presented by Dr Ford in his written submissions dated 28 April 2023, are highlighted. In relation to the charges that Dr Ford seeks to lay at the door of the Applicant in Section 6 of the "Dr Ford Submissions" dated 28 April 2023, are not accepted and rejected out of hand. It is submitted that Dr Ford seeks to employ reverse psychology to create a "picture" that it is the Applicant who is attempting to re-open issues raised by him during Inquiry Session No. 1, and in respect of which he knows that the Applicant's position is that they are irrelevant to the needs case. The obvious repost to Dr Ford's illogical contention is to ask the question as to what the Applicant's team would have to gain from such a course of action when it has always been the Applicant's position that these issues are simply irrelevant to the needs case for the G-T Connection. The Applicant did not seek to lodge GWP 22 to 24 or introduce new evidence in relation to these documents, which was entirely attributable to the actions of Dr Ford. The Applicant's response to Dr Ford's new evidence is to demonstrate that it is inherently flawed, including by reference to documents that were available before 2023.

7.38. It would appear from the most recent of Dr Ford's Submissions that he is just incapable of understanding the basis upon which the Applicant contends that the issues that he raises are irrelevant to the outcome of this Inquiry process. Dr Ford has not demonstrated that he has the necessary expertise in system planning to understand the difference between: (i) the identification and establishment of the drivers for an infrastructure modernisation project that are specific to the condition and capacity of the 132kV transmission system in this part of south west Scotland; and, (ii) engaging in academic debate over the direction of possible changes in energy policy that may or may not occur, or, what form such changes may take if there are

changes. This lack of understanding is also evident from the closing submissions from GWP (Section 19), suggesting that the Applicant has sensitivity over the production of GWP22 and GWP23. That submission is based on a blinkered approach that involves ignoring the Applicant's previous criticisms of Dr Ford's attempts during Inquiry Session No.1 to frustrate the consenting process by referring to irrelevant considerations that do not bear upon Ofgem's approval issued in February 2021, for both of the main Connections for the KTR Project; (i.e approval of the G-T Connection and the P-G via K Connection with different primary investment drivers). The Further Written Submissions prepared by the Applicant's expert, Mr Kadar, provides a clear explanation on that issue, which it is submitted should be accepted by the Reporters.

7.39. The Reporters are therefore requested to make clear findings that the issues as summarised in paragraph 7.24 above, and which are based on Dr Ford's new documents GWP22 to GWP24, are irrelevant for the purposes of making findings on the needs case. The evidence of Mr Kadar should be preferred as set out in the Written Submissions for the Applicant dated April and May 2023. For the avoidance of doubt, it is accepted on behalf of the Applicant that the investment driver for the G-T Connection is a relevant and material consideration, and in respect of which findings will require to be made. The evidence in relation to that consideration is addressed below.

#### *Relevant Statutory and Licence Obligations*

7.40. The Applicant's needs case is, as previously submitted, founded on the statutory obligations that are of relevance to the formulation of this transmission infrastructure proposal for which the section 37 consents are sought. Mr Kadar emphasised in his evidence that the technical requirement to replace the P-G via K and G-T Connections is due to the end of life condition of the existing transmission assets and there was, as a consequence, a security of supply imperative. The replacement of the existing transmission assets required to be carried out in a manner which was compliant with

the Applicant's statutory obligations under section 9 of the 1989 Act to develop and maintain an efficient, co-ordinated and economical system of electricity transmission, and, to facilitate competition in the supply and generation of electricity. In addition, as a result of the obligation imposed on Ofgem to ensure that consumers' interests in the security of supply of electricity are protected, under the Applicant's licence obligation as the holder of the transmission licence for the south west of Scotland, the Applicant is also obliged to ensure security of supply for its demand customers.

- 7.41. It is of importance to consider these duties in relation to the whole of the statutory framework under the 1989 Act. As previously submitted in Chapter IV, in determining the section 37 Applications the Scottish Ministers also have to ensure that in making the decisions that they have regard to the need to maintain security of supply for the customers who will be served by the KTR Project, and, the extent to which the transmission infrastructure development will assist in the reduction of targeted greenhouse gas emissions. It is therefore submitted that clear findings require to be made in relation to the investment drivers that have been approved by Ofgem for both of the Connections. These drivers are directly related to the statutory and licence obligations referred to above.
- 7.42. In giving evidence on the needs case, Dr Ford rejects the significance and relevance of the approval by Ofgem of the needs case based on a range of spurious reasons. Instead of accepting it as confirmation of the needs case for this Project by the relevant regulatory body, he attempted to go behind the Ofgem approval. In giving its approval for this Project, Ofgem not only had regard to the economic justification but also to all of the Applicant's statutory and licence obligations of relevance to the selection of the design solution, which were covered in the evidence of Mr Kadar, and also Mr Young when giving evidence on the importance of selecting the least cost design solution. Dr Ford was challenged in cross-examination concerning his statement in his written evidence that *"OFGEM's choice is related purely to the economic*

*interests of consumers*<sup>143</sup>. He was taken to section 3A of the 1989 Act and it was put to him that Ofgem's principal obligations when carrying out their functions included protecting the interests of both existing and future consumers in relation to their interests in the reduction of electricity supply emissions of targeted greenhouse gases, and, their interests in security of supply<sup>144</sup>. He agreed that the first obligation included the delivery of renewable energy and that he was wrong in his statement that Ofgem in approving the needs case for the KTR Project was concerned only with the economic interests of consumers<sup>145</sup>.

7.43. It was put to Dr Ford that when he discussed the relevant statutory context he had omitted important statutory obligations and had given a misleading account as to the relevant statutory context. This was as a result of failing to make reference to the obligations on Ofgem under section 3A to protect consumers' interests in security of supply and to facilitate effective competition between generators<sup>146</sup>, both of which are of considerable relevance to the KTR Project. In relation to this passage in the evidence of Dr Ford, the Reporters are invited to note his explanation for providing the misleading statement that is contained in paragraph 80 of his Inquiry Statement, as repeated in paragraph 23 of his Inquiry Report, that Ofgem's approval is "related purely to the economic interests of consumers". It was impressed upon him in cross-examination that he had an obligation as an "expert witness" to ensure that his evidence was not misleading on important factual matters of relevance to his "expert opinion".<sup>147</sup>

7.44. Dr Ford sought to explain away his misleading explanation as to the role of Ofgem, and the statutory context within which Ofgem operated, by arguing that he couldn't cover everything comprehensively. When it was suggested to him that he was in fact "cherry picking" as to what he included in his evidence and what he didn't, he confirmed that he had selected particular issues to convey a particular picture. In his

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<sup>143</sup> Paragraph 80 in GWP's Inquiry Statement and replicated as paragraph 23 in Dr Ford's Inquiry Report.

<sup>144</sup> Section 3A (1A)(a) and (b) as confirmed by Dr Ford at page 100 of the transcript of evidence for Day 2.

<sup>145</sup> Page 102 of the transcript for Day 2.

<sup>146</sup> Pages 103 to 107 of the transcript for Day 2.

<sup>147</sup> Page 107 *ibid*.

evidence he was presenting his picture based on his interpretation of a document, even though it was a technical document<sup>148</sup> the content of which was out with his field of expertise. However, at the end of that line of cross-examination he accepted that Mr Kadar was supported in his explanation as to Ofgem's reasons for approving the double circuit G-T Connection as an appropriate technical solution by the terms of the decision made by Ofgem. The main point that Dr Ford was trying to make was to question the benefits associated with an increase in capacity resulting from modernisation of the technology used to replace the G-T Connection. On this issue, the Reporters are requested to conclude that this part of the cross-examination demonstrated that when addressing the relevant statutory context, Dr Ford was guilty of selecting only those statutory obligations that fitted with the story that he wanted to tell in his evidence. This affects the reliability of his evidence as the Reporters cannot assume that his conclusions are based on a sound analysis of all relevant and material considerations.

7.45. Mr Kadar gave a clear explanation as to the nature of both the statutory and licence obligations of relevance to the technical engineering design requirements that had led to the decision to select a double circuit 132kV connection between Glenlee and Tongland Substations.<sup>149</sup> As he explained during his evidence-in-chief, the NETS SQSS<sup>150</sup> contains the standards that the Applicant is obliged to design the system against, including for demand connections (i.e. supplies to customers)<sup>151</sup>. For the G-T Connection this includes the requirement under the NETS SQSS for a 132kV double circuit connection to Tongland Substation that is a Grid Supply Point (GSP) for 13,000 customers<sup>152</sup>. This is a complete answer to Dr Ford's unsubstantiated claim that a single 132kV circuit on wood pole supports would suffice to provide the Connection between Glenlee and Tongland. It is clear from the cross-examination that in forming

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<sup>148</sup> Pages 107 to 109, *ibid.*

<sup>149</sup> Paragraph 8.1 and 8.2, paragraphs 11.6 to 11.9, and paragraph 13.4 of Mr Kadar's Inquiry Report (APP001.001), as explained in greater detail in his evidence-in-chief noted at pages 82 to 86 of the transcript for Day 1

<sup>150</sup> CD008.002

<sup>151</sup> Page 29 of the transcript for Day 1

<sup>152</sup> Paragraph 3.8 to 3.10 of Summary of SPEN's Case and the references in footnote 45 above



that opinion he has not had proper regard to relevant statutory or licence obligations.

7.46. Dr Ford accepted during his cross-examination that adherence to licence obligations was a regulatory matter<sup>153</sup>. He also accepted that he had not addressed these in his written evidence, either in the GWP Inquiry Statement which he had created, or, in his Inquiry Report and precognition which did not significantly add to the content of the Inquiry Statement<sup>154</sup>. He confirmed that he did not dispute the evidence from Mr Kadar in relation to licence obligations, apart from to introduce in his response a reference to Ofgem's recognition of undergrounding as a design solution in scenic areas<sup>155</sup>. This qualification did not bear upon Mr Kadar's evidence on the requirement to provide a double circuit connection to Tongland Grid Supply Point. In any event, GWP led no evidence in contradiction of the SPEN's case on undergrounding.

7.47. After a lengthy cross-examination over the NETS SQSS requirement that a double circuit connection should be provided to a GSP, Dr Ford eventually accepted that a single circuit connection to Tongland GSP would not comply with the requirements of Chapter 3 of the NETS SQSS<sup>156</sup>. He came to accept that Tongland Substation is a GSP and that there is no reason to suppose that would change or that it would not continue to require a double circuit connection<sup>157</sup>. This was another relevant and material consideration that was ignored, or left out of account in his written evidence, either on the basis he was unaware of the relevant licence obligations until he read, and heard, the evidence of Mr Kadar on Day 1 of Inquiry Session No.1, or, he didn't understand the significance of those obligations to his theory that a single circuit connection would suffice for the G-T Connection until he heard the evidence of Mr Kadar.

7.48. This is an important issue for two reasons. Firstly, the assertion by Dr Ford that a single circuit 132kV connection between Glenlee and Tongland Substations is

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<sup>153</sup> Pages 122 and 123 of the transcript of evidence for Day 2.

<sup>154</sup> Page 119 of the transcript of evidence for Day 2

<sup>155</sup> Pages 119 to 120 of the transcript of evidence for Day 2

<sup>156</sup> Pages 134 and 139 of the transcript for Day 2

<sup>157</sup> Page 134, lines 14 to 25 and pages 139 and 141 of the transcript for Day 2

sufficient from the perspective of the needs case is one of the main tenets of his evidence on the needs case. It underpins his claim that the application for the G-T Connection should be refused because in his opinion a double circuit 132kV Connection is not required. Secondly, it is also important because it is a clear example of the extent to which Dr Ford was prepared go in giving purportedly expert opinion evidence from a position of ignorance on the important regulatory framework of relevance to the needs case. As explained in the evidence of Mr Kadar, system planning depends upon a sound analysis as to the drivers for new transmission infrastructure works on the existing system. By conflating possible changes in energy policy related to the role of the ESO and locational marginal pricing, with the needs case for the G-T Connection, Dr Ford has misled himself as to the true relevant issues. More significantly, he is potentially misleading the Reporters and leading them into error and, in that regard, he has failed in his duties as an expert witness.

7.49. Another topic under the heading of statutory and licence obligations that is of considerable importance for the needs case is the statutory obligation to connect generators. Mr Kadar sets out the generation background in Section 9 of his Inquiry Report (APP001.001). Dr Ford unequivocally accepted the evidence from Mr Kadar that as a transmission owner, the Applicant has a duty under the licence obligations to connect generators and that if required by the ESO to make a connection offer the TO has no freedom of choice but is obliged to make a connection offer consistent with its licence obligations<sup>158</sup>. It was also discussed in the context of the obligation on the Applicant under section 9(1)(b) of the 1989 Act that transmission licence holders should facilitate competition in the supply and generation of electricity, with which Dr Ford did not take issue. The demand for connections to the transmission system from generators is misrepresented in the evidence of Dr Ford. It is summarised in SPEN's Summary of Case under reference to Tables 4 and 5 in Section 9 of Mr Kadar's Inquiry Report. As can be seen from Table 4, 137MW of renewable generation is

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<sup>158</sup>

Page 124 of the transcript for Day 2

contracted through connection agreements to connect to Tongland GSP. The way in which Dr Ford seeks to get around this issue is to once again conflate possible changes in energy policy with the needs case, as approved by Ofgem. This can be seen from pages 125 to 130 of the transcript for Day 2 of Inquiry Session No.1, when he introduces the possibility of changes in the role of the ESO and Ofgem in transmission system planning.

7.50. It is submitted that Dr Ford regularly employed a tactic of conflating different issues in order to distract from his lack of understanding of system planning and the issues of fundamental importance to the needs case from the perspective of the TO and regulator. He had to concede during his cross-examination in Inquiry Session No. 1, this possible change in approach to transmission planning does not bear upon the statutory and licence obligations that previously, and currently, apply to the Applicant, or which should be taken into account in this decision-making process on the needs case as approved by Ofgem. He accepted that on this issue, the relevant question for the transmission licence holder and Ofgem is the connected and contracted generation<sup>159</sup>. In that context the reliance that he, and GWP's Senior Counsel (in cross-examination of Mr Kadar and in his closing submissions), place on the decision to refuse consent for the proposed Mochrum Fell wind farm is irrelevant. As Mr Kadar explained, it remains in the contracted generation portfolio and therefore capacity on the transmission system has to be planned for. This was not challenged in the cross-examination of Mr Kadar's evidence by Mr Campbell and this part of his closing submission is contradictory to Dr Ford's acceptance under cross-examination that the Applicant was, and is, obliged to plan for contracted generation. The Reporters will appreciate from the reliable evidence provided by Mr Kadar that his evidence is entirely consistent with the obligation under section 9(1)(b) of the 1989 Act, to facilitate competition among generators.

7.51. It became apparent from both the evidence-in-chief led from Mr Kadar and the cross-

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<sup>159</sup> Pages 124 to 130 of the transcript for Day 2

examination of Dr Ford, that when Dr Ford had carried out his own researches for the purposes of preparing his challenge to the Applicant's needs case, he had misled himself over firm connection rights and non-firm connection rights. It was clear from his evidence that he had not taken into account the inter-relationship between various statutory and licence obligations that lead to the conclusion that TOs such as the Applicant have no choice but to plan for the transmission upgrades that are required to make its system available, and fit for purpose, to connect the generators who have been offered contracts to connect their new renewable generating stations. Mr Kadar emphasised on more than one occasion when giving his evidence during Inquiry Session No.1 that the offers are between the generators and the ESO. It is that contractual arrangement that dictates if a generator has firm connection rights or non-firm.

7.52. This is an issue that Dr Ford demonstrated during his evidence that he did not understand. The Reporters will recall that he engaged in grandstanding during his evidence-in-chief in the pretence that he was directing to the Applicant's Director of Transmission his explanation as to what constituted firm and non-firm connections. Unfortunately for him he then had to concede during his cross-examination that his explanation was wrong<sup>160</sup>. At which point he claimed that he didn't have access to the contractual details in the way that Mr Kadar had and therefore he hadn't been able to research the detail based on the contracts. It is observed that notwithstanding this limitation to his understanding it did not stop him from giving evidence on the topic, and which the Reporters were being invited to accept that it was the opinion of an expert witness.

7.53. These are the main issues that arose during Inquiry Session No.1 in relation to statutory and licence obligations as addressed in the evidence of Mr Kadar and Dr Ford. The Reporters are invited to base their findings in relation to these issues having regard to the legal submissions on the statutory framework under the 1989

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<sup>160</sup> See pages 192 to 194 of the transcript of evidence or Day 2

Act in Chapter IV, and the written evidence of Mr Kadar in his Inquiry Report as expanded upon during his oral evidence at Inquiry Session No.1. It is submitted that the selective and incomplete approach that Dr Ford adopted when addressing the statutory and licence obligations cannot engender confidence in the Reporters that they are not being misled by him. Examples have also been given above of instances in which he was shown to be wrong in his evidence. For these reasons it is submitted that the only safe course of action is for the Reporters only to have regard to Dr Ford's evidence on the statutory and regulatory framework if his evidence is consistent with that given by Mr Kadar. The remainder of Part 1 is concerned with the controversial issues that were debated in evidence during Inquiry Session No.1, which are of direct relevance to the needs case.

#### Relevant Controversial Issues

7.54. The issues addressed under this heading are either based on the evidence of Dr Ford during Inquiry Session No.1 or which arise from the closing submissions for GWP.

In summary these are the following matters:

- The Ofgem decision on the approved drivers for the KTR Project;
- Dismantling of the S Route;
- The requirement for additional capacity from the G-T Connection;
- Ofgem's derogation; and,
- Dr Ford's conflation of section 9 duties with Schedule 9 duties.

#### **Ofgem's Decision on the Needs Case**

7.55. Another area in which Dr Ford has introduced confusion through both his original evidence during Inquiry Session No.1 and his most recent evidence in the written submissions of 28 April 2023, is in relation to his own position in evidence regarding what he understands to be the driver for the G-T Connection. During Inquiry Session No.1 he accepted that the primary driver for the project was a non-load driver. He accepted that the needs case had been presented to Ofgem on the basis of it being non-load related investment driven by asset health. The Reporters will recall that

toward the end of his cross-examination he was taken through the Ofgem Final Determinations dated 3 February 2021 (CD008.006) and shown the entries for both scheme references linked to the relevant RIIO-T2 justification projects for both of the main elements of the KTR Project.

- 7.56. As can be seen from the front page of the Engineering Justification Paper for the Kendoon to Glenlee Reinforcement works<sup>161</sup>, i.e. the P-G Connection, the relevant reference number is SPT200144. It describes the primary investment driver as being “Load”. He was taken to the Ofgem Final Determinations and at page 80 he was shown the entry for SPT200144, which confirms the Ofgem T2 allowance for that project. Similarly from the equivalent Engineering Justification paper for the G-T Modernisation project, the scheme reference number was identified as SPNLT20109 and the primary investment driver described as Asset Health<sup>162</sup>. Under reference to page 82 of the Ofgem RIIO-2 Final Determinations he was shown the entry for that project with the same reference number and confirmation of the Ofgem T2 allowance<sup>163</sup>.
- 7.57. There is therefore no basis whatsoever for the statements made by Dr Ford in his previous evidence and repeated in his most recent evidence, that it is only the KTR Project as a whole that has been approved by Ofgem. Paragraph 5.4 of Dr Ford’s Submission dated 28 April 2023 demonstrates that his intention all along was to re-open issues in respect of which he had made significant concessions during Inquiry Session No.1. However, to still be maintaining as he does in paragraph 5.4 of the 28 April 2023 Submission that the Applicant has only shown Ofgem approval for the KTR Project as a whole, and not an approval specific to the G-T Connection is a misleading statement by him of what he knows is an untruth; (given the process of taking him through CD008.004 to CD008.006 in cross-examination in Inquiry Session No.1). It has been fully explained in the evidence of Mr Kadar and Mr Young that the increase in capacity that will result from the modernisation of the G-T Connection

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<sup>161</sup> CD008.004

<sup>162</sup> CD008.005

<sup>163</sup> CD008.006

is an incidental benefit of the replacement of the Connection due to the asset health. It is the modern technology used in the design of the Connection that provides this benefit.

- 7.58. As he well knows from his cross-examination, Ofgem has approved this element of the KTR Project based on the primary investment driver of asset health, i.e. non-load related. That is sufficient and Dr Ford has singularly, and consistently, failed to explain the basis upon which he contends that the G-T Connection requires a separate approval for an incidental increase in capacity that results from the modernisation project. As explained in the evidence of Mr Kadar and Mr Young, the SPEN design for the G-T Connection is the lowest cost option to replace the end of life existing connection between Glenlee and Tongland. Apart from suggesting a single circuit Trident wood pole connection as a cheaper alternative, which would not comply with the NETS SQSS, that conclusion has not been challenged.
- 7.59. Another misleading aspect of his new evidence in the 28 April 2023 written submission, is his reference to section 12 and 13 of Mr Kadar's Inquiry Report in paragraph 5.4, for the purposes of asserting that the Applicant's evidence "does not show Ofgem approval was specific to the G-T connection" (his emphasis). This is misleading based on the exercise during his cross-examination at Inquiry Session No.1, as described in the above paragraph, which he accepted did show approval by Ofgem that was specific to the primary investment driver for the G-T Connection and, separately, the load driver for the P-G Connection. It is also misleading because his statement is based solely on the content of Mr Kadar's Inquiry Report when he knew very well from his cross-examination during Inquiry Session No.1 that Mr Kadar had also produced the supporting documentary evidence in CD008.004 to CD008.006. This is re-emphasised in Mr Kadar's Further Written Submission of 5 May 2023 and in which he challenges Dr Ford's assertion that the design would result in a 3-fold increase in capacity; (thereby giving yet another reason to question Dr Ford's "expertise" in system planning).
- 7.60. It should not be forgotten by the Reporters that Dr Ford has accepted that for the P-

G Connection, Ofgem had approved the increased investment associated with the different technical design of L7 towers and twin phase conductors for the purposes of increasing the capacity of the P-G Connection. He has stated on more than one occasion in his evidence to the Inquiry that he did not take issue with any aspect of the P-G Connection<sup>164</sup>. As previously acknowledged, he did seek to argue during Inquiry Session No.1 that there was not specific approval by Ofgem for the G-T Connection<sup>165</sup>. Initially he also sought to argue that approval of projects with non-load drivers fell outside of Ofgem's approval process but ultimately came to accept that his position in that regard was simply wrong<sup>166</sup>. That is demonstrated through the referencing of Dr Ford to documents CD008.005 and CD008.006 during his cross-examination. It is also addressed in paragraphs 3.12 to 3.15 of the Applicant's Summary of its Case.

7.61. This seems to have been forgotten by GWP's Counsel when preparing his closing submissions. On page 8 of his closing submissions on the needs case he appears in the first paragraph to be referring to the KTR Project as a whole and asserts that there is no need to provide additional capacity for either the G-T or P-G Connections. Apart from the fact that this is in contradiction of the evidence of his own witness, which was given on numerous occasions, it is based on flawed reasoning. In making that submission he refers to his witness's contention that there is no foreseeable need in the future to provide further transmission capacity for new generation to connect at either Tongland GSP or beyond up to Glenlee substation. This contradicts the concessions made by his own witness during cross-examination under reference to Tables 4 and 5 of Mr Kadar's Inquiry Report (pages 19 and 20), when Dr Ford accepted that the Applicant did not have any choice so far as the ESO is concerned other than to provide transmission system capacity for contracted generation.

7.62. Another misleading aspect of GWP's closing submissions on this topic relates to the key drivers for these two Connections. The final paragraph on page 8 of GWP's

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<sup>164</sup> The design of the P-G Connection is addressed in SPEN's Summary of Case at paragraph 3.7

<sup>165</sup> This can be seen from the debate in evidence from page 204 to 215 of the Transcript for Day 2

<sup>166</sup> Page 215



closing submissions makes reference to the technical justification for the G-T Connection and cites Mr Kadar's evidence in the Further Written Submission of 5 May 2023 in that regard. It is contended that security of supply for the 13,000 customers supplied by the Tongland GSP is the main driver for addressing the end of life condition of the existing 132kV connections to Tongland GSP. It is then argued that this is different to the justification given in paragraph 2.13 of Mr Kadar's precognition. This reference is erroneous as there is no paragraph 2.13 in that document. Based on the context of what is said in the GWP closing submissions it appears that should in fact be a reference to paragraph 2.14 of Mr Kadar's Inquiry Report. The statement made in that paragraph of closing submissions is misleading as it is not comparing like with like. The justification stated by Mr Kadar in paragraph 2.14 of his Inquiry Report is specific to the two key drivers for the KTR Project as a whole and not specific to the G-T Connection.

7.63. It is therefore not surprising that they are not the same because Mr Campbell is comparing different things. This difference was demonstrated during the cross-examination of Dr Ford on Day 2 of the Inquiry, through reference to the separate Engineering Justification papers for the P-G Connection via Kendoon, and, the G-T Connection<sup>167</sup>. The significance of those lines of cross-examination and Dr Ford's answers in evidence appears to have been missed by Mr Campbell or just not understood. Contrary to his expectation as expressed in closing submissions, there is no sound evidential basis for the conclusion that he draws at the end of that paragraph by suggesting that the Applicant's "*stance on "need" for the Proposal is supportive of GWP's position*". Quite the contrary; Mr Kadar does not conflate issues in his evidence when addressing quite separate considerations and it is GWP's Counsel who has failed to understand that he is not comparing like with like, and muddling up the different justifications for the P-G Connection with the justification for the G-T Connection.

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CD008.004 and CD008.005 as discussed in paragraphs 7.56 to 7.59 above

- 7.64. The Reporters are therefore invited to base their findings in relation to the Ofgem approval of the needs case and the approved primary investment drivers for the G-T Connection and the P-G via K Connection on the incontrovertible and reliable evidence of Mr Kadar. Dr Ford's changing and unfounded evidence that he gave on issues related to the Ofgem approval of the Applicant's needs case for both the G-T and P-G Connections, which are discussed above, reflect very poorly on his credibility as a witness generally, and serve to destroy any credibility that he could claim as an expert witness.
- 7.65. The Reporters should be aware that Dr Ford and GWP's Counsel are encouraging the Reporters down a route that would result in the Scottish Ministers being in breach of their obligations under section 3A of the 1989 Act. By arguing that Ofgem's approval of the needs case for the design solution being promoted by the Applicant should be disregarded and the section 37 Application for the G-T Connection refused on that basis, they are encouraging the Reporters and Scottish Ministers to ignore the statutory obligation to have regard to consumers' interests in security of supply, reducing electricity supply emissions of targeted greenhouse gases and facilitating competition among generators of electricity. Such is the importance of these issues the Reporters are respectfully requested to make clear findings that these interests would be supported by the consenting of the KTR Project, as designed by the Applicant and as approved by Ofgem.

### **Dismantling of the S Route**

- 7.66. The next controversial issue that featured in Dr Ford's evidence and is surprisingly focussed upon in Sections 9 and 10 of GWP's closing submissions is the decommissioning of the S Route; i.e. the existing 132 kV single circuit OHL between Tongland and Dumfries Substations. Both Dr Ford in his evidence to the Inquiry, and GWP's Counsel in closing submissions, display an incomplete understanding as to the relevance of this circuit and the connection between the two Substations in system planning terms. The need to radialise the transmission system in this part of

south west Scotland was explained clearly in the evidence-in-chief of Mr Kadar and his evidence on that issue was not challenged. It is effectively summarised in paragraphs 3.3 to 3.4 and 3.6 of the Applicant's Summary of Case.

- 7.67. Dr Ford has shown an inconsistency in his position in relation to the decommissioning of the S Route. On the one hand he has accepted without question that there are the system design benefits spoken to in the evidence of Mr Kadar as to the need to re-configure the transmission network in this part of south west Scotland. He doesn't dispute that it is necessary to create a radialised system rather than the Main Interconnected Transmission System ("MITS") that currently exists in order to remove what Mr Kadar describes as a major bottleneck on the network. He doesn't dispute that this necessarily involves dismantling the existing single circuit between Tongland and Dumfries Substations <sup>168</sup>.
- 7.68. However, he does contend that it is the decommissioning of the S Route that gives rise to the need for a double circuit between Glenlee and Tongland. In arguing that case he ignores the wider system planning need for the dismantling of the S Route, and, the evidence of Mr Kadar that the existing S Route is also in an end of life condition as explained in the Inquiry Report of Mr Kadar<sup>169</sup>. It was explained by Mr Kadar that to address the asset condition for the S Route with a replacement OHL would be more expensive because the route is 10km longer than the G-T Connection and it would not deliver the benefits of radialising the network through breaking the connection between Tongland and Dumfries Substations. Dr Ford does not have an answer to the need to reconfigure the design of the system to achieve radialisation of the 132kV network. But for the purposes of seeking to circumvent the significance of the regulatory requirement under the NETS SQSS for a dual circuit connection to Tongland GSP, both Dr Ford and GWP's Counsel continue to pretend that in terms of system planning, the retention of the S Route is an option.
- 7.69. It is stated in closing submissions that the Applicant has not demonstrated that the

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<sup>168</sup> Pages 138 to 139 of the transcript for Day 2

<sup>169</sup> Section 7 of APP001.001 and Figure 3 on page 17 and Appendix 3 to the Inquiry Report

existing overhead line could be left in place for another 5 to 15 years. That is to fail to understand the significance of the asset condition assessments that have been carried out not just for the S Route but also the R Route and N Route, as discussed in Section 7 of Mr Kadar's Inquiry Report. He was not challenged on this evidence. As noted in paragraph 3.13 of the Applicant's Summary of Case, the G-T Connection has been approved by Ofgem as the most economic and efficient solution for the replacement of ageing assets.

7.70. The submissions on page 9 of GWP closing submissions have no basis in evidence and also misrepresent the evidence that is before the Inquiry. For example, the assertion that: *"The Applicant has simply assumed that because Tongland to Dumfries is a greater overland distance from Glenlee to Tongland, that a greater benefit will flow from the removal of the longer line, and the Glenlee to Tongland replacement will be less expensive."* These assertions just ignore the need to develop the transmission system in an economic and efficient manner, and to radialise the network through the removal of the transmission connection between Tongland and Dumfries<sup>170</sup>. The removal of the S Route between Tongland and Dumfries is not part of the KTR Project as it has its own system design objective. For these reasons GWP's submissions in relation to the Applicant's decision to replace the existing single circuit G-T Connection with a double circuit, are similarly unfounded in evidence and ignore the reality of the system design considerations that Mr Kadar addressed in his evidence.

7.71. The Reporters are invited to base their findings on the dismantling of the S Route on the reliable evidence of Mr Kadar.

### **Additional Capacity for Connections at Tongland**

7.72. GWP's Counsel is also incorrect in submitting in the penultimate paragraph of Sections 9 and 10 of Closing Submissions that there is no need for connection of renewable generation at Tongland and that the Applicant has not responded as regards the unsuitability of the area around Tongland for the development of

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<sup>170</sup> Paragraph 4.3 of the Applicant's Summary of Case

renewable generating stations. This submission ignores the evidence from Mr Kadar that there is currently 137MW of contracted generation connected or awaiting connection at Tongland GSP and the new proposed circuits between Tongland and Glenlee would provide the capacity for this generation to connect<sup>171</sup>. Contrary to the picture that both Dr Ford and Mr Campbell are attempting to paint for the purposes of arguing GWP's case, there is already a clear needs case for increased capacity for generation connections at Tongland which cannot proceed without the KTR Project. In regulatory terms, it matters not that this increased capacity is an incidental benefit of the Ofgem approved primary investment driver to address asset health and replace the existing G-T connection with a dual circuit 132kV OHL. Yet another aspect of system planning that neither Dr Ford or Mr Campbell comprehend but that does not stop them painting their own picture from a position of ignorance.

7.73. The submission is, of course, based on Dr Ford's theorising that the G-T Connection should be regarded as the wrong development in the wrong place, because it is his position that generators of renewable energy are unlikely to require a transmission connection for new renewable generating stations that would require a connection to either Tongland substation or the transmission network between Tongland and Glenlee Substations<sup>172</sup>. This is not consistent with Dr Ford's acceptance in cross-examination that for the Applicant as the TO, under both the statutory and licence obligations there is no freedom of choice in those obligations to connect generators requesting connections through the ESO<sup>173</sup>.

### **Ofgem's Derogation**

7.74. Finally, in terms of the closing submissions from GWP's Counsel, it is suggested at the end of Sections 9 and 10 that "there is no analysis of the effect of OFGEM's derogation upstream and north of Glenlee." This is just wrong and is another unjustified and misleading statement made on behalf of GWP in relation to the needs

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<sup>171</sup> Paragraph 13.5 of Mr Kadar's Inquiry Report, APP001.002

<sup>172</sup> This was a line of argument in relation to the needs case that was more clearly developed in Hearing Statement 7 for GWP on NPF4 and Dr Ford's Submissions

<sup>173</sup> Pages 122 to 124 of the transcripts for Day 2

case. The sentence that follows that statement in the final paragraph on the needs case is just as flawed and misleading. It is intended to create the impression that the technical design for the P-G Connection fails to meet the requirements of the NETS SQSS and requires a “long-term” derogation from Ofgem to permit operation of this Connection that would be non-compliant with the NETS SQSS, and, which would mean that “all generation in SW Scotland” that is served by the KTR Project will remain constrained.

7.75. This is an issue that has been fully explained in the evidence of Mr Kadar and consequently, this paragraph in GWP’s submissions appears to indicate that the explanation has either not been understood by those representing GWP on the needs case, or, that there has been an inadequate and flawed review of the Applicant’s evidence on this issue for the purposes of drafting GWP’s closing submissions. Reference is made to Section 10 of Mr Kadar’s Inquiry Report in which the system capability of the existing network from a generation connection perspective, and, the capability of the network with the KTR Project constructed and operational, are both discussed. The explanation in Mr Kadar’s Inquiry Report includes references to the requirements set out in Chapters 2 and 4 of the NETS SQSS that are relevant to increasing capacity for generation connection, as well as Chapter 3 which has been discussed in relation to demand security; i.e. security of supply.

7.76. In paragraphs 10.10 and 10.11 of Mr Kadar’s Inquiry Report he explains the approach that has been taken by the Applicant to ensure the secure operation of the transmission system through the management of the output of renewables development in some areas of SW Scotland. He has explained the nature of the derogation that has been granted by Ofgem in relation to the requirements in Chapter 2 of the NETS SQSS. This has been to relieve the Applicant of its obligation to plan and develop its transmission system in accordance with specific aspects of the NETS SQSS that relate only to generation connections and specific boundaries. The relevant decision and direction from Ofgem have been produced by Mr Kadar as Inquiry documents APP001.007 and APP001.008, respectively.

- 7.77. This was expanded upon in Mr Kadar's evidence-in-chief. Under reference to the executive summary in APP001.007 he explained the reason for the derogation being requested and granted for the period up to October 2026<sup>174</sup>. The first reason being that it takes account of the Applicant's aim at that time, to complete the KTR Project prior to that date in accordance with the RIIO-T2 business plan. The second reason is that by that date both Ofgem and the Applicant expect a further review of contracted generation, in conjunction with another economic assessment, to establish if additional reinforcements of the system are required or if the use of innovative GEMS techniques would be the more economic alternative to carrying out another reinforcement of the system (i.e. in addition to the KTR Project).
- 7.78. This issue was addressed in the Applicant's Summary of Case in Section 5 of Chapter A at pages 15 and 16, which was lodged 2 weeks before GWP's closing submissions, from which it is obvious that the content of GWP's closing submission is not based on the accurate account of the facts in the Summary of Case. It is the transmission system north of Polquhanity, not the part of the transmission system that would be part of the KTR proposed reinforcement, to which the derogation from Ofgem applies in relation to contracted generation. The derogation does not permit the "long-term operation" of the G-T Connection in non-compliance with the NETS SQSS. In any event the derogation that applies to the part of the transmission system that is north of Polquahnity, applies only to specific boundaries listed in the decision and direction (APP001.007 read together with APP001.008).
- 7.79. When the other measure to manage non-compliance with the obligation to connect contracted renewables generation is taken into account, namely the development of GEMS which is also discussed in Mr Kadar's evidence, the correct conclusion that should be accepted by the Reporters is that these steps enable the Applicant "to progress the development of the system in an economic and efficient manner"<sup>175</sup>, in accordance with the Applicant's obligations under section 9 of the 1989 Act. As noted

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<sup>174</sup> Page 42 of the transcript for Day 1 of the Inquiry

<sup>175</sup> Paragraph 5.4 on page 16 of SPEN's Summary of Case

in paragraph 5.3 on page 16 of the Summary of the Applicant's Case, the GEMS system has been approved by Ofgem as part of the RIIO-T2 Final Determination<sup>176</sup>, and it is currently being designed with the system operator, NGENSO. Despite it having been explained in Mr Kadar's evidence it is not taken into account at all in the closing submissions for GWP in relation to the issue of constrained contracted generation.

7.80. The Reporters are invited to treat GWP's closing submissions on this issue as unreliable and not properly founded in the evidence before the Inquiry. They are respectfully invited to base their findings on Mr Kadar's sound explanation as to the reasons for, and the effect of, the derogation that was sought. In addition they are reminded that Mr Kadar stated during his oral evidence during Inquiry Session No.1 that given the delays that have occurred in the consenting process, it is probable that the Applicant will require to seek an extension of the derogation.

#### **Conflation of section 9 duties with Schedule 9 duties**

7.81. Dr Ford conflates the Scottish Ministers' duties under Schedule 9 of the 1989 Act in relation to the environment, with their duties under section 9 of the 1989 Act, for the purposes of arguing that the approval of the needs case by Ofgem does not entitle the Scottish Ministers to accept the technical and economic justifications for the KTR Project. Although he accepted in cross-examination that it is the section 9 duties that he sets out in paragraph 4 of GWP's Inquiry Statement<sup>177</sup> that are the most relevant to Inquiry Session No.1, he nevertheless stated that the Scottish Ministers also have to take into account "the environmental considerations"<sup>178</sup> when considering the needs case. He came to concede that under the 1989 Act it was the ESO, the TO and Ofgem who were involved in the delivery of the section 9 duties, whereas Scottish Ministers had to have regard to their obligations under section 3A.

7.82. His confusion on this issue was apparent from the outset of the Inquiry Process when

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<sup>176</sup> Page 89 of CD008.006 (hard copy) first row, in relation to GEMS.

<sup>177</sup> Pages 83 to 84 of the transcript for Day 2

<sup>178</sup> Page 85 of the transcript for Day 2



he co-authored the written submissions dated 27 July 2022 with Mr Campbell. Their submissions argued that an Inquiry Session on the needs case is justified on the basis that *“there has not been a comprehensive assessment of the proposal which encompasses the combined economic, technical and environmental considerations arising from the proposal.”*<sup>179</sup> The source of Dr Ford’s mistaken belief that environmental issues had a bearing upon whether or not the needs case was justified, turned out to be linked to his theory that he is concerned with “the right development in the right place” and the preservation of environmental “amenities” through siting generation close to the demand centres. This emerged from the next topic that came to be discussed during this part of Inquiry Session No.1 in relation to section 9 duties, which is addressed in the following sub-paragraph.

7.83. In relation to section 9 duties, Dr Ford challenged the position of the Applicant that the design of the KTR project would result in an efficient and co-ordinated system of electricity transmission<sup>180</sup>. As noted from the section of the transcript covering this part of Dr Ford’s cross-examination, his argument was that the Applicant’s approach to project planning reflected an “incrementalist approach” and not a co-ordinated approach<sup>181</sup>. Although he confirmed that he had not challenged Mr Kadar’s evidence as contained in his Inquiry Report on the section 9 duties both in relation to efficiency or the requirement to design a co-ordinated transmission system<sup>182</sup>, he sought to argue that the broader issue of concern to him was that the Applicant had not co-ordinated the design of the transmission system with the location of demand centres. This was what he was referring to in paragraphs 40 to 42 of the Inquiry Statement. He confirmed that he was arguing this position under reference to a paper that had been delivered by Sir William Holford, at the time when he was a Professor of town and country planning. This is a reference cited at the end of paragraph 41 of the Inquiry Statement and footnoted, and which came to be produced as an inquiry

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<sup>179</sup> Unnumbered paragraph 4 within Section 1.2 and paragraph 1.3 of the written submission dated 27 July 2022.

<sup>180</sup> Paragraphs 41 to 42 of the Inquiry Statement that are not repeated in either his Inquiry Report or precognition on technical justifications, as confirmed during his cross-examination at pages 87 to 94 of the transcript for Day 2.

<sup>181</sup> Pages 86 to 94 of the transcript for Day 2

<sup>182</sup> Pages 90 and 91 of the transcript for Day 2

document, GWP4. As is clear from the preamble to the paper, it was a lecture delivered to the Royal Society of Arts in November 1959 on the subject of “Power Production and Transmission in the Countryside: Preserving Amenities”.

7.84. Dr Ford was clearly “painting a picture” in terms of his use of the paper, for the purposes of seeking to argue in this part of his written evidence that the design of the KTR Project was not an efficient or co-ordinated design for the purposes of section 9 of the 1989 Act. The picture that he has tried to paint throughout the Inquiry Process is that summarised in paragraph 41 of GWP’s Inquiry Statement. He was taken to task on his statement in paragraph 40 that it should be concluded that Holford would not have approved of the proposal as it conflicted with Holford’s approach as to “how power lines should be developed”. It was put to him that if he was referring to the Holford Rules, which he confirmed that he was, that the paper was outdated and that the most up-to-date versions of the Holford Rules were before the Inquiry (CD006.001), which he accepted. He also accepted that these rules were still used by the Transmission Owners for the routeing of overhead lines and were not used for the purposes of siting generation<sup>183</sup>.

7.85. Although it is accepted that this very dated paper contained an early articulation of the Holford Rules, the Reporters are referred to the evidence of Mr Walker, the Applicant’s Landscape Architect throughout the development of the KTR Project, and, Mr Marc van Grieken, the Landscape Architect previously with LUC who advised the Applicant on routeing and the application of the Holford Rules, during Hearing Session No.2. They explained that the guidance notes added to the Holford Rules by NGC and SHETL by the renowned Landscape Architect, the late Mark Turnbull, have been invaluable in making routeing decisions.

7.86. Although Dr Ford accepted that the Holford Rules and guidance notes produced by the Applicant<sup>184</sup> were the rules that should be used for routeing overhead lines and not for siting generation, he continued to adhere to his theory, based on GWP4, that

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<sup>183</sup> Page 90 of the transcript for Day 2

<sup>184</sup> CD006.001

to “minimise the effect overall” of overhead line development, it was necessary to site generating stations as close as reasonably possible to centres of demand<sup>185</sup>. It is claimed by him that an “incremental project-by-project” approach that he suggests the Applicant has taken to the KTR Project is not a coordinated approach because it is “not coordinated with a coherent plan for energy developments in the region”<sup>186</sup>.

7.87. The Reporters are invited to reach the opposite conclusion based upon the reliable evidence produced by the Applicant and spoken to by not only Mr Kadar, but also Mr Jack in Hearing Session No. 2 on Days 6 and 7. In relation to the needs case, Mr Kadar explained the extent to which the Applicant had examined various alternative scenarios relating to the generation background in this area of south west Scotland that covered the whole of Dumfries and Galloway. The approach to planning was based on a detailed assessment of the most efficient, coordinated and economic way to replace ageing assets in the area and to remove the bottlenecks in the transmission system in the south west of Scotland, in order to increase capacity for the connection of new renewable energy generation **in the same region**, and make necessary provision for the export of generation **from the same region**; (emphasis added)<sup>187</sup>.

7.88. Under reference to CD001.225, Mr Kadar confirmed that this document related to one of the presentations given by the Applicant to the Dumfries and Galloway Developer Forum in November 2016 in which Mr Kadar participated with a presentation on SPT’s Network Planning<sup>188</sup>. It was carried out at the commencement of the public consultation process after it has been decided not to proceed with the 400kV supergrid proposed development that was known as the DGSR, as a consequence of the negative outcome from the cost benefit analysis (“CBA”) carried out by the ESO. Mr Kadar confirmed during his evidence-in-chief that the proposed scheme that is described on page 9 was what was referred to at that time as “the reduced scheme”,

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<sup>185</sup> Criteria (c) in paragraph 41 read together with paragraph 42 of Dr Ford’s Inquiry Statement, and pages 92 to 94 of the transcript for Day 2

<sup>186</sup> Paragraph 42 of Dr Ford’s Inquiry Statement.

<sup>187</sup> Pages 23 and 24 of the transcript for Day 1 during Mr Kadar’s evidence-in-chief

<sup>188</sup> Page 68 of the transcript of evidence for Day 1

and which subsequently became known as the KTR Project<sup>189</sup>. The context is provided in the earlier presentation to Dumfries and Galloway Developer Forum in July 2016 that explains the reasons for departing from the proposed strategic wider works that was being developed under RIIO-T1 (i.e. the DGSR project), to “the Reduced Scheme”.

7.89. The earlier presentation in July 2016 to the Forum included another presentation by Mr Kadar. He confirmed that pages 6 and 7 of the slides for his presentation to the Forum, which are included in inquiry document CD001.228, are the drivers that were presented to Ofgem in the Applicant’s needs case and approved by Ofgem, and, which are discussed in his evidence to the Inquiry<sup>190</sup>. He confirmed that the drivers have remained the same throughout the intervening period. It will be noted by the Reporters that in relation to Dr Ford’s contention that the KTR Project is unrelated to the region of Dumfries and Galloway that as long ago as 2016, this was a project that was being designed to:

- (i) modernise existing end of life transmission assets in the region to secure supplies to customers in the region, the need for which was based on the information contained in the figure on page 6 of CD001.228, which Mr Kadar confirmed was the same figure as appended as Figure 3 to his Inquiry Report<sup>191</sup> and discussed in his evidence; and,
- (ii) provide additional capacity for generation customers in Dumfries and Galloway, facilitating the connection of anticipated renewable generation.

7.90. The summary that is given on page 8 of Mr Kadar’s presentation addresses the conclusions drawn at that time in relation to the CBA carried out for the strategic wider works, that did not support progressing the DGSR project. It is noted in the Conclusions on the CBA<sup>192</sup> that the reduced scheme provides significant benefits to the system and GB consumers. Mr Kadar was then taken during his evidence-in-

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<sup>189</sup> Page 9 of CD001.225

<sup>190</sup> Page 71 of the transcript for Day 1

<sup>191</sup> APP001.001

<sup>192</sup> Page 14 of Mr Kadar’s presentation in CD001.228

chief to the summary of feedback from the third round of consultation published in July 2019 reporting on the consultation exercise carried out between the end of November 2017 and the end of January 2018, which was the last round of consultation prior to applying for development consent for the KTR Project<sup>193</sup>. Mr Kadar was taken to the summary of the drivers for the project in paragraphs 2.1.3 and 2.1.4 of the Inquiry Report and he confirmed that under reference to the documents that he had been taken to during his evidence-in-chief, these had been the drivers from “Day 1”<sup>194</sup>; i.e. from the outset of the consultation process on the reduced scheme (July 2017) and also the drivers for the DGSR.

- 7.91. Bearing in mind that this evidence had been given by Mr Kadar on Day 1 of the Inquiry, it is highly significant that no evidence was led from Dr Ford when he came to give evidence on Day 2 of Inquiry Session No.1, to contradict any of Mr Kadar’s evidence on the genesis of the “reduced scheme” that became the KTR Project. It was telling that during his evidence-in-chief during Inquiry Session No.1 that Dr Ford spent more time enthusiastically telling the Inquiry about his researches from which he reached the conclusion that Scotland is generating more electricity than it requires for its indigenous needs, that possible changes in relation to LMP, and the possible the role of the Future Systems Operator (FSO) in systems planning caused him to conclude that the approach to the siting of new generation in Scotland was increasing costs to consumers and “literally wasting money”.
- 7.92. This lecture from Dr Ford begins on page 28 of the transcript for Day 2 when he is asked in evidence-in-chief to tell the Inquiry about: the picture in Scotland overall; to the capacity of the boundaries that can cause bottlenecks in the Scottish part of the GB transmission system preventing export to England; to LMP and the cost to consumers associated with constraint costs; to his final conclusion from all of this “research” that he has carried out that is stated at the end of the evidence-in-chief on page 64 of the transcript. He delivers this conclusion using language that is referred

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<sup>193</sup> Page 6 of CD001.230

<sup>194</sup> Page 74 of the transcript for Day 1

to at the end of the paragraph above, which is not indicative of an objective and independent expert. That language is reflective of the ill-considered statement that he wrote in paragraph 42 of the GWP Inquiry Statement that: *“As part of the ad hoc littering of energy development anywhere across the countryside, the proposal facilitates energy development a long way from where the energy itself will be consumed”*.

7.93. He cares not that his theories and his own conclusions on this topic are not relevant to the Reporters’ fact-finding role or the Scottish Ministers’ decision-making role. He cares not that his theories are not based on fact as regards the reality of the statutory and licence obligations on the Applicant, nor that the Applicant has no freedom of choice regarding the contracted renewables generation that they are obliged to connect. It is highly significant that his theory about locating new renewables generation currently locating in Scotland, into England, is not consistent with the obligation on the Applicant to make its transmission system available for connections of new generating stations to facilitate competition. This is a statutory obligation that he essentially ignores throughout his theorising over the future shape of the electricity industry throughout Great Britain. On that basis, it will be very clear to the Reporters that Dr Ford has no evidential basis for his “submissions” in paragraph 42 of his Inquiry Statement that the section 37 Applications are “driven by an incrementalist approach, which is not coordinated with a coherent plan for energy developments in the region”.

7.94. Mr Kadar’s unchallenged evidence confirmed that the driver for increased transmission capacity is the primary investment driver for the P-G Connection, which was not challenged, to increase the ability to export generation in the region out of the region, and to fulfil contractual obligations to connect generators who have agreements with the ESO for connection within the region, which the Applicant is obliged under statute and its licence to facilitate. It is submitted that this is a complete answer to Dr Ford’s own pet theories that the Reporters and the Scottish Ministers should set aside as not only irrelevant to their decision-making functions but, also, for which he has no credible evidential basis. It is also a theoretical approach to

evaluating the need for transmission infrastructure projects that flies in the face of all of the statutory and licence obligations spoken to in evidence by Mr Kadar.

- 7.95. To summarise on the needs case, the Reporters are invited to conclude that Dr Ford cannot be treated as an expert witness on the needs case and that his evidence is both unreliable and lacking in credibility.
- 7.96. The Reporters are invited to accept the evidence of the Applicant's witness, Mr Diyar Kadar, as both reliable and credible and to find that he has the necessary expertise to be giving evidence on this Topic as an expert witness. They are therefore invited to conclude that the Applicant has demonstrated that the technical and economic justifications have been established.

### **Part 2 - Strategic alternatives**

- 7.97. In addition to clearly demonstrating that the technical and economic justification for the KTR Project has been established, the Applicant has also shown that the appropriate technology and location have been selected.
- 7.98. The Applicant considered a range of strategic alternatives for the KTR Project when deciding on the most appropriate means of delivering the necessary electricity transmission network reinforcements. The work carried out by the Applicant as part of system planning in evaluating the availability of strategic alternatives also served to inform the evaluation for EIA purposes of the main alternatives that had been studied, as noted in Chapter VIII.
- 7.99. It is important to highlight at the outset that the Applicant's pre-application engagement with communities and key stakeholders, undertaken over a five-year period through three distinct rounds of consultation, has supported the multi-stage design process followed for the KTR Project. The engagement included the publication and sharing of technical information in relation to the overhead line designs (steel lattice towers and wood poles), including connection capacities for each of the proposed overhead lines with key stakeholders, communities and connection customers.

### Evidence in relation to consideration of strategic alternatives

- 7.100. Matters relating to the consideration of strategic alternatives were discussed during Inquiry Session no. 2. The expert witnesses representing the Applicant during Inquiry Session no. 2 were Mr Simon Lloyd, Mr Kadar, Mr Young and Mr Pearse Murray. The other parties who took part in the session were GWP represented by Dr Ford, and Mr Kerr who appeared as a third party objector.
- 7.101. The team representing the Applicant in relation to matters relating to strategic alternatives consisted of experts with appropriate professional qualifications and professional experience in relation to those matters. Their expertise, technical skills and appreciation of the statutory duties and licence obligations binding on the Applicant have not been questioned by any party.
- 7.102. As noted in Appendix 2 of the Applicant's Inquiry Statement, Mr Lloyd's experience includes over 40 years of experience with high voltage power cables. He has been involved in a considerable number of projects in both the UK and abroad. His expertise is evident from the trust placed in him by his peers – as a member of the IET, in 2011 he was invited to be a member of the IET Project Board producing the IET Electricity Transmission Costing Study which had been requested by the chair of the Infrastructure Planning Commission (IPC). He is also a member of Cigre at which he has contributed as a UK member on an underground cable installation working group. His evidence to the Inquiry was largely unchallenged, and is strongly recommended to the Reporters. It is submitted that considerable weight can be placed on Mr Lloyd's expert evidence. It is notable that no other party to the Inquiry was represented by an expert in relation to the matters addressed in Mr Lloyd's evidence.
- 7.103. The qualifications and experience of Mr Kadar are set out at the start of this Chapter, and are not repeated here. It is submitted that Mr Kadar is a skilled professional, with breadth of experience in relation to the matters he addressed in evidence. It is submitted that considerable weight can be placed on his expert evidence.
- 7.104. Mr Young is a mechanical engineer experienced in developing feasibility designs and costs for engineering solutions on the transmission network. His position as Lead



Design Engineer within the Applicant's business is directly relevant to the matters he gave evidence on. Mr Young's evidence demonstrated his extensive knowledge of technical issues relating to the various means of delivering electricity connections, and comprehensive understanding of statutory duties and licence obligations binding on the Applicant. The Reporters are invited to place considerable weight on his evidence.

7.105. Mr Murray is the Transmission Director of SP Transmission plc. His qualifications are noted in his Inquiry Report (APP002.003). Mr Murray is a very knowledgeable senior professional, with 34 years professional experience in large scale, capital intensive environments, including 25 years in senior leadership positions in the generation and networks sectors of the electricity industry. Mr Murray is responsible for the operation, maintenance and development of the SPT transmission network, in line with the Company's obligations under its Transmission Licence. His knowledge and understanding of the statutory duties and licence obligations binding on the Applicant were clear from his evidence, and were not challenged by any party. It is submitted that considerable weight should be placed on his evidence.

7.106. The Lead Reporter will recall that this Inquiry Session was split over four separate days of oral evidence, namely 27 October 2022, 2 November 2022, 9 November 2022 and 10 November 2022. This demonstrates the considerable amount of evidence given as part of this session. However, it should also be recognised that some of the time taken in evidence was needed to address the procedural issues caused by Dr Ford representing GWP, who decided to present new arguments not set out in his written evidence during the session on 2 November 2022. Dr Ford's approach to giving evidence demonstrates his clear disregard for the Inquiry procedures set by the Reporters, and is unbecoming of an expert witness. This issue is referred further below.

7.107. As discussed above and elsewhere in these Closing Submissions, Dr Ford demonstrated that he is an unreliable and partial witness. His evidence to the Inquiry was based on his own theories and perceptions, unsupported by relevant

qualifications or evidence. It is submitted that no weight should be placed on his evidence, and that his evidence should not be admitted as expert evidence.

7.108. Mr Kerr's evidence betrayed a very superficial understanding of the issues relating to strategic alternatives, including technical considerations and the Applicant's statutory duties and licence obligations. As set out elsewhere in these Closing Submissions, it is submitted that very limited weight should be placed on his evidence.

7.109. In addition to the evidence presented during the dedicated Inquiry Session no. 2, strategic alternatives were also discussed in other sessions. Notably, Mr Steele appearing on behalf of LSKE promoted a limited section of undergrounding in the vicinity of Knocknalling Estate (as well as an alternative route, as noted below). Mr Steele does not have any qualifications relevant to the consideration of technical matters relating to strategic alternatives for the KRT Project. As noted in Chapter IX below, his evidence was not based on sound understanding of technical requirements and costs associated with the proposals promoted on behalf of LSKE. It is submitted that very limited weight should be placed on his evidence in the context of consideration of strategic alternatives.

7.110. Other witnesses commenting on strategic alternatives in their evidence included Mr John Thomson representing GSAB Partnership, and Mr Swift, Ms Louise Cumbley and others representing the GWP. None of those parties made the Inquiry aware of any professional qualifications of relevance to the issue of strategic alternatives, and their evidence betrayed a very superficial understanding driven by overarching views in opposition to the KTR Project. It is submitted that very limited weight should be placed on their evidence.

#### Re-stringing of existing overhead lines

7.111. The strategic alternatives considered by the Applicant included the alternative solution consisting of restringing the existing lines. This is neither a technically feasible nor a viable economic solution. As explained by Mr Kadar, a like-for-like

replacement of the current network would not be compliant with the Applicant's statutory duties and licence obligations and will not provide the enhanced system capability that is urgently needed and achieved by radialisation and removal of the interconnected 132kV system.

7.112. Separately Dr Ford's misguided evidence in relation to possible use of the existing lines for a short period of time is discussed in the earlier section of this Chapter VII. It does not take appropriate account of the current condition of the existing assets, categorised as end of life in line with the methodology approved by Ofgem. As submitted above, the Reporters are invited to place no weight on Dr Ford's unsupported and purely theoretical arguments.

### Undergrounding

7.113. In terms of design options, undergrounding was the main strategic alternative considered by the Applicant. The Applicant has gone to considerable efforts to study this option, as demonstrated by the Underground cable study summary report ("**UGS report**") including accompanying Appendices (CD001.237 – CD001.245).

7.114. As explained by a number of witnesses representing the Applicant, the consideration of undergrounding was not triggered by the technical or environmental factors outlined in the Applicant's approach to routing policy. Rather, the Applicant has considered undergrounding in line with the Scoping Opinion issued by the Scottish Ministers, as noted in Chapter VIII of these Closing Submissions.

7.115. The Applicant carried out a transparent, detailed, and comprehensive study of underground cable options to allow a comparison of the preferred route of an underground cable with the equivalent overhead line solution. The study investigated the potential use of underground cabling and examined six route options. As explained in the evidence of Mr Murray and evidenced by the UGS report, the exemplary study of undergrounding allowed a clear and transparent decision to be taken on the most appropriate technology and route to be selected for each of the six sections considered. The Applicant's decision to reject

undergrounding was taken in line with the Applicant's statutory duties and licence obligations, based on clear consideration of technical, economic and environmental factors.

- 7.116. The Applicant's UGS report was criticised by Dr Ford in his written evidence. However, contrary to those written criticisms, Dr Ford accepted in cross examination that the UGS report is comprehensive. This change in position demonstrates the extent to which Dr Ford's evidence is unreliable and includes unsubstantiated claims which have been clarified only when explicitly challenged.
- 7.117. Mr Thomson on behalf of GSAB Partnership sought to criticise the Applicant's decision to reject undergrounding. However, as demonstrated in the evidence on behalf of the Applicant, the criticisms made on behalf of GSAB Partnership were not raised on sound policy grounds, or indeed any other justifiable grounds.
- 7.118. Both Dr Ford on behalf of GWP and Mr Kerr sought to criticise the Applicant for not examining shorter sections or hybrid solutions for undergrounding. This complaint is repeated in the Closing Submission on behalf of GWP. It was argued that such considerations may have resulted in different cost ratios between underground cable and overhead line solutions, which could have altered the decision-making. However, as explained by Mr Lloyd, all routes with the exception of UGC6 (being the full undergrounding of the G-T Connection) considered in the CCI Technical Study forming Appendix 2 to the UGS report (CD001.244) are hybrid as they require interface positions between underground cable and overhead line towers. The criticisms of Dr Ford and Mr Kerr demonstrate their very superficial understanding of the work carried out by the Applicant.
- 7.119. Consideration of short sections of undergrounding was also raised by Mr Steele, the landscape architect engaged by LSKE. Mr Steele heralded that underground cable should be installed between Towers 18 and 21 forming part of the P-G via K Connection. However, it was clear from his evidence that Mr Steele did not appreciate that due to number of cables per phase required for the P-G via K Connection, additional terminal towers with fenced cable termination compounds would be

required at either end of the suggested underground cable section. This technical requirement was explained by Mr Young and Mr Lloyd on behalf of the Applicant, and was not challenged by any party.

7.120. Due to his ignorance of this technical requirement, Mr Steele did not consider the visual implications of additional infrastructure required for the transition from an overhead line to an underground cable as part of a short section of undergrounding, resulting in the additional infrastructure being located in close proximity of one another. This is touched on further in Chapter IX of these Closing Submission, in the context of landscape and visual matters. In addition, Mr Steele did not consider the fact that due to the short length of the proposed underground cable section, it is expected that the cost ratio would be at the higher end of the range of costs of the other sections considered in the UGS report, due to the larger impact of the 'fixed' costs (i.e. terminal towers, cable termination compounds, etc.) associated with the proposal. This was clearly explained by Mr Young during Inquiry Session no. 2.

7.121. The UGS report includes a series of detailed appraisal tables which compared the environmental, technical and economic (cost) considerations of the preferred cable routes, identified by CCI, against the proposed OHL routes identified by the Applicant. These conclude with the final recommendation on which technology and route was to be taken forward to application stage by the Applicant. Mr Murray explained that the Applicant's EIA, and inputs on the separate cable study from its independent consultants LUC, had confirmed that continuous overhead line routes for each section of the KTR Project were feasible, met the Applicant's stated Routeing Objective, and that the circumstances for considering underground cable had not been triggered.

7.122. Mr Kerr questioned the Applicant's decision not to proceed with the undergrounding, and pointed to the undergrounding implemented by other electricity undertakers. This matter, touched on in Chapter VI above, continued to be raised and is noted in Mr Kerr's Closing Submission despite the clear explanations provided by the witnesses representing the Applicant as to the circumstances in

which funding for undergrounding in line with the initiative made available by Ofgem could be utilised. Mr Kerr's refusal to accept these explanations further illustrates the superficial nature of his evidence, driven by his overriding objectives.

7.123. During the Inquiry, the Lead Reporter asked the witnesses whether in their opinion undergrounding of certain sections of the KTR Project could be required through conditions attached to the Consents. The unequivocal answer from those representing the Applicant was that such conditions could not be imposed. It is submitted that (i) undergrounding does not form part of the proposals for which consent is being sought and (ii) undergrounding has not been the subject of EIA. For these reasons, the imposition of a condition requiring undergrounding of certain sections of the KTR Project would be an error of law, and would result in a challengeable decision. With the exception of the sections considered in the UGS report, the route of potential undergrounding sections has not been considered from a technical feasibility perspective. It is also submitted that by requiring undergrounding in the circumstances where it cannot be justified by any of the criteria in the Applicant's transparent approach to routing policy, a dangerous precedent would be created. This could lead to increases in costs for the electricity consumers, as the circumstances in which undergrounding is considered would not be applied consistently.

7.124. It is submitted that the UGS report and the evidence of the expert witnesses representing the Applicant clearly demonstrates that undergrounding is not an appropriate alternative for the Connections forming the KTR Project. The Applicant has openly acknowledged that the underground option for each of the sections studied in the UGS report is technically feasible and, on balance, environmentally preferable, although not without environmental effects. Nevertheless, the preferred cable routes in each section do not offer sufficient environmental advantages to justify the substantial increase in costs as compared to the overhead line sections, in line with the Applicant's statutory duties and licence obligations. These conclusions apply to the sections considered as part of the underground cable study set out in the

UGS report, as well as any other shorter sections or hybrid solutions for undergrounding put forward by Objectors, such as the proposal suggested on behalf of LSKE. The excessive cost of undergrounding was even accepted by Dr Ford representing GWP in oral evidence.

#### Twin trident wood poles

- 7.125. The key 'alternative' promoted by Dr Ford in relation to the G-T Connection was the use of Trident wood pole technology. For the reasons explained by Mr Kadar, system planning and technical reasons and regulatory and licence obligations binding on the Applicant mean that the alternative to the L4(m) steel towers, for the capacity required and ensuring security of supplies, the G-T Connection have to be two parallel wood pole Trident circuits.
- 7.126. Dr Ford sought to argue that the cost differential between the L4(m) and the alternative twin Trident design solution was marginal and that the higher cost to consumers is worth the environmental benefits claimed by Dr Ford. As set out in the Inquiry Report of Mr Kadar and Mr Young, the reasons for this solution being rejected for the G-T Connection are primarily technical and economic. Any environmental effects of the L4(m) solution meaning that it was not viable and could not be supported would have been raised through the EIA process. However, as explained by Mr Murray, a viable and environmentally acceptable L4(m) OHL route has been identified and therefore there is no justifiable reason to change from the most technically and economically appropriate overhead line specification.
- 7.127. As noted at the start of this Part 2 of Chapter VII, as part of his examination on 2 November 2022 Dr Ford set out new evidence in relation to spurious 'benefits' of construction of the new overhead line from Glenlee to Tongland using twin Trident solution. These benefits were not supported by facts, as demonstrated in respect of traffic movements by Mr Young's Supplementary Statement (APP002.014). The Lead Reporter will also recall that Dr Ford sought to refer to an unscaled drawing of a single wood pole and a steel tower which has not been submitted to the Inquiry to

support his assertions regarding the differentiation between landscape and visual impacts of these technologies, completely ignoring the separate routeing process which would require to be followed in order to consider impacts on all relevant receptors and the differing number of structures which would be required. As explained in the Applicant's Summary of Case, Twin Trident 132kV circuits are estimated to require a minimum of 648 wood pole structures as opposed to 118 steel lattice towers. The number of wood poles will increase at altitudes of more than 200m as the spans will be significantly reduced due to the exposure to a harsher environment. The parallel Trident circuits would also result in a greater land sterilisation due to the number of structures and would require an estimated corridor width of 90m as opposed to the 80m width required for the L4 infrastructure.

7.128. As comprehensively explained by the Applicant's witnesses, the so-called 'benefits' described by Dr Ford do not stand up to any scrutiny, and demonstrate that Dr Ford had no difficulty with making unsubstantiated claims on matters outwith his competence. It is strongly submitted that the Reporters should place no weight on Dr Ford's misleading statements.

### **Part 3 - Strategic route selection, design strategy and consultation**

7.129. As discussed in the evidence of Mr Kadar, the Applicant must formulate proposals that meet the needs of the transmission system, are technically feasible and economically viable, and provide a coordinated and efficient system. In addition, in line with Schedule 9 of the 1989 Act, the Applicant has a duty to consider the environment and the people who live, work and recreate in the vicinity of any relevant proposals. As set out above, the evidence of Mr Kadar demonstrates that the KTR Project has been developed in compliance with the Applicant's statutory duties and licence obligations.

7.130. As explained in the Applicant's Hearing Statement in relation to strategic route selection, and noted in the Applicant's Summary of Case, the system planning and design considerations are an integral part of the routeing process. Following the



selection of the technology to deliver the KTR Project, the Applicant's team of experts proceeded with the route selection process to find an appropriate, continuous overhead line route utilising the specified technology for each of the Connections. In this context, the strategic route selection and design form the final building block of the Applicant's design solution for the KTR Project. The alternative routes considered for the KTR Project are amongst the strategic alternatives which have been considered. The route selection process was informed by the extensive consultation carried out by the Applicant, in line with and exceeding the Scottish Government Energy Consents and Deployment Unit's Good Practice Guidance (January 2013)<sup>195</sup>.

Evidence in relation to strategic route selection, design and consultation

7.131. Matters relating to strategic route selection, design and consultation were discussed during a dedicated session, i.e. Hearing Session no. 2. The expert witnesses representing the Applicant during Hearing Session no. 2 were Mr Jack, Mr Hayman, Mr O'Neill, Mr Van Grieken, Ms Wigley and Mr Walker. The extensive experience of these witnesses, as set out in Appendix 2 of the Hearing Statement on this topic, has not been questioned by any party. All of the Applicant's witnesses possess the necessary professional qualifications and experience required to present expert evidence on the matters they gave evidence on. Importantly, all of the experts in the Applicant's KTR Project team are highly experienced in routeing, design and assessment of electricity transmission projects of this type. Their many years of experience in the field mean that each of them is acutely aware of the statutory obligations and licence duties binding on the Applicant in relation to routeing and design, and are very familiar with the Holford Rules relevant in the context of routeing overhead lines. It is strongly submitted that the Reporters should place substantial weight on the evidence of the experts representing the Applicant in relation to route selection, design and consultation matters.

7.132. The other parties which took part in the Hearing Session no. 2 on strategic route

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CD006.007

selection were SF represented by Mr Doug Howieson and Mr Andrew Kitching, GWP represented by Dr Ford and Mr Swift, and Mr Kerr who appeared as an individual third party objector.

7.133. Mr Howieson is the SF Conservator for South Scotland, and Mr Kitching is the technical officer for SF in the South Scotland Conservancy. Both Mr Howieson and Mr Kitching are highly experienced in matters relating to forestry, and their qualifications and professional standing in relation to those matters is not in question. However, they are not experienced in matters relating to routeing and design of overhead line projects, and are not familiar with the relevant rules and industry approach to this. They are also not familiar with the statutory duties and licence obligations binding on the Applicant in relation to electricity transmission projects. Their evidence in relation to routeing and design matters has been driven by a single objective, namely protection of forestry, and did not take account of other factors which have to be considered, and balanced, in the context of projects of this type. As such, it is submitted that only limited weight can be placed on their evidence in relation to strategic route selection, design strategy and consultation for the KTR Project.

7.134. Dr Ford took the main role representing GWP in relation to matters relating to strategic route selection, design and consultation. Dr Ford does not have any professional qualifications or experience relevant to the matters he purported to give expert evidence on. In his evidence on behalf of GWP, Dr Ford engaged in 'amateur routeing' without considering all factors relevant to route selection, which clearly demonstrated his lack of understanding of well established routeing methodologies. It is submitted that Dr Ford has discredited himself as an expert witness. His criticisms of the KTR Project are not substantiated, and are based on his own unproven theories as to how and where electricity transmission projects should be developed. For the reasons set out below and elsewhere in these Closing Submissions, it is submitted that no weight should be placed on his evidence, and that his evidence should not be admitted as expert evidence.

- 7.135. Mr Kerr's lack of understanding of the principles governing route selection and design of overhead lines, and his lack of appreciation of the statutory duties and licence obligations binding on the Applicant was apparent in his contributions. It is submitted that very limited weight should be placed on his evidence.
- 7.136. Separately, from the dedicated Hearing Session no. 2, issues relating to strategic route selection and design for the KTR Project have been raised by Mr Steele on behalf of LSKE during Inquiry Session no. 4 in relation to landscape and visual matters. As set out in Chapter IX, the proposed alternative route alignments were driven purely by the interests of LSKE, and did not take account of the impacts on other residential properties in the area and the technical requirements of the Connections. For the reasons noted below and referred to in Chapter IX, it is submitted that only limited weight can be placed on Mr Steele's evidence.

#### Strategic route selection and design

- 7.137. An outline of the methodology followed by the Applicant in relation to route selection and design for the KTR Project is set out in Chapter 2 of the EIA Report (CD001.008), and in the Applicant's Hearing Statement. For the sake of brevity, the details of this process are not set out in detail in these Closing Submissions.
- 7.138. The route selection process followed the Applicant's published approach to routeing. It also reflected the industry standard methodological basis for routeing high voltage overhead lines, namely "The Holford Rules: Guidelines for the Routeing of new high voltage overhead transmission lines (with NGC 1992 and SHETL 2003 notes)"<sup>196</sup>. The process of applying the Holford Rules through the KTR routeing process was summarised succinctly by Mr Van Grieken during Hearing Session no. 2. As part of this evidence, Mr Van Grieken also explained that undergrounding, whilst not specifically mentioned in the routeing strategy, remained open for consideration as the Applicant moved through the routeing process. The criteria for considering undergrounding was discussed in the evidence of Mr Pearse Murray during Inquiry

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Session no. 2, as referred to above.

7.139. One of the Applicant's route selection decisions subject to substantial criticism by Mr Kerr was the decision not to 're-use' the existing route between Glenlee and Tongland, known as the R Route (south). As explained by the experts representing the Applicant, the routeing process adopted a 'blank sheet' approach to identifying and appraising corridor and route options. That is to say, there was not a presumption in favour of a corridor or route option, simply because it has an existing OHL within it. It is important to clarify that, as described in evidence by Ms Wigley, the existing route option would not have been considered as an option had the current legal and policy constraints on development in an SPA and SSSI, and the Holford Rules, been in place at the time that the route for R Route was identified. Nevertheless, as part of the iterative routeing process, in response to feedback received during the second round of consultation, the Applicant considered how the existing route performed whilst being appraised against the same routeing criteria as the preferred Glenlee to Tongland route, west of Loch Ken. This study confirmed that, in balancing the findings of the appraisal of both options in accordance with the KTR Project routeing objective and routeing strategy, and in the context of the Holford Rules, progressing the proposed route for the G-T Connection (west of Loch Ken) is an improvement in landscape and visual terms and in relation to the Loch Ken and River Dee Marshes designation.

7.140. Dr Ford sought to criticise the Applicant's route selection process, due to the inter-relationship with the former Dumfries and Galloway Strategic Reinforcement ("DGSR") Scheme. The scope of this larger scheme also included the 132kV voltage elements now forming the KTR Project from the outset. The interrelationship between the DGSR Scheme and the KTR Project was explained in detail by Mr Kadar. It was explained in evidence on behalf of the Applicant that the choices regarding the 132kV elements now forming the KTR Project have been made in line with appropriate principles, and remained valid. Additionally, Mr Hayman

explained in evidence during Hearing Session no. 2 that the consultation during the first round of consultation remained relevant to the second round of consultation. It is clear that the suggestions of the KTR Project 'falling out' of the larger DGSR Scheme have been raised by Dr Ford simply to cast doubt over the Applicant's approach based on Dr Ford's own misconceptions, despite there being no basis in fact for his criticisms.

7.141. Dr Ford's unfounded criticisms of the Applicant's approach to routeing were not limited to the relationship between the KTR Project and the DGSR Scheme. On a number of occasions, he sought to engage in 'amateur routeing', seeking to demonstrate that other alignments, for example avoiding more areas of forestry, were possible. While this approach to route selection may appear superficially attractive, it does not take account of the considerable range of factors which had to be considered by the Applicant. It was clear from the evidence of the experts representing the Applicant that Dr Ford's 'routeing efforts' disregarded important receptors and have not been thoroughly thought through. Once again, Dr Ford gave evidence on matters he is not appropriately qualified to comment on, seeking to discredit the thorough process followed by the Applicant.

7.142. It is important to address the complaint regarding the Applicant's consideration of the RSAs in the context of routeing set out on page 12 of the Closing Submission on behalf of GWP. Contrary to GWP's submission, the RSAs were not '*singularly important*' in respect to the routeing appraisal and selection process, they were one of many environmental considerations which needed to be balanced when applying the principles of the Holford Rules and the Applicant's own Approach to Routeing and Environmental Impact Assessment guidance. The suggestion by GWP that the consideration of alternative routes was not properly undertaken and did not exhaustively consider every potential alternative OHL corridor/route between Glenlee and Tongland was challenged by the Applicant during Hearing Session no. 2. Dr Ford suggested there was an 'obvious' alternative which avoided the relevant nature and biodiversity designations/sensitivities at Loch Ken, but failed to recognise

the multiple other environmental and technical considerations which needed to be considered when identifying viable overhead line routes. Analysis of the effects on the integrity of the designated area was undertaken in the LVIA, and was further supplemented by the evidence presented in Chapter 8 of the Inquiry Report prepared by Mr Walker (APP004.004) which led to the withdrawal of the Council's two outstanding objections, as discussed elsewhere in these Closing Submissions.

7.143. Similar lack of understanding of the Holford Rules is also evident in the Closing Submission on behalf of GWP. In particular, GWP's submission noting that the "*GHRSA and the Galloway Forest Park are the most important natural tourist and recreational destinations in SW Scotland by some measure*" ignores the fact that Dumfries and Galloway has three National Scenic Areas (NSAs), the Nith Estuary, the East Stewartry Coast and the Fleet Valley. These nationally designated landscapes are three of 40 NSAs found across Scotland, that represent the areas of greatest protection in respect to scenic value. Legislation defines an NSA as an area "*of outstanding scenic value in a national context*". In line with the legislative status afforded to these areas and their classification as areas of highest amenity value in accordance with the Holford Rules (Rule 1), the East Stewartry Coast and the Fleet Valley were a key consideration in the routeing process for the KTR Project (and the DGSR Scheme before).

7.144. Dr Ford's lack of understanding of the Holford Rules was further demonstrated by his confusion as to which of the Rules was applicable to consideration of RSAs. Mr Walker explained that, in the context of applying the Holford Rules to particular designated areas, the RSA was designated at local level via the Dumfries and Galloway LDP, which is consistent with similar designations made by other local authorities throughout Scotland. In the context of the Holford Rules, Mr Walker explained that, regardless of the size of area of designation, it is the reference to "highest" amenity (Rule 1) and "high" amenity (Rule 2) that is of most importance in categorisation of the RSA i.e. national and international designations such as National Scenic Areas (NSAs) are categorised as Rule 1 and regional/local

designations such as RSAs as Rule 2.

- 7.145. 'Amateur routeing' efforts and misapplication of the Holford Rules were not limited to Dr Ford – inappropriate alternative line alignments were also suggested on behalf of LSKE. As explained during Inquiry Session no. 4, whilst alternative overhead or underground options suggested on behalf of LSKE may reduce effects on the interests of Knocknalling Estate, it was conceded by Mr Steele that alternative and significant effects would arise for alternative options, including potential effects on the residential visual amenity of residents of Inverharrow (as discussed in Chapter IX below in the context of landscape and visual matters). It should also be noted that one of the alternative alignments of the P-G via K Connection proposed by Mr Steele is not technically feasible.
- 7.146. The requirements of a thorough routeing process were also misinterpreted by the witnesses representing SF. Their focus on protection of forestry to the detriment of all other receptors is not aligned with acceptable industry standards, or the statutory duties and licence obligations binding on the Applicant. Ms Wigley explained on behalf of the Applicant that forestry and woodland were clearly identified as routeing considerations and applied as appraisal criteria at both the corridor and route selection stage. These were divided into two sub-criteria, the first being commercial woodland and then ASNW/NWSS broadleaf woodland. In the appraisal process, the presence of commercial forestry, ASNW and NWSS was presented and potential loss, if that option were to be progressed, quantified. The professional judgement of the Applicant's specialist forestry team, led by Mr O'Neill, was then applied to reach a forestry and woodland preference for a route. Due to the large scale and central position of forestry and woodland within the KTR study area, relative to the fixed connection points for the KTR Project, avoidance of impacts on all forestry and woodland was not possible.

#### Consultation and engagement process

- 7.147. There is no formal requirement for pre-application consultation in respect of

applications being made under section 37 of the 1989 Act. However, the Applicant followed, and went beyond, the best practice as outlined in the Scottish Government Energy Consents and Deployment Unit's Best Practice Guidance (January 2013), which encourages engagement with stakeholders and the public during development of proposals. As outlined throughout the Applicant's evidence, consultation and engagement has underpinned and directly informed the Applicant's approach to the routeing, design and EIA for the KTR Project. This included engagement with stakeholders comprising the SSLG, non-statutory consultees, interested parties/groups and the public. Feedback received by the Applicant informed specific route modifications aimed at addressing the identified concerns.

7.148. Dr Ford criticised the Applicant's consultation efforts, trying to suggest that the consultation was not effective. These criticisms were raised despite the Applicant's exemplary application of the Best Practice Guidance. It is submitted that the Applicant's consultation efforts were commendable. It is evident that the feedback received influenced the KTR Project, for example as demonstrated by the specific examples of route modifications referred to in paragraph 26.16 of the Applicant's Summary of Case.

### **Conclusions**

7.149. The evidence presented on behalf of the Applicant clearly demonstrates the technical and economic need for the KTR Project. Notably, Ofgem was satisfied with the Applicant's design approach and decision making, culminating in a final submission for the KTR Project which received Ofgem approval for investment funding and delivery within the current investment plan period (RIIO-T2). The key stakeholders involved in the pre-application engagement for the KTR Project did not raise any formal objection to the design approach or decision-making process, either during this engagement or through the subsequent decision-making process. As explained in evidence, the Applicant is satisfied that the approach taken to design has identified



all technically feasible strategic alternatives and that the process to assess these was robust and transparent. The Applicant's final decision to proceed with the KTR Project in its proposed form is consistent with its statutory duties and license obligations and reflects the approach of the electricity industry.

7.150. It is submitted that substantial weight should be placed on the evidence of the expert witnesses representing the Applicant in relation to the design solution for the KTR project. It is also important to note that no objector, in reference to the Applicant's policy on circumstances for the consideration of undergrounding (CD006.004), has presented evidence that brings into question the continuity of the proposed overhead line routes. None of the evidence presented by the other parties demonstrates that the Applicant's position and decision-making processes are incorrect or fail to comply with the Applicant's statutory duties and transmission licence obligations. In contrast, the Applicant's EIA process demonstrates clearly that its stated Routeing Objective, founded in the Applicant's statutory duties and licence obligations, was met for each of the proposed overhead line sections.

## 8. EIA METHODOLOGY AND CONSIDERATION OF ALTERNATIVES

### Introduction

- 8.1. It is notable that the Applicant's professional team of experts involved in the KTR Project remained consistent from the early stages of the proposal. The same key members of the professional team have been involved throughout route selection and design, EIA including assessment and reporting, and throughout the Inquiry process. The consistency and longevity of the team involved in the KTR Project is unusual for a project of this type, particularly given the considerable amount of time which has passed since Project's initial inception. This consistency of experts involved allowed for the team's considerable experience and detailed understanding of the Project to be retained and built upon, informing the decision making processes which culminated in the final form of the KTR Project proposed through the Applications. The continuity of involvement of the Applicant's experts was commended at the Inquiry by Mr Howieson on behalf of SF, who recognised that the long-term retention of knowledge has brought benefits to the KTR Project. It is also anticipated that the same team of experts would continue to be involved with the KTR Project throughout its implementation, utilising their wealth of knowledge, expertise and experience. The route selection, design, EIA and consultation for the KTR Project should be considered against this background, and in light of the conclusions regarding the Applicant's design solution as discussed in Chapter VII above.
- 8.2. As explained in the evidence for the Applicant, avoidance and/or minimisation of environmental impacts has been at the core of the KTR Project throughout the route selection and design process. This approach allowed for the adverse impacts to be avoided and/or minimised through careful routeing and design. The Applicant has also proposed a range of specific mitigation measures, to be implemented in line with established methodologies broadly accepted in the industry. These measures are deemed 'embedded mitigation' and are a part of the KTR Project and demonstrate the Applicant's genuine commitment to minimising adverse impacts. The embedded

and 'additional' (effect/location specific) mitigation measures have been considered as part of the EIA reported in the EIA Report, in line with the established industry practice.

### **EIA methodology**

#### Evidence of the witnesses participating in the Inquiry Session no. 3 regarding justification for EIA methodology

- 8.3. Matters relating to the justification for the EIA methodology used for the KTR Project were discussed during the Inquiry Session no. 3 on 11 November 2023. The expert witness representing the Applicant during this session was Ms Kate Wigley. The other parties who took place in the Inquiry Session no. 3 were GWP represented by Dr Ford, and Mr Kerr who appeared as a third party objector.
- 8.4. Ms Wigley has a Master's in Environmental Impact Assessment and Management from Manchester University and a BSc (Honours) in Geography from Leeds University. She has over 19 years of professional experience in undertaking environmental impact assessments, mainly specialising in major infrastructure projects including overhead transmission lines and renewable energy developments. She is a Chartered Environmentalist and Full Member of the Institute of Environmental Management and Assessment (IEMA). Ms Wigley has been involved in the KTR Project since the initial stages of route selection and design, and has played a very important role in overseeing/directing the EIA throughout the process. She also took an active role in the KTR consultation process, participating in the public consultation events and liaising with consultees (including attending the Statutory Stakeholder Liaison Group (SSLG) and the Community Liaison Group (CLG) meetings with the Applicant). Ms Wigley was also the lead author of the EIA Report, and coordinated the input of technical experts from the various disciplines in line with the overarching EIA methodology. The relevant experience and expertise of Ms Wigley as overall EIA Report author has not been questioned by any party to the Inquiry and has been acknowledged by Dr Ford on behalf of GWP during cross-

examination. In her evidence, Ms Wigley demonstrated very detailed knowledge of the KTR Project, including routeing and design decisions, the mitigation measures proposed as part of the Project, and the scope and approach to the environmental impact assessment. Drawing from her extensive involvement in electricity projects, Ms Wigley's evidence showed thorough understanding of the statutory duties and licence obligations which influenced the Applicant's decisions culminating in the KTR Project proposed through the Applications. It is submitted that considerable weight should be placed on Ms Wigley's expert evidence.

8.5. Dr Ford acknowledged that he had never carried out an EIA. He also conceded that he had no relevant academic qualifications or professional experience in relation to EIA. In his evidence, he displayed lack of awareness of the basic principles underpinning the EIA methodology for the KTR Project. In particular, Dr Ford's precognition and the GWP Inquiry Report prepared by him clearly demonstrate that he was under the mistaken impression that only the 2017 EIA Regulations were relevant. In his oral evidence during the Inquiry Session no. 3, Dr Ford sought to gloss over this fundamental misunderstanding, in a similar way as his other misconceptions regarding the KTR Project. He appeared to dismiss the important differences between the 2000 EIA Regulations and the 2017 EIA Regulations, including the different requirements relating to consideration of alternatives as discussed below. His ignorance on these topics has once again put Dr Ford in breach of the core principles of the code of conduct of the Royal Town Planning Institute. For these reasons and as noted above, it is submitted that Dr Ford should be seen as an unreliable and not credible witness, and no weight should be placed on his evidence. It is also submitted that his evidence should not be admitted as expert evidence.

8.6. Mr Kerr's evidence betrayed a lack of understanding of the legal requirements and industry standards of relevance to the KTR Project. His comments were driven by his overriding view expressed throughout the Inquiry, namely that the KTR Project should be undergrounded. This suggestion was repeated by Mr Kerr throughout the

oral sessions he attended, despite him being present to hear the evidence of the Applicant's expert witnesses explaining why undergrounding was rejected. In this context, it is submitted that only very limited weight can be placed on Mr Kerr's evidence.

#### Legal requirements relevant to the EIA

- 8.7. As noted in Chapter IV above and explained in evidence by Ms Wigley, the EIA methodology applied to the assessment of the KTR Project was established having regard to the transitional provisions set out in Regulation 40 of the 2017 EIA Regulations. In accordance with the transitional provisions, the information contained within the EIA Report complied with the substantive provisions of Part II of Schedule 4 to the 2000 EIA Regulations. The EIA methodology and the EIA Report reflected the Scoping Opinion issued by the Scottish Ministers and were informed by the further consultation with the statutory consultees.
- 8.8. It is submitted that the Reporters and the Scottish Ministers are entitled to be satisfied that the Applicant has fulfilled its duties under the relevant EIA Regulations. It is also submitted that the Reporters and the Scottish Ministers are entitled to also be satisfied that the Applicant has met its obligations under Schedule 9 of the 1989 Act. This position remains largely un-challenged through the Inquiry process. The obligations set out in Schedule 9 of the 1989 Act are not a development management test, as explained in the Applicant's evidence. Nevertheless, as has been clearly set out by the relevant experts and in written evidence, the Applicant has complied with its obligations under the relevant provisions of the 1989 Act.

#### EIA Methodology for the KTR Project

- 8.9. The EIA for the KTR Project has been carried out by a team of competent experts as required under the 2017 EIA Regulations and in line with standard established methodologies. The EIA methodology underpinning the EIA Report, including the application of the substantive provisions of the 2000 EIA Regulations, was accepted by all statutory consultees. In fact, SF was complimentary about the Forestry Chapter

of the EIA Report. This should be given substantial weight in decision making regarding the EIA methodology.

- 8.10. One of the challenges to the EIA methodology for the KTR Project touted by Dr Ford was the fact that the removal of S Route was not included as part of the KTR Project for the purposes of assessment. This unsubstantiated criticism was driven by a lack of appreciation that the KTR Project and the removal of S route are two quite separate and self-contained projects as set out in the Scoping Report (CD001.235), Chapter 3 of the EIA Inquiry Report and as explained in oral evidence by Ms Wigley. The reasons for this approach are summarised in section 29 of the Applicant's Summary of Case. Importantly, the approach to the treatment of S route in EIA terms was agreed with Scottish Ministers and consultees, as is apparent from the Scoping Opinion for the KTR Project. Instead of accepting the position taken by the Scottish Ministers, Dr Ford sought to insinuate that the Scottish Ministers did not understand the significance of this decision. It is submitted that this lack of regard for the Scottish Ministers' decision is unbecoming of an expert witness Dr Ford purported to be.
- 8.11. Despite his comments regarding the Applicant's approach to removal of S route in EIA terms, Dr Ford conceded during cross examination that there was no question of 'project splitting' to avoid engaging the need for EIA in respect of those works. As noted in Ms Wigley's Inquiry Report, the removal of S route will be subject to an EIA screening request to the Council. This has been made very clear within the Scoping Report (CD001.235) and in discussions with the Council. Scottish Ministers and the Council are content with the approach.
- 8.12. A separate criticism of the EIA Report raised by Dr Ford was the assertion that the information about line capacities has not been disclosed by the Applicant. The timing/availability of the information regarding capacity was discussed during the Inquiry Session no. 1. Contrary to the assertions made by Dr Ford, there is no requirement for the existing or proposed capacities to be stated or included within the EIA Report. As an 'expert', Dr Ford should understand that the capacity of conductors does not have any bearing on the environmental effects associated with

overhead line electricity transmission development. It is important to note that the DPEA confirmed by email dated 6 October 2022 that the Reporters consider that information provided by the Applicant in its Technical and Economic Justification Inquiry Report by Mr Kadar and supporting documents, which included line ratings and capacity, was neither supplementary information requested by them nor substantive information about a matter to be included in the EIA Report. Rather, that information was just a re-stating and explanation of arguments already made<sup>197</sup>. This confirmation is of particular relevance to the criticisms raised by Dr Ford in relation to EIA methodology. Ms Wigley addressed this matter in evidence during Inquiry Session no. 3<sup>198</sup>.

8.13. Dr Ford's obvious confusion about the correct EIA Regulations applicable to the EIA Report goes some way towards explaining his other unsubstantiated challenge to the EIA Report, as evidenced by the statement in paragraph 52 of GWP's Inquiry Statement that *"the level and type of alternatives considered by the Applicant are inadequate"*. It has been demonstrated in written and oral evidence that the approach to the consideration of alternatives in the context of EIA reflects good practice guidance, complies with the requirements of the 2000 EIA Regulations and the Scoping Opinion. As conceded by Dr Ford in evidence during Inquiry Session no. 2, only alternatives that are considered to meet the technical and economic considerations driven by the Applicant's statutory duties and licence obligations should be progressed for consideration during the EIA. For the reasons explained by Mr Kadar during Inquiry Session no. 2 and discussed in Chapter VII above, replacing S route would not be economic or efficient, and would not achieve the required system planning benefits. On that basis, it would be disingenuous to consider the environmental effects of the utilisation of S route as a 'main alternative' in the EIA Report. Similarly, and as also explained in Chapter VII above, Dr Ford's proposed use of a single or twin Trident wood pole design had been rejected on both technical

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<sup>197</sup> It was confirmed by the Lead Reporter that this reflects the opinion of both Reporters. See transcript of Inquiry Session no. 3, page 164.

<sup>198</sup> See transcript of Inquiry Session no. 3, pages 65-66.

and economic grounds, as has re-stringing the existing overhead lines and use of T-Pylons. The other alternatives were undergrounding and alternative routes, and these are discussed below in the second part of this Chapter VIII.

- 8.14. Another matter challenged by Dr Ford is the consultation carried out by the Applicant. The Reporters will be aware that there is no requirement for pre-application public consultation within either the 2000 EIA Regulations or the 2017 EIA Regulations. The Applicant undertook consultation on the KTR Project in accordance with the Scottish Government Energy Consents and Deployment Unit's Good Practice Guidance (January 2013) (CD006.007). This approach is also in line with good practice in EIA. Additionally, the consultation required by the 2017 EIA Regulations has been carried out for the KTR Project. This has been accepted by Dr Ford in his oral evidence. More generally, Dr Ford accepted that the consultation process had in many ways been exemplary<sup>199</sup>. Matters relating to consultation are also referred to in the second part of this Chapter VIII.

#### Conclusion regarding the EIA methodology

- 8.15. As explained in evidence on behalf of the Applicant, the scope of the EIA Report was confirmed in the Scoping Opinion issued by the Scottish Ministers and via the ECU gatecheck process. All information required by the EIA Regulations and the Scoping Opinion of the Scottish Ministers for the KTR Project is included in the EIA Report. Statutory consultees have raised no concerns in relation to the EIA methodology. As discussed at the start of these Closing Submissions, the Council withdraw its initial objection to the Applications (initially challenging the conclusion in relation to the Regional Scenic Areas, as discussed in Chapter IX below). Following the Council's withdrawal, it is fair to say that no statutory consultee challenged the conclusions.
- 8.16. For the reasons set out above, the evidence of Ms Wigley is recommended to the Reporters. It is submitted that substantial weight can be placed on her expert evidence.

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<sup>199</sup> Transcript from Inquiry Session no. 3 (11 November 2023) page 160



8.17. It is clear that that Dr Ford has been an unreliable witness who set out to raise unfounded concerns in relation to the EIA methodology for the KTR Project. It is submitted that no weight should be attached to his evidence, and that his evidence should not be admitted as expert evidence.

### **Main alternatives**

8.18. As noted above and explained in evidence on behalf of the Applicant, Dr Ford's proposed alternative, namely the use of a single or twin Trident wood pole design for the G-T Connection had been rejected on both technical and economic grounds – similarly to re-stringing the existing overhead lines and use of T-Pylons. The other main alternatives, namely alternative routes and undergrounding, have been considered by the Applicant in considerable detail, as noted in the EIA Report.

### **Alternative routes**

8.19. As noted above, the Applicant's project team has consisted of the same members from its in house Environmental Planning team (Mr Jack) and project consultants (Mr Ross Hayman, Mr O'Neill, Mr Marc van Grieken, Ms Wigley and Mr Dan Walker), from the outset of the routeing process in 2014, through EIA and design for the project to submission of the applications with accompanying EIAR in 2020, to the present day. This has ensured a high degree of continuity throughout the routeing, EIA and stakeholder engagement for the KTR Project. The extensive knowledge and experience of the Applicant's team and their continued involvement with the KTR Project allows for a thorough understanding of the complex balancing of issues which the Applicant has had to weigh at each step of the process.

8.20. Matters relating to strategic route selection, design and consultation were discussed during a dedicated session, i.e. Hearing Session no. 2. The expert witnesses representing the Applicant during Hearing Session no. 2 were Mr Jack, Mr Hayman, Mr O'Neill, Mr van Grieken, Ms Wigley and Mr Walker. It is strongly submitted that the Reporters should place substantial weight on the evidence of the experts representing the Applicant in relation to route selection, design and consultation

matters.

- 8.21. The other parties which took part in the Hearing Session no. 2 on strategic route selection were SF represented by Mr Doug Howieson and Mr Andrew Kitching, GWP represented by Dr Ford and Mr Swift, and Mr Kerr who appeared as an individual third party objector.
- 8.22. Mr Howieson is the SF Conservator for South Scotland, and Mr Kitching is the technical officer for Scottish Forestry in the South Scotland Conservancy. Both Mr Howieson and Mr Kitching are experienced in matters relating to forestry, and their qualifications and professional standing in relation to those matters is not in question. However, as explained elsewhere in these Closing Submissions, they are not experienced in matters relating to routeing and design of overhead line projects, and are not familiar with the relevant rules. They are also not familiar with the statutory duties and licence obligations binding on the Applicant in relation to electricity transmission projects. Their evidence in relation to routeing and design matters has been driven by a single objective, namely protection of forestry, and did not take account of other factors which have to be considered in the context of projects of this type. As such, it is submitted that only limited weight can be placed on the evidence of Mr Howieson and Mr Kitching.
- 8.23. For the reasons set out below and elsewhere in these Submissions, very limited weight can be placed on the evidence of Mr Kerr. It is also submitted that no weight should be placed on Dr Ford's evidence, and that his evidence should not be admitted as expert evidence in relation to matters regarding strategic route selection, design strategy and consultation for the KTR Project.
- 8.24. As explained in the evidence of the Applicant's witnesses, the system planning and design considerations are an integral part of the routeing process. These considerations set out the 'brief' in respect of which the Applicant's Environmental Planning team and the specialist environmental consultants commenced routeing work, which was to find an appropriate, continuous overhead line route, utilising the specified steel lattice (P-G via K Connection, G-T Connection and BG Deviation

Connection) / Trident wood pole (E-G Connection and C-K Connection) overhead line type, for each of these Connections.

- 8.25. The route selection process for the KTR Project followed the industry accepted and well-established Holford Rules, and the Applicant's policy approach to routeing and EIA for major infrastructure projects. It was fully iterative, and involved refining the route and design of the Project from broad corridor options through routes and into specific route alignments and tower siting. This process was carried out using consultation feedback at each stage to 'check' and review the assumptions being made to guide the route. The details of the Applicant's route selection and design process are set out in Chapter D of the Applicant's Summary of Case, and are not re-stated here. However, certain key matters of relevance in the context of main alternatives and EIA methodology are highlighted below.
- 8.26. An important point to be noted in the approach to routeing for the KTR Project, and one that Dr Ford misguidedly sought to use as a drawback, is the inter-relationship with the former Dumfries and Galloway Strategic Reinforcement ("DGSR") Scheme. As explained by the Applicant's witnesses and as is clear from the Routeing Objective for Corridor routeing, the scope of this larger scheme also included the 132kV voltage elements (Polquhanity to Glenlee via Kendoon and Glenlee to Tongland, including the smaller connections on wood pole from Carsfad to Kendoon and Earlstoun to Glenlee) from the outset. There is no question of the KTR Project 'falling out' from the DGSR Scheme and somehow being subject to lesser route selection scrutiny, as has been suggested by Dr Ford.
- 8.27. It is also not correct to suggest that the relationship between the KTR Project and the DGSR Scheme predetermined the choice of technology used, again as suggested by Dr Ford. As explained in evidence, this choice was driven by technical and economic considerations, in line with the Applicant's statutory duties and licence obligations. Dr Ford's characterisation of the KTR Project is not based on any evidence, and simply reflects his perception of what might have been done by the Applicant, on the simplistic basis that the KTR Project was initially included as one of the proposals

forming part of the DGSR Scheme. As explained in detail by the witnesses representing the Applicant, the KTR Project is based on explicit need for the Project in the specific location.

- 8.28. The route selection and design of the KTR Project was informed by extensive and robust consultation. As explained by Mr Hayman, there is no formal requirement for pre-application consultation in respect of applications being made under section 37 of the 1989 Act. In the absence of the formal requirements, the Applicant has embraced best practice outlined in the Scottish Government Energy Consents and Deployment Unit's Best Practice Guidance, and followed an exemplary approach to engagement and consultation which exceeded the minimum requirements as set out in the guidance.
- 8.29. The lead consultants engaged by the Applicant in relation to consultation and engagement matters, i.e. Mr Hayman and his team at Copper Consultancy, have extensive experience of projects of this type. The team's excellent credentials demonstrate the Applicant's genuine commitment to conducting an effective and robust consultation process. The Applicant's team provided a comprehensive account of the efforts made to ensure appropriate engagement, including public consultation events, discussions with individual third parties including Mr Kerr and Mr Swift, as well as engagement with Community Councils and statutory and non-statutory consultees. This also included coordinated engagement with key stakeholders through the SSLG, and with community councils and related groups through the CLG.
- 8.30. The extensive engagement carried out by the Applicant has informed the route selection and design of the KTR Project. It is evident that the Applicant did not just pay lip service to the consultation process – numerous examples were given by the Applicant's project team who participated in Hearing Session no. 2 as to the adjustments made to the route in order to take account of representations by affected landowners, and feedback from the wider community as well as consultees. Neither the Council nor any of the other statutory consultees have objected to any matters

relating to the strategic route selection methodology or the approach to pre-application engagement. Two of the statutory consultees, NatureScot and Historic Environment Scotland in their consultation responses to the Applications (CD002.021 and CD002.024), make explicit positive reference to the Applicant's approach to routeing, and their involvement in the routeing process. It is submitted that great weight should be placed on the non-objection and positive feedback of the statutory consultees.

- 8.31. The positive feedback on the engagement and consultation process aimed at informing the route selection and design of the KTR Project is far from the views expressed on behalf of some sectors of the affected communities and opposition groups, principally GWP. In his evidence on behalf of GWP, Dr Ford criticised the considerable consultation and engagement efforts by the Applicant, despite the fact that the steps taken reflected and exceeded the approach recommended in the Scottish Government's guidance.
- 8.32. It seems clear that the only acceptable response palatable to the objectors to the KTR Project would have been to accede to their demands to either revert to the existing 'R route' for the G-T Connection, or, to underground the replacement G-T Connection. Those expressing these opinions did not take any account of the appropriateness of the Applicant's methodology (as summarised in the Applicant's Summary of Case), or the statutory duties and licence obligations which the Applicant requires to comply with.
- 8.33. For the reasons explained by the experts representing the Applicant, it is the Applicant's view that the approach to strategic route selection, design and consultation in relation to the KTR Project has been carried out in a manner which reflects the Applicant's statutory and licence duties, and which reflects the electricity industry's best practice, including the Holford Rules. The Applicant strongly disagrees with the criticisms of the strategic route selection, design and consultation process raised by GWP and other third parties. It is submitted that the appropriate route, which meets the Applicant's stated routeing objective, has been selected for

each of the Connections forming the KTR Project.

- 8.34. It is submitted that the process followed by the Applicant in relation to consideration of alternative routes has been exemplary. It demonstrates a true commitment to meaningful consideration of main alternatives, as a matter of good practice and in line with industry standard methodology. The extensive consideration of alternative routes for the KTR Project complies with the requirements of the EIA Regulations in relation to consideration of alternatives. It is also submitted that the iterative design process informed by environmental consideration and consultation feedback is an excellent example of EIA in its true sense, ensuring that mitigation by design is used to minimise impacts of the project.

#### Undergrounding

- 8.35. Undergrounding was considered in the context of EIA methodology during Inquiry Session no. 3. In addition, it was discussed during Inquiry Session no. 2 in relation to strategic alternatives. The parties taking part in Inquiry Session no. 2 include the Applicant's team of expert witnesses, GWP represented by Dr Ford, and Mr Kerr. In line with the comments set out in Chapter VII and elsewhere in these Closing Submissions, it is submitted that no weight should be given to the evidence of Dr Ford, and his evidence should not be accepted as expert evidence. The evidence presented by the witnesses representing the Applicant is recommended to the Reporters.
- 8.36. As explained elsewhere in these Closing Submissions, and noted on a number of occasions by the witnesses representing the Applicant, the requirement to consider undergrounding has not been triggered by technical or environmental requirements in line with the Applicant's 'Approach to Routeing and Environmental Impact Assessment' document. Nevertheless, in response to the Scottish Ministers' Scoping Opinion, together with the consultation feedback received from stakeholders and communities affected by the KTR Project, the Applicant considered undergrounding as an alternative to the KTR Project. The summary of considerations relating to

undergrounding as presented within the Consideration of Alternatives section of Chapter 2 of the EIA Report<sup>200</sup> demonstrates that the Applicant has appropriately considered this alternative and notes the reasons for the choice made, taking into account the environmental effects.

- 8.37. As explained by Mr Murray, the Applicant has carried out a thorough assessment of the undergrounding option in respect of the route sections identified through consultation. This is reported in Appendix 3 to the UGS report <sup>201</sup>, making reference to technical, economic and environmental considerations in relation to each of the sections considered as part of the UGS report. It is notable that Mr Murray was not asked any questions about the decision making process by Senior Counsel representing GWP.
- 8.38. The UGS report demonstrates, as consistently accepted by the Applicant, that undergrounding option is technically feasible for the relevant sections reviewed and, on balance, environmentally preferable having regard to, in particular, landscape and visual as well as forestry impacts. However, it has been rejected for economic reasons, as explained in the evidence of Mr Murray during Inquiry Session no 2. This matter is further discussed in Chapter VII above.
- 8.39. Dr Ford's written evidence criticises the Applicant's consideration of alternatives, including consideration of undergrounding. However, when considered in light of his oral evidence where Dr Ford accepted that the Applicant's consideration of undergrounding has been thorough, it is evident that Dr Ford's criticisms have no basis, and that he has yet again manufactured concerns instead of seeking to ensure that his evidence is objectively justifiable. This partial and unjustified approach further demonstrates why Dr Ford's evidence should not be given any weight and should not be viewed as expert evidence.
- 8.40. The Applicant's consideration of undergrounding is relevant in the context of Policy 11 of NPF4, and in particular the final paragraph of sub-paragraph (e) of that Policy.

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<sup>200</sup> CD001.008

<sup>201</sup> CD001.245

The Applicant's witnesses gave extensive evidence in relation to undergrounding. Although underground connections are technically possible for the KTR Project, the technical and economic disadvantages of this alternative design approach cannot be justified in terms of the Applicant's policy approach to routing transmission infrastructure (CD006.004 and CD006.005). This approach is based on the statutory obligations and licence duties to which the Applicant is subject and, in particular the duties under Section 9 of the 1989 Act to develop and maintain an efficient, coordinated and economical system for the transmission of electricity. As explained by Mr Murray, the Applicant's Steering Group considered the detailed UGS report and decided that underground cable connections did not offer sufficient environmental advantages to justify the substantial increase in costs as compared to the overhead line connections and would be inherently less efficient. In this context, it is submitted that the final paragraph of sub-paragraph (e) of Policy 11 has been met through the detailed study of the technical and economic considerations associated with undergrounding sections of the OHL Connections.

- 8.41. While undergrounding has not been triggered by environmental or technical factors envisaged in line with the Applicant's policy, the consideration of this alternative was specifically requested within the Scoping Opinion issued by the Scottish Ministers. In line with this requirement, the Applicant has gone to considerable efforts to study undergrounding options for specific sections of the KTR Project as identified through consultation. Following thorough consideration as explained in the evidence of Mr Murray, the Applicant determined that, in line with the Applicant's statutory duties and licence obligations, overhead line connections should be progressed for all route sections considered in the UGS report. In the context of main alternatives and EIA Regulations, the Applicant's extensive consideration of undergrounding once again demonstrates a commitment to compliance with the relevant requirements.

#### Conclusions regarding main alternatives

- 8.42. The Applicant's evidence clearly demonstrates that main alternatives have been



appropriately studied as part of the KTR Project, in line with requirements of the EIA Regulations and as a matter of good practice. The Applicant's approach involved extensive consultation and public engagement, which influenced the choices made and informed the final form of the KTR Project subject to the Applications. The criticisms of the Applicant's methodology have no merit, and are based on unsubstantiated claims and poor understanding of the applicable legal framework.

### **Conclusions**

- 8.43. The EIA for the KTR Project was undertaken pursuant to the substantive requirements of the 2000 EIA Regulations, in accordance with the transitional provisions contained in regulation 40 of the 2017 EIA Regulations. The Applicant submits that the EIA for the KTR Project has been undertaken in compliance with the EIA Regulations and in line with the relevant good practice. The requirements of the Scoping Opinion are fully addressed in the EIA Report, and the statutory consultees did not raise any concerns with the methodology or conclusions of the EIA Report. The Applicant's approach to consultation has been exemplary, and the legal requirements regarding consultation in terms of the EIA Regulations have been complied with. It is submitted that the Reporters and Scottish Ministers can be satisfied that the requirements of the EIA Regulations and Schedule 9 of the 1989 Act have been complied with.
- 8.44. The Applicant's expert witnesses have demonstrated considerable knowledge and professional experience in relation to matters they gave evidence on. The long-term involvement of the experts forming the Applicant's team involved in the KTR Project should be commended. It is submitted that the evidence of the Applicant's witnesses should be preferred by the Reporters, and should be given considerable weight. For the reasons set out above, the evidence of Mr Howieson and Mr Kitching should be given limited weight. The evidence of Mr Kerr betrayed his lack of understanding of the matters at hand, and should be given very limited weight.
- 8.45. It is submitted that Dr Ford has discredited himself as an expert witness. His

criticisms of the KTR Project are not substantiated, and are based on his own unsubstantiated theories as to how and where electricity transmission projects should be developed. For the reasons set out above and elsewhere in these Closing Submissions, it is submitted that Dr Ford's evidence should be given no weight and should not be admitted as expert evidence.

## 9. CONSIDERATION OF ENVIRONMENTAL IMPACTS

### Introduction

- 9.1. As explained in Chapter VI above, the environmental impacts of the KTR Project must be considered in the context of the relevant policies for the purposes of guiding the decision-making process.
- 9.2. The policy matters of particular relevance to the KTR Project are summarised in Chapters C and J of the Applicant's Summary of Case, and are noted in Chapter VI above. The conclusions found elsewhere are not re-stated in this Chapter IX, although the policies of particular importance to the environmental impacts are noted as appropriate. It is submitted that any policy tensions should be considered taking account of the strong support for the KTR Project on the basis of Policy 11 of NPF4, and the status of the KTR Project as a National Development.
- 9.3. The environmental impacts of the KTR Project have been minimised through careful design and route selection. In addition, a comprehensive suite of mitigation measures has been proposed by the Applicant, to be secured by conditions attached to the Consents.

### Landscape and visual impacts

- 9.4. As acknowledged in the evidence by a number of the Applicant's witnesses, and in the Applicant's internal routing policy documents, significant adverse landscape and visual effects are, in general terms, the main environmental impacts that require to be addressed in the decision-making process. For this reason, this topic is the first of the environmental impacts to be evaluated in these Closing Submissions.

Evidence of the witnesses participating in Inquiry Session no. 4 regarding landscape and visual impact (including cumulative and sequential impacts, impacts of the on and off-site access works, visual impact on residential amenity and the combined implications for residential properties)

- 9.5. Matters relating to landscape and visual impact (including cumulative and sequential

impacts, impacts of the on and off-site access works, visual impact on residential amenity and the combined implications for residential properties) were discussed during Inquiry Session no. 4, held on 14 and 15 November 2022 (Days 9 and 10 of the oral sessions). The expert witness representing the Applicant during Inquiry Session no. 4 was Mr Dan Walker. The only other professionally represented party who took part in Inquiry Session no. 4 was LSKE, represented by Mr Mark Steele. Mr Kerr took part in the session as a local householder in Galloway Forest Park and third party objector. Comments relating to landscape and visual matters were also made by Dr Ford on behalf of GWP, during other Hearing and Inquiry Sessions (outwith the dedicated session focusing on the landscape and visual impact matters).

- 9.6. Mr Walker has the necessary professional qualifications and over 13 years of professional experience relevant in the context of assessment of landscape and visual impacts. He specialises in landscape and visual impact assessment (“LVIA”) for major infrastructure projects, including overhead transmission lines. As discussed in evidence, Mr Walker has been involved in the KTR Project from its original inception as the DGSR Project in 2014, including the routeing process and the extensive consultation carried out by the Applicant. As noted in the Applicant’s Summary of Case, Mr. Walker clearly demonstrated in evidence that he has an in-depth knowledge of the KTR Project, the study area and baseline conditions, and the key routeing issues in respect to landscape and visual matters. His evidence also demonstrated his experience and understanding of the interaction and balance required to be struck in considering different technical and environmental factors which may influence the technical feasibility and economic viability of different options for overhead transmission lines. Mr Walker also demonstrated a thorough understanding of the of the Applicant’s statutory duties and licence obligations of relevance in the context of route selection and design of electricity transmission projects. For the reasons set out below, the evidence of Mr Walker is recommended to the Reporters, and it is submitted that very substantial weight can be placed on his evidence.

- 9.7. The evidence from Mr Steele was limited to the interests of LSKE, and the potential landscape and visual impacts arising from the introduction of towers T18 to T21 of the P-G via K Connection. Mr Steele admitted that he has never been involved with an overhead line development prior to his involvement with the KTR Project, and has never prepared a full independent LVIA for any development project. In his evidence, he sought to justify exploration of alternative proposals for realignment or undergrounding of the overhead line forming part of the P-G via K Connection crossing over part of Knocknalling Estate. Mr Steele was tasked with heralding his client's case driven entirely by private interests of LSKE, disregarding other interests in the locality and the wider public interests. For the reasons set out below, it is submitted that only limited weight can be placed on Mr Steele's evidence.
- 9.8. The evidence of Mr Kerr demonstrated his limited understanding of landscape and visual impact matters. His concerns are principally driven by his perception of the likely views from his property. It is clear that Mr Kerr would prefer that the KTR Project follows an alternative route away from his property and outwith the Galloway Forest Park, or is undergrounded (at least in part). Mr Kerr vigorously argued that the G-T Connection should be placed underground, making reference to other operators routinely placing similar infrastructure underground but without any regard to the circumstances in which is appropriate for those undertakers to pursue undergrounding. For example, Mr Kerr continued to ignore the fact that funds for undergrounding initiatives established by the transmission operators in response to the Ofgem policy funded by UK energy consumers are not available in relation to the KTR Project, despite the reasons for this fact being explained by the Applicant's witnesses. On this basis and for the reasons discussed in the Applicant's Summary of Case, it is submitted that very limited weight should be placed on Mr Kerr's evidence.
- 9.9. GWP did not participate in Inquiry Session no. 4, and did not present any expert evidence in relation to landscape and visual impacts. However, that did not stop Dr Ford from making unsubstantiated assertions in relation to the landscape / visual

benefits of his proposals for the G-T Connection to be placed on either single or twin Trident wood poles. Despite his protestations during Inquiry Session no. 2 in relation to strategic alternatives, Dr Ford's planning degree does not provide him with the qualifications, knowledge or experience needed to give objective expert evidence on matters of landscape and visual impact. It is well established practice that planning professionals seek the input of expert landscape architects in relation to landscape and visual matters in connection with developments of the size and scale of the KTR Project. By not doing so and proclaiming to be in the position to offer an expert opinion on the landscape and visual impacts of single or twin Trident wood pole proposal he was promoting, Dr Ford acted outwith the objective extent of his competence. As such, Dr Ford's determination to give evidence in relation to landscape and visual matters puts him in breach of the core principles of the code of professional conduct of the Royal Town Planning Institute of which he is a member. It is strongly submitted that no weight should be placed on Dr Ford's evidence in relation to purported benefits of using single or twin Trident wood poles for the G-T Connection, as described in section 33 of the Applicant's Summary of Case. It is also submitted that his evidence on this matter should not be admitted as expert evidence.

9.10. In addition, the Closing Submission for GWP contains a number of comments in relation to landscape and visual impact matters, despite GWP not presenting a case on these topics. These comments present an inaccurate representation of the evidence and on a number of occasions present selective quotes from Mr Walker's evidence, as referred to below. Senior Counsel on behalf of GWP is inviting the Reporters to accept a misleading interpretation of the Applicant's expert on landscape and visual matters, despite the fact that his client, GWP, did not present any evidence on this topic and did not participate in Inquiry Sess no. 4. This approach is deceptive and inappropriate. It is submitted that the Reporters should disregard the comments relating to landscape and visual matters set out in Senior Counsel's Closing Submission on behalf of GWP, and should place no weight on those comments.

Position of the Council and other parties in relation to landscape and visual impacts

- 9.11. As notes in section 32 of the Applicant's Summary of Case, the main reason for Inquiry being held in respect of the KTR Project was the Council's decision to object to the Applications for consents for the Project. The objection by the Councillors was against the recommendation of the Council's professional planning officers, and was based on one ground of objection that was solely concerned with potential adverse landscape and visual impact on the amenity of the Galloway Hills and Solway Coast Regional Scenic Areas (RSAs). This objection was not well reasoned and poorly framed, and did not draw any distinction between the various Connections forming part of the KTR Project despite their differing location and proposed type of support structures. As is clear from the transcript of the Councillors' deliberations (APP004.006), the decision to object was driven by local political interests and was not supported by any professional advice.
- 9.12. The unsustainable nature of the Councillor's objection was finally acknowledged by them in light of the Inquiry Report prepared by Mr Walker (APP004.004), which comprehensively and methodically explained why the objection had no objective basis. Prior to the commencement of the Oral Sessions in October 2022, the Council confirmed the withdrawal of its objection, and its withdrawal from the Inquiry process, in an email from its legal representative Mr Peter Ferguson dated 12 October 2022. The Council did not therefore take any part in Inquiry Session no. 4. Following the withdrawal of the Council's objection, there were no statutory or non-statutory consultees maintaining an objection to the KTR Project on the basis of landscape and visual impacts.
- 9.13. As noted in section 32 of the Applicant's Summary of Case, there was no challenge made in the evidence presented by other parties to the approach or methodology adopted for the LVIA reported in Chapter 7 of the EIA Report (CD001.013), which accords with the best practice principles contained within the Guidelines for Landscape and Visual Impact Assessment – Third Edition ("GLVIA3") (CD009.001). With the exception of representations from third party interests with concerns in

relation to adverse effects on residential amenity and the receptors listed in paragraph 3.42 of the Inquiry Report (APP004.004), there was no challenge from statutory or non-statutory consultees as regards the findings and conclusions of the LVIA.

Minimising landscape and visual impacts, and consideration of alternative technologies in that regard

- 9.14. Landscape and visual impacts were considered as an integral part of the route selection and design process. As explained in evidence, the Applicant and its project team firmly believes that impacts of an overhead line on landscape and visual amenity are most successfully avoided or mitigated by careful routeing. This approach is represented in the Applicant's guidance contained in "Approach to Routeing and Environmental Impact Assessment" (CD006.004128 and CD006.005129), and is aligned with the principles of the Holford Rules (with NGC 1992 and SHETL Notes) (CD006.001). As explained in evidence, the Applicant has gone to considerable lengths to reduce landscape and visual amenity impacts of the KTR Project. Reporter Rice will be aware of this based on her accompanied and unaccompanied site visits.
- 9.15. Section 3.6 of the Applicant's guidance in its "Approach to Routeing and Environmental Impact Assessment" details the specific circumstances where undergrounding as an alternative to an overhead line may be considered. These are summarised in section 33 of the Applicant's Summary of Case. It has been explained that the circumstances requiring consideration of undergrounding on the grounds of landscape and / or visual impacts did not arise at any point in the routeing or EIA process for the KTR Project. None of the landscape and visual effects arising from the introduction of the Connections, either individually or cumulatively, are assessed within the LVIA as 'very significant'. Therefore, the undergrounding of specific sections of the OHL Connections has not been deemed necessary, in order to mitigate the type of landscape and visual impacts described in the guidance. The landscape



and/or visual effects assessed as significant effects arising as a result of the KTR Project did not reach this threshold. Despite the localised significant landscape and visual effects identified in the LVIA for receptors along the route of the KTR Project Connections, Mr Walker has found no justification in landscape and visual terms for undergrounding. It should be noted that Mr Steele's Inquiry Report does not identify landscape or visual effects of the very greatest severity in line with the LVIA assessment methodology (CD001.124) adopted by Mr Walker, or Mr. Steele's own methodology i.e. major and significant landscape or visual effects. Mr Steele also did not contest in evidence that major significant effects would not occur for either landscape or visual receptors identified in immediate vicinity of Knocknalling Estate, including travellers on the tourist route that is the A713.

9.16. It is clear from evidence in relation to strategic alternatives for the project, as well as landscape and visual impact matters, that undergrounding of connections has to be considered in the balance of environmental, technical and economic considerations. In other words, the Applicant's duties in line with section 9 of the 1989 Act must be balanced with its duties in line with Schedule 9 of the 1989 Act. As explained by Mr Young during Inquiry Session no. 2, undergrounding of short sections of connections (such as proposed on behalf of LSKE) inevitably increases the 'per km' cost of that section as a result of the cost of infrastructure which requires to be put in place to allow for the undergrounding (i.e. the transition from overhead line to underground cable and vice versa). It also leads to certain technical consequences, including difficulties with quickly locating and remedying connection faults. Additionally, it cannot be assumed that undergrounding of short sections of connections would always result in decreased effects on amenity. Undergrounding of the short section of the P-G via K Connection in the vicinity of the Knocknalling Estate was suggested by LSKE as means of mitigation of the visual effects, and serves as a useful example of the issues created by undergrounding.

9.17. The Applicant's expert witnesses explained that undergrounding of the short section of the P-G via K Connection suggested on behalf of LSKE would result in

introduction of substantial additional infrastructure required to facilitate the undergrounding. Mr Lloyd and Mr Young, the relevant expert witnesses on this issue for the Applicant, explained during Inquiry Session no. 3 that these transitions would be facilitated by the introduction of larger terminal towers, contained within large secure compounds with additional ancillary infrastructure, and requiring the formation of permanent vehicular access provision from the A713. No comparable assessment of the landscape and visual effects of the alternative suggested on behalf of LSKE is before the Inquiry. However, while the effects on Knocknalling Estate and visual receptors in the immediate vicinity may be reduced, as Mr Walker explained in evidence, other significant landscape and visual effects should be anticipated to arise from the requirement for additional infrastructure at each transition between the P-G via K OHL Connection, and the proposed underground cable. It was clear from the evidence of Mr Steele that he has given no consideration to the alternative landscape and visual effects which may arise from the introduction of his proposed hybrid underground section between tower 18 and tower 21 of the P-G via K Connection, which would require the transition from an overhead line to underground cable and back to overhead line.

- 9.18. Reporter Rice will recall that during the accompanied site visit, Mr Steele admitted that the infrastructure required to facilitate the proposed short section of undergrounding would be more visible from the A713 than he argued in earlier evidence. Paragraph 5.2.3 of Mark Steele's Inquiry Report states that "*Landscape and visual effects are likely to be reduced if the KTR was realigned in the vicinity of the Knocknalling Estate and substantially reduced if undergrounded.*" This position was tested in oral evidence during Inquiry Session no. 4, and whilst alternative overhead or underground options may reduce effects on the interests of Knocknalling Estate, it was conceded by Mr Steele that alternative and significant effects would arise for alternative options, including potential effects on the residential visual amenity of residents of Inverharrow (detailed above). Considerable discussion was also had in relation to the potential effects associated with terminal towers and sealing end

compounds for any underground option between T18 and T21. The nature of the terminal towers was explored with Mark Steele in evidence, and there was an acceptance that the terminal towers themselves, being generally larger and more substantial infrastructure would, give rise to significant effects in the vicinity of their chosen location. The clarification and change in position following the site inspection remains accurate to the discussions and concessions made on site.

- 9.19. The other technological alternative to the Connections was raised by Dr Ford on behalf of GWP during Inquiry Session no 2. on strategic alternatives, in the form of single or twin Trident wood poles. As noted above and set out in section 33 of the Applicant's Summary of Case, Dr Ford's unsubstantiated assertions as to the major landscape / visual benefits of this alternative solution were not supported by any evidence. Dr Ford failed to take account of the substantial increase in the number of structures which would be required to implement his proposal – the installation of twin Trident 132kV circuits for the G-T Connection is estimated to require 648 wood pole structures, as compared to 118 L4 steel lattice towers. Mr Walker explained in evidence that the routing of the purported twin Trident alternative proposed by Dr Ford may differ from the proposed route of the KTR Project. The different technical limitations and opportunities offered by this type of infrastructure were highlighted, and the environmental implications, particularly the landscape and visual implications outlined. Drawing on experience from other projects, Mr Walker concluded that two parallel (continuous) or diverging Trident 132kV overhead lines were unlikely to deliver a significant benefit in terms of the landscape and visual effects that would arise in comparison to the G-T Connection as proposed as L4 steel lattice towers. It is submitted that Mr Walker's evidence on this issue, as the only qualified expert on the matter of landscape and visual impacts, should be preferred by the Reporters, and no weight should be placed on the evidence of Dr Ford. It is also submitted that Dr Ford's evidence on should not be admitted as expert evidence.
- 9.20. Mr Walker has found no justifiable requirement for strategic alternatives such as realignment or undergrounding to be considered as a consequence of the landscape

and visual impacts identified. The alternative of single or twin Trident for the G-T Connection promoted by Dr Ford was rejected for technical and economic reasons, as explained in evidence. Significant landscape and visual impacts of the KTR Project have been avoided, reduced, and minimised throughout the rigorous and transparent process followed by the Applicant. The consistent application of the approach to routeing in accordance with tried and tested best practice guidance leads the Applicant to conclude that the final design alignments for each Connection reflect the KTR Routeing Objective and accord with the Applicant's statutory duties under section 9 of, and Schedule 9 to, the 1989 Act.

#### The Regional Scenic Areas (RSAs)

- 9.21. As explained in evidence on behalf of the Applicant in a number of contexts, there is a clear locational need for the development of the KTR Project in the particular locations proposed, given the fixed location of the points of connection (i.e. the existing substations and adjacent hydroelectricity generation assets). This includes a specific need for the development of the G-T Connection in the locations proposed within the RSAs.
- 9.22. As previously noted, the primary reason for the Council's objection (CD002.001) related to what it said was uncertainty as to whether the proposals would not have an "unduly adverse effect on the landscape character due to this proposal running through two Regional Scenic Areas" (the Galloway Hills and the Solway Coast RSAs). Mr Walker has always maintained that the Council's RSA Technical Paper (CD005.004) does not assist in the assessment process, in that it does not set out a definitive list of special qualities in relation to any of the RSAs within Dumfries and Galloway. However, he prepared his Inquiry Report seeking to address the Council's concerns, as elaborated on within its Inquiry Statement (DGC001.002), by drawing upon the assessment of landscape and visual effects predicted to arise for receptors located within the RSAs as detailed within the LVIA. In light of Mr Walker's conclusions, the Council withdrew its objections to the G-T (TRL-170-4) and P-G via

K and (TRL-170-5) Connections<sup>202</sup> and confirmed its withdrawal from the Inquiry process.

- 9.23. In the Closing Submission on behalf of GWP, Senior Counsel made a number of references to Mr Walker’s evidence regarding the RSAs. These comments have been made without any reference to contradictory evidence presented by GWP, or indeed any other party. The comments in GWP’s Closing Submission rely on selective quoting of Mr Walker’s evidence in a number of instances. While these Closing Submissions do not rehearse all of the inaccurate quotes, it is important that these are brought to the attention of the Reporters. For example, first paragraph on page 13 of GWP’s Closing Submission states *“The landscape is said to be “capable of accommodating the form and scale of infrastructure proposed” yet the author has found it “...difficult to...appraise if the scenic quality of the RSAs would be compromised by the landscape and visual effects predicted...”*. However, the full quote of Mr Walker’s evidence set out in his Inquiry Report (APP004.004) at paragraph 8.94 is *“It is acknowledged that adverse effects on the landscape, views, and visual amenity of the RSAs will arise from the introduction of the KTR Project Connections. However, it is considered the landscape of the RSAs which will experience adverse effects is capable of **successfully** accommodating the form and scale of infrastructure proposed, **without undermining the reasons for their designation either locally or for the RSAs as a whole.**”* (emphasis added). The selective quoting of the conclusions reached by the Applicant’s expert is misleading.
- 9.24. Similarly, second paragraph of GWP’s Closing Submission on page 13 continues stating *“Inconsistently, however, the Proposal “would (not) significantly adversely affect the factors taken into account in (the designation.”*. Again, the full quote of Mr Walker’s evidence at paragraph 8.96 of his Inquiry Report (APP004.004) provides the correct context in which this statement is made, namely *“Whilst in the absence of any formally defined special qualities, it is difficult to definitively appraise if the scenic quality of the RSAs would be compromised, **it is not considered that the landscape and visual effects***

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The Council’s objections to the other three connections forming part of the KTR Projects were withdrawn earlier in the inquiry process.

*predicted to arise in respect of the Galloway Hills RSA and Solway Coast RSA would significantly adversely affect the factors taken into account in designating the areas. The limited adverse significant landscape and visual effects will not compromise the integrity of the landscapes of the RSAs or diminish the ability of receptors to understand and appreciate the landscapes of the RSAs.*" (emphasis added). The selective references to Mr Walker's evidence are not only misleading and inaccurate – they invite the Reporters to reach conclusions on an incorrect interpretation of expert evidence with no basis in evidence. It is important to note that the Council confirmed in withdrawing from the Inquiry that its concerns relating to the RSAs have been satisfactorily addressed; that impacts were judged to be acceptable; and that there was no longer a planning policy basis for opposing the Applications. The Closing Submission on behalf of GWP appears to disregard this fact.

- 9.25. In addition to the inaccurate representation of Mr Walker's evidence, GWP's Closing Submission makes a series of unsupported claims in relation to what the Applicant should have done, in GWP's opinion. It is suggested by GWP that *"If the reasons for the wider landscape designation have not been articulated by the Council, would one not expect to see the Applicant's witness actually assess the value of the landscape for the Examination."* Whilst the Council do not concede that the RSA Technical Paper does not detail defined special qualities for the RSAs, its Inquiry Statement (DGC001.002) did set out the special qualities which it believed could be affected by the KTR Project. This is dealt with in detail in paragraphs 8.73 – 8.86 of Mr Walker's Inquiry Report (APP004.004). Effects on these 'Special Qualities' and 'Key Characteristics' (drawn from the Technical Paper) were then dealt with systematically in Table 8-1 and Table 8-2 of Mr Walker's Inquiry Report. This assessment did not *'assess the value of the landscape'*, as that is for the Council to do and what Mr Walker maintains in his expert opinion is not done with sufficient transparency in the Technical Paper (as detailed in Chapter 8 of his Inquiry Report). Mr Walker's role, and the role of the Applicant, is to demonstrate how the designated landscapes and what is valued about them (i.e. the Special Qualities) would be affected by the proposals – which the Applicant has

done, as demonstrated in Mr Walker's evidence.

9.26. GPW's Closing Submission continues by making unsubstantiated claims as to the effects of the KTR Project. These are not supported by any transparent or justified assessment of effects. Effects on the RSAs have been addressed in detail in the evidence presented in Mr Walker's Inquiry Report and led to the Council's withdrawal from the Inquiry. The Reporters are invited to consider these before considering whether the "*the highly significant and intrinsic value of the GHRSA and the Solway Coast RSA*" is indeed adversely affected to such a degree that their value and integrity would be undermined and the NPF4 Policy 4 d) provisions would not be satisfied. GWP has not presented any evidence to the Inquiry to date that suggests that the integrity, or indeed the 'special qualities' of the RSAs in so far as they can be determined, will be significantly and adversely affected to such a degree that it would undermine their reason for designation. It should be noted that paragraph 11.5 of Mr Walker's Inquiry Report states "*The identified significant landscape and visual effects, and cumulative effects are considered to be proportionate and typical of the type and scale of infrastructure proposed, and effects have been minimised through effective routeing and design of the OHLs through these landscapes.*", and at paragraph 11.12 goes on to conclude "*It is not the purpose of this Inquiry Report to consider whether the identified landscape and visual effects are contrary to planning policy. The landscape and visual effects identified should be judged within the context of an appropriate consenting balance, and not in isolation.*"

9.27. For these reasons, it is submitted that the Reporters should place no weight on the comments relating to landscape and visual matters set out in GWP's Closing Submission.

Distinction between Landscape and Visual Impact Assessment (LVIA) and Residential Visual Amenity Assessment (RVAA)

9.28. Potential effects on views from residential properties within the closest proximity to the proposed KTR Project Connections, and the existing N Route, R route (north),

and R route (south) to be removed, are considered in the LVIA (CD001.013). This was supplemented by a RVAA (APP004.001 – APP004.003), with accompanying figures and wireline visualisations. The RVAA was submitted as part of the Inquiry process in August 2022.

- 9.29. In paragraphs 2.15 to 2.16 of the RVAA it is noted that “*the assessment of effects on residential visual amenity is often distinctly separate from the assessment of visual effects as covered in a standard LVIA*” (paragraph 2.15). However, it is clear from both these paragraphs, when read together, that the assessment of significance of effects on residential amenity contained in the LVIA (which is reported in Chapter 7 of the EIA Report (CD001.013), together with supporting figures, appendices, and visualisations), underpins the RVAA. It is the Applicant’s position that the RVAA provides verification of the assessment presented in Chapter 7 of the EIAR as regards significance of effects on residential visual amenity in respect of all properties within 200m of the proposed KTR Connections. This is based on the assessment work carried out by its landscape architect who prepared both the LVIA and RVAA, Mr Dan Walker.
- 9.30. The important distinction between the LVIA and RVAA assessment in relation to the effects on residential amenity is that the RVAA has an additional final step in the assessment methodology, Step 4, which is carried out for the purpose of assisting the decision-maker to form a judgement on “living conditions” or residential visual amenity. The reasoning that lies behind the RVAA guidance that is specific to residential visual amenity is that the focus of the well-established guidance in the GLVIA3 is that it focuses on public views and public visual amenity which require to be given consideration in the planning process. In relation to private views, it is well-established in planning law that views from private residences are not generally treated as a material consideration in the decision-making process on applications for statutory development consents. This principle applies in the operation of the planning system. Due to the increase in applications for consents for wind farms the Landscape Institute recognised that there could be circumstances in which the



particular form of new development in close proximity to a residential property could be overbearing and/or give rise to a high magnitude of visual change, particularly if located within key/principal views from the property, that the effects on private residential visual amenity becomes a material consideration which is judged to be of greater public interest. In that situation such effects on private residential amenity may properly be taken into account by the decision-maker, as noted in paragraph 2.5 in Chapter 2 of the RVAA and paragraphs 1.3 to 1.9 of the Landscape Institute's Technical Guidance Note 2/19 on RVAA (CD009.008).

- 9.31. The concept developed by the Landscape Institute in its RVAA guidance in order to assist both landscape architect and the decision-maker in forming the RVAA judgement on predicted effects on visual amenity, is that of the Residential Visual Amenity Threshold. This is defined and described in paragraphs 2.1 to 2.3 of the RVAA guidance and within the Glossary on page 17. The definition in the Glossary is: *"The threshold at which the visual amenity of a residential property is changed and adversely affected to the extent that it may become a matter of Residential Amenity and which, if such is the case, competent, appropriately experienced planners will weigh this effect in their planning balance."*
- 9.32. The broader advice contained in paragraphs 2.1 to 2.3 as regards the application of that concept is to pose the question as to whether or not the effect of the development on Residential Visual Amenity *"is of such nature and/or magnitude that it potentially affects "living conditions" or "Residential Amenity"*, as noted in paragraph 2.1 of the RVAA guidance. An example of the factors that might lead to a judgement that the residential visual amenity threshold has been reached is that in relation to tall structures, one of the relevant questions is whether or not the development is *"overwhelming/overbearing"*. The characteristic of a new development being *"overbearing"* is defined in the Glossary as *"the impact of a development or building on its surroundings, particularly a neighbouring property, in terms of its scale, massing and general dominating effect"*.
- 9.33. Within the RVAA guidance in paragraphs 4.17 to 4.20, detailed guidance is given as

regards the important distinction between: (i) the assessment as regards magnitude of change and significance of effect and changes in visual amenity at the property, which is the assessment usually carried out as part of the LVIA process; and, (ii) reaching a judgement on *“whether the predicted effects on visual amenity and views at the property are such that it has reached the Residential Visual Amenity Threshold, therefore potentially becoming a matter of Residential Amenity.”*; (paragraph 4.18 of the RVAA guidance).

- 9.34. This distinction is maintained in the RVAA guidance through the recognition that the assessment stage discussed within sub-paragraph (i) in the above paragraph, forms Step 3 of the RVAA, and the next stage discussed within sub-paragraph (ii) in the above paragraph, forms Step 4 of the RVAA. The terms used in reaching a judgement need to be understood and not confused. In the Glossary Residential Visual Amenity is defined as: *“The overall quality, experience and nature of views and outlook available to occupants of residential properties, including views from gardens and domestic curtilage. It represents the visual component of Residential Amenity”*; page 17 of the RVAA guidance. Residential Amenity is defined in relation to *“amenity”* as: *“the quality of being pleasant or agreeable”*; and in relation to property as *“the attractiveness and value of real estate of a residential structure”*. It is made clear in the RVAA guidance that Residential Visual Amenity is only one component of assessing Residential Amenity; (e.g. the definition of Residential Visual Amenity and paragraph 1.2 within the RVAA guidance).
- 9.35. Considerable insight as to the application of these terms when seeking to reach a judgement on whether or not the Residential Visual Amenity Threshold has been reached, is provided through reference to planning precedent that is the subject of Appendix 1 to the RVAA guidance. The overall theme of the reasoning in the various decisions is whether or not the level of adverse effect on residential visual amenity from a particular proposed development, based on factors such as the overbearing nature of the development, the overwhelming and oppressive nature of the visual impacts, would render a property as an unattractive place to live. There is particular focus on whether or not the development would result in unacceptable living

conditions because the outlook of the residents either from the property or the amenity space would be so unpleasant, overwhelming and oppressive that in the public interest the living conditions should be protected. It is only when that test is met is it considered that it is in the public interest that the private property interests should be protected for the wider public interest.

Residential Visual Amenity Assessment (RVAA) in the context of the KTR Project

- 9.36. The requirement to connect into the existing Substation locations, taking account of the existing technical constraints, meant that there was a necessity in some locations to encroach within 150m of residential properties. Nevertheless, in no instance within the RVAA is it judged that these receptors would be subject to effects on residential visual amenity which are considered to breach the Residential Visual Amenity Threshold. Furthermore, many residents were judged as likely to experience a beneficial change in residential visual amenity as a consequence of the removal of the existing N route and/or R route (north), or R route (south), and/or the alternative location of the proposed KTR Project Connections which would replace them. Reporter Rice will be aware of these likely beneficial changes from her site visits. This demonstrates the care taken by the Applicant in ensuring appropriate routeing and design of the KTR Project and minimising effects of the Project on all receptors.
- 9.37. Mr Steele contended that effects on the residential visual amenity of residents of Knocknalling House should have been considered in the RVAA. This is on the basis that when arriving at or departing from the property via its private driveway, residents would pass beneath the P-G via K Connection. This criticism is strongly rejected. It has been explained by Mr Walker that no effects on views or visual amenity of residents would be experienced from Knocknalling House at approximately 650m from the OHL and screening by the extensive mixed woodland of Knocknalling Wood. Reporter Rice will be aware of the circumstances at Knocknalling Estate from the accompanied site visit.
- 9.38. The Summary of Case submitted by Senior Counsel on behalf of LSKE provides an

inaccurate representation of the evidence presented by Mr Steele on the matter of residential amenity. In the concluding paragraph on page 2 of LSKE's Summary of Case, it is stated that *"The overall effect on residential amenity for the listed building and its setting from the proposal would be highly significant. Every entry or exit by any means would be dominated by the presence of the Proposal. That would not be in the public interest."* However, the Reporters will recall that in both written and oral evidence Mr Steele finds the landscape and visual effects to be of a Moderate or Moderate/Major, and significant in the context of the EIA Regulations. Applying Mr Steele's own methodology, these do not represent the most severe level of effect. Indeed, he conceded in both his written and oral evidence that effects on the residential visual amenity of residents of Knocknalling House would not breach the residential visual amenity threshold. The effects were never described by Mr Steele as *"highly significant"*. This inaccurate representation of the evidence presented to the Inquiry evidences the disregard for proper procedure shown on behalf of LSKE, as further discussed below in the context of the impacts on setting of the listed buildings at Knocknalling. It is also notable that the veneer of public interest is being applied in an attempt to legitimise LSKE's position, which is aimed at changing the impacts on Knocknalling at the cost of others.

- 9.39. The Reporters are invited to contrast the desire to further protect the residents of Knocknalling House with the rather careless approach to the amenity of residents of other properties as a result of the alternative solutions promoted on behalf of LSKE. Mr Steele agreed with the Applicant that the alternative alignment of the overhead line proposed by Lord Sinclair, which would require the crossing of the existing R route (north), the A713 (and forming part of the Galloway Tourist Route) and the Water of Ken twice, and the location of towers closer to residential properties would likely lead to more severe effects on residential visual amenity of residents at the nearby properties of Inverharrow (Property P46 within the RVAA) and Carsfad Cottage (Property P45 within the RVAA) than the proposed alignment of the P-G via K Connection. Mr Steele also conceded that his proposed second alternative

alignment of the P-G via K Connection would result in an increased level of visual effect from the property of Inverharrow, which would likely be significant as a result. It should also be noted that this further alternative alignment of the P-G via K Connection proposed by Mr Steele is not technically feasible.

- 9.40. The blatant disregard for the interests of others, cost implications and technological constraints on delivery of the KTR Project, clearly demonstrates that the alternative solutions promoted on behalf of LSKE are designed to protect solely the private interests of that party.

#### Policy considerations

- 9.41. A policy of particular importance to the consideration of landscape and visual effects of the KTR Project is paragraph e(ii) of Policy 11 of the NPF4. As noted in Chapter VI above, it clearly signals to the decision maker that in terms of significant landscape and visual impacts, such impacts are to be expected for some forms of renewable energy. The landscape and visual EIA work provided with the Applications, and the written and verbal evidence presented to the Inquiry, has demonstrated that the landscape and visual effects arising from the KTR Project would be acceptable. It also explains the localised nature of the identified significant adverse landscape and visual effects arising in respect of each of the Connections. Appropriate mitigation has been applied by way of embedded mitigation during the design process, and, in terms of the finalised design and routing.
- 9.42. As noted in Chapter VI above, paragraph d) of Policy 4 of NPF4 deals with local landscape areas (i.e. locally designated landscapes, such as Regional Scenic Areas as they are defined by Dumfries and Galloway Council), and is also of relevance in this case. As explained by Mr Walker, the special qualities, intrinsic values and integrity of the RSAs will not be significantly affected by the KTR Project. The special qualities of the Galloway Hills RSA and Solway Coast RSA as far as they can be interpreted (absent any specific definition in the Regional Scenic Area Technical Paper), would be maintained, and would continue to be appreciable. Therefore, the first limb of the

test in paragraph d) of Policy 4 of NPF4 is satisfied. This has been discussed in more detail in the evidence of Mr Bell. The second limb of the test in paragraph d) of Policy 4 of NPF4 provides that development proposals that affect a site designated as a local landscape area in the LDP will only be supported where any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance. For the reasons set out elsewhere in these Closing Submissions, it is submitted that this second limb of the test in paragraph d) of Policy 4 of NPF4 is satisfied by the KTR Project. In this case the benefits are of national importance – as evidenced, among other things, by designation as a National Development. In summary, it is submitted that the KTR Project satisfies the test in the first limb of paragraph d) of Policy 4 of NPF4. If the Reporters and / or the Scottish Ministers do not agree with this conclusion, it is also submitted that the KTR Project satisfies the second limb of the test in paragraph d) of Policy 4 of NPF4.

#### Conclusions in relation to landscape and visual impacts

- 9.43. The likely landscape and visual impacts of the KTR Project have been mitigated through careful design and routeing. Thorough assessment based on established methodology concluded that the requirement for consideration of undergrounding has not been triggered by the landscape or visual (or indeed any other) effects of any of the Connections forming the KTR Project. Careful routeing and design also avoided breaching the Residential Visual Amenity Threshold in respect of any of the properties in close proximity to the KTR Project.
- 9.44. It is submitted that the comprehensive and transparent assessment of the likely effects of the Applications, presented in the LVIA and RVAA, demonstrates that the KTR Project would not lead to unacceptable landscape or visual impacts, or unacceptable impacts on residential visual amenity. Overall, the significance and extent of landscape and visual effects arising from the KTR Project are considered to be proportionate and expected for a development of the nature and scale proposed.

- 9.45. The landscape and visual effects identified should be judged within the context of an appropriate consenting balance and taking account of the relevant policy background. In this case, significant support is derived from Policy 11 of NPF4, and the status of the KTR Project as National Development.
- 9.46. For the reasons set out above, it is submitted that the evidence of Mr Walker should be preferred by the Reporters in relation to landscape and visual impact matters, and substantial weight should be placed on this evidence. It is also submitted that only limited weight can be placed on the evidence of Mr Steele. Given his lack of understanding of the matters at hand, very limited weight should be placed on the evidence of Mr Kerr. In addition, for the reasons set out above and noted in the Applicant's Summary of Case it is strongly submitted that no weight should be placed on the evidence of Dr Ford in relation to matters relating to landscape and visual impacts. It is also submitted that Dr Ford's evidence on should not be admitted as expert evidence. Finally, it is submitted that no weight should be placed on the unsubstantiated comments regarding landscape and visual matters set out in the Closing Submission on behalf of GWP.

#### **Impact on cultural heritage assets and their setting**

- 9.47. Certain matters relating to the impact on cultural heritage assets have been addressed in further written submissions as part of the Inquiry. It is submitted that the Reporters should place considerable weight on the submissions on behalf of the Applicant in that regard. It should be noted that none of the statutory consultees raised any objections to the KTR Project on the basis of impacts on cultural heritage assets and their setting.

#### **New evidence presented on behalf of LSKE**

- 9.48. As noted in Chapters III and IV above, the Closing Submissions and Summary of Case on behalf of LSKE introduce a procedural irregularity to the Inquiry, in the form of statements on behalf of LSKE presented only in those documents, and not relying on any evidence which is before the Reporters. The offending statements in the

Closing Submission and Summary of Case on behalf of LSKE relate to the impacts on the setting of listed buildings at Knocknalling<sup>203</sup>. This topic has not been the subject of examination through the oral and / or written procedures forming part of the Inquiry, and is not addressed in LSKE's existing and admissible evidence. The impacts on the setting of the listed buildings at Knocknalling were also not mentioned by Mr Steele during the accompanied site visit on 29 November 2022<sup>204</sup>, and did not form part of the Reporters' itinerary for the visit.

9.49. To fully understand the extent of the new matters being raised in the Closing Submission and Summary of Case on behalf of LSKE without reliance on any existing and admissible factual evidence, those advising the Applicant have reviewed the documents submitted to the Inquiry on behalf of LSKE (including reports, statements and precognitions), and the transcripts of all Sessions held as part of the Inquiry. This analysis is summarised in Table 1 below. For completeness, Table 1 includes cross-references to the relevant materials submitted in relation to the Applications as well as the related necessary wayleave application WAY-170-19 relating to Knocknalling

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<sup>203</sup> As noted in the email from Ms MacLean of Shepherd and Wedderburn LLP to the DPEA dated 17 May 2023, the offending paragraphs are set out below.

Closing Submission on behalf of LSKE

- Third paragraph on page 2 (starting "*The reasons for*");
- Fourth paragraph on page 2 (starting "*Knocknalling House is*");
- Fifth paragraph on page 2 (starting "*Together, it is*");
- Sixth paragraph on page 2 ("*The Listing is*");
- All paragraphs on page 3;
- First paragraph on page 4 (starting "*(see s. 69 above)*");
- Second paragraph on page 4 (starting "*A "setting" and any*");
- Third paragraph on page 4 (starting "*The Courts have made*");
- Fourth paragraph on page 5 (starting "*Undergrounding the new*"), in so far as it relates to listed buildings and their setting;
- First paragraph on page 6 (starting "*NPF 4, adopted in February*"), in so far as it relates to listed buildings and their setting;
- Second paragraph on page 6 (starting "*Policy 7 c) emphasizes*"); and
- Third paragraph on page 6 (starting "*The overall damaging*"), in so far as it relates to listed buildings and their setting.

Summary of Case on behalf of LSKE

- Last paragraph on page 1 (starting "*The reasons initially*");
- Second paragraph on page 2 (starting "*Visibility is not*");
- Third paragraph on page 2 (starting "*The Act protects the settings*");
- Fourth paragraph on page 2 (starting "*A "setting", and*");
- Fifth paragraph on page 2 (starting "*The Act's use*"); and
- Last paragraph on page 2 (starting "*The overall effect*"), in so far as it relates to listed buildings and their setting.

<sup>204</sup> It should be noted that the accompanied site visit on 29 November 2022 related to the Applications as well as the related necessary wayleave application WAY-170-19.



Estate.

**Table 1 – Analysis of the new topics raised in the Closing Submissions and Summary of Case on behalf of LSKE in the context of existing evidence**

<b>Topic</b>	<b>Inquiry Statement</b>	<b>Inquiry Report of M Steele</b>	<b>Precognition of M Steele</b>	<b>WAY-170-19 Hearing Statement</b>	<b>WAY-170-19 Written Statement</b>	<b>WAY-170-19 Precognition of M Reid</b>	<b>Transcripts of oral sessions</b>
Application of legal protections afforded to setting of listed buildings at Knocknalling	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
Application of tests from the 'Managing Change in the Historic Environment: Setting' guidance	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed

issued by Historic Environment Scotland							
Undergrounding / alternative route proposed on behalf of LSKE as means of avoiding impacts on the setting of listed buildings at Knocknalling	Not addressed	Not addressed*	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
Impacts of the KTR Project on the setting of listed buildings at Knocknalling	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed

Application of NPF4 Policy 7 c) with respect to the setting of listed buildings at Knocknalling	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
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\* A reference to effects on the setting of historic listed buildings is included within the Note on Holford Rule 2. This matter was not pursued by Mr Steele, who focused on the 'adverse landscape effects on the amenity value'. This is clear from the text accompanying the quoted Holford Rule 2, which reads *"As previously discussed, Knocknalling Wood and the Knocknalling Estate are of ecological and cultural heritage value, as is recognised by their Ancient Woodland and NIDL status. The KTR deviates from the existing overhead line alignment and, in the opinion of MSC, would increase adverse landscape effects on the amenity value of the Knocknalling NIDL."*

- 9.50. It is clear from Table 1 above that the new topics, raised for the first time in the Closing Submissions and Summary of Case on behalf of LSKE, have not been addressed in the evidence presented to date, and have not been tested through examination as part of the Inquiry process. As such, it is not appropriate for these new topics to be introduced in Senior Counsel’s Closing Submission, without relying on existing evidence presented to the Reporters. It is also not appropriate for the new topics to feature in the Summary of Case, as they do not form part of LSKE’s case being summarised. Equally, it is also not appropriate for new documents, such as the ‘Managing Change in the Historic Environment: Setting’ guidance issued by Historic Environment Scotland referred to on the third page of Closing Submission on behalf of LSKE, to be referenced despite not being submitted to the Inquiry.
- 9.51. As noted at paragraph 2.23 of these Closing Submissions, at the Pre-Examination Meeting held on 15 June 2022 all parties agreed that the Inquiry in relation to the Applications should follow the ‘Code of Practice for Handling Inquiries under Section 62 and Schedule 8 to the Electricity Act 1989’ (CD003.002). Unfortunately, the Code of Practice has not been followed in the Closing Submission and the related Summary of Case on behalf of LSKE. In fact, the attempt to introduce references to new evidence at this late stage in the process directly contradicts paragraph 38 of the Code of Practice, which explicitly states that Closing Submissions “*must not introduce any new evidence*”.
- 9.52. Senior Counsel representing LSKE argued, in email correspondence issued to the DPEA, that the Closing Submission and Summary of Case provided by him on behalf of his client do not amount to new evidence. Amongst other submissions on this procedural matter, Senior Counsel representing LSKE argued that the passages relating to the impacts of the KTR Project on the setting of the listed buildings at Knocknalling are to be treated as “*submissions based on public documents and the known*

*circumstances of Knocknalling*"<sup>205</sup>. This statement is incorrect in the context of both (i) the ability to introduce 'public documents' not before the Inquiry in Closing Submissions; and (ii) the extent to which the impacts of the KTR Project on the setting of listed buildings at Knocknalling can be described as the 'known circumstances of Knocknalling' based on which Senior Counsel for LSKE argued that no new evidence was being introduced in the Closing Submission and Summary of Case on behalf of his client.

- 9.53. There is no doubt that the 'Managing Change in the Historic Environment: Setting' guidance issued by Historic Environment Scotland, referred to on the third page of Closing Submission on behalf of LSKE, is in the public domain in the sense that it is freely and publicly available. However, this guidance is not a Core Document, or a document submitted by any of the parties to the Inquiry. It is therefore not before the Reporters as part of the Inquiry, and should not be relied on to support new lines of argument as are presented for the first time in the Closing Submission and Summary of Case on behalf of LSKE.
- 9.54. Similarly, the listed status of the buildings at Knocknalling is not in dispute. However, the nature and scale of impacts of the KTR Projects on the setting of the listed buildings at Knocknalling is an evidential matter which has been raised for the first time in the Closing Submissions and Summary of Case on behalf of LSKE, and a matter on which the Applicant disagrees with LSKE. It is clear that the presentation of this issue in the Closing Submission and Summary of Case on behalf of LSKE is partial and not set out to provide the Reporters with a comprehensive overview of the relevant matters addressed as part of the Inquiry. For example, it is not made clear that the boundary of the Non-Inventory Designed Landscape (NIDL) within Knocknalling Estate does not include the section of access road to the Estate from the A713 road to the edge of Knocknalling Wood, i.e. the area crossed by the KTR Project. From that, it is clear that the new OHL forming part of the KTR Project is lies outwith

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<sup>205</sup>

Email from Mr Campbell KC dated 19 May 2023, 8:06 AM

the NIDL and which forms the 'setting' for the listed buildings within it. It is also clear that the views on this matter, expressed by Senior Counsel on behalf of LSKE, are not shared by the statutory consultees, as none of them raised the impacts of the KTR Project on the setting of listed buildings at Knocknalling as a reason for objection. In fact, Section 4 of the Council's Planning Applications Committee Report (CD002.002) makes reference to consultation responses (both internal and from Historic Environment Scotland), and concludes that the KTR Project "*will not have an unacceptable impact on archaeology and cultural heritage and as such is considered compliant with LDP2 Policies HE1, HE3 and HE4*". The impacts of the KTR Project, and specifically the P-G via K Connection, on the setting of the listed buildings at Knocknalling have not been addressed in the evidence submitted on behalf of LSKE, and have not been considered under any procedure as part of the Inquiry. As such, it is clearly not appropriate for these matters to be raised for the first time in the Closing Submission and Summary of Case on behalf of LSKE.

- 9.55. In more recent correspondence<sup>206</sup>, Senior Counsel representing LSKE again argued that the matter of impacts of the KTR Project on the setting of the listed buildings at Knocknalling raised by him in the Closing Submissions and Summary of Case on behalf of LSKE does not amount to 'evidence', and instead form part of 'submissions'. In effect, and as noted in Chapter IV above, the Reporters are being invited to accept the conclusions of Senior Counsel for LSKE on an issue in respect of which there is no proper basis in fact to support the conclusions he draws (i.e. there is no admissible evidence before the Reporters on the crucial factual issues), and there is no proper basis for reaching conclusions in relation to the relevant legal principles (as the application of the law depends upon lawful factual findings).
- 9.56. The procedural irregularity created by Senior Counsel representing LSKE is very unfortunate. If, as Senior Counsel for LSKE would have it, the comments relating to the impacts of the KTR Project on the setting of listed buildings at Knocknalling are

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<sup>206</sup> Email from Mr Campbell KC dated 25 May 2023, 7:50 AM

simply ‘submissions’ and ‘not evidence’, then those ‘submissions’ have no basis in admissible evidence before the Reporters. Therefore, they cannot be lawfully taken into account as a material consideration. On the other hand, and again as the Senior Counsel for LSKE would have it, if his comments relating to the impacts of the KTR Project on the setting of the listed buildings at Knocknalling are ‘facts’ which are ‘not in issue’ in this case<sup>207</sup>, those facts would have to be established in the materials available to the Reporters and be agreed by all parties to the Inquiry. As demonstrated in Table 1, such evidential basis is not available in this case. As noted above, the Applicant disagrees with the partial presentation of this issue set out for the first time in the Closing Submission and Summary of Case on behalf of LSKE, without any notice and outside procedural arrangements put in place to ensure fairness to all parties. Finally, if Senior Counsel’s comments relating to the impacts of the KTR Project on the setting of listed buildings at Knocknalling are an attempt to introduce the new facts to allow the Reporters to consider this issue, as would appear to be the case in the absence of any other evidential basis before the Inquiry, this new evidence is inadmissible, has not been tested and should be excluded by the Reporters.

9.57. Senior Counsel for LSKE suggested in his email submissions that *“Anything said by an Objector can be countered in the Applicant’s closing submissions”*<sup>208</sup>. While this is correct in respect of legitimate and admissible submissions based on facts which have been established in evidence before the Inquiry, it is not correct in respect of inadmissible submissions or new evidence which has not been examined. Those advising the Applicant are not prepared to contribute to inviting the Reporters to treat statements relating to the impacts of the KTR Project on the setting of the listed buildings at Knocknalling as a new material consideration without any evidential basis before the Inquiry. In fact, for the reasons set out above it is submitted that by taking account of the offending comments by the Senior Counsel for LSKE, the

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<sup>207</sup> As per the first paragraph in the numbered section 2 of the email from Mr Campbell KC dated 25 May 2023, 7:50 AM  
<sup>208</sup> Email from Mr Campbell KC dated 25 May 2023, 7:50 AM



Reporters would create the potential for a legal challenge to their decision. It should also be noted that the Summary of Case on behalf of LSKE was submitted late, at the same time as that party's Closing Submissions – after the close of the other Inquiry procedures, with the exception of the Applicant's Closing Submissions, and after the submission of the Applicant's Summary of Case to the DPEA.

- 9.58. It is submitted that if the comments on new evidence presented in the Closing Submission and the Summary of Case on behalf of LSKE were to be allowed, in the interest of fairness the Applicant would wish the opportunity to address these by providing evidence from an appropriately qualified expert. While it may be that this could be addressed through exchange(s) of further written submissions, it would be for the Reporters to determine whether the new LSKE evidence and the Applicant's response require to be the subject of oral examination. Any further procedure to consider new evidence introduced at this late stage would inevitably impact on the Inquiry timetable, which currently anticipates that these Closing Submissions on behalf of the Applicant will be the last procedural step prior to the Report to the Scottish Ministers being prepared by the Reporters.
- 9.59. The Applicant has sought an interim ruling from the Reporters, inviting the Reporters to exclude the offending passages from the Closing Submission and Summary of Case on behalf of LSEK. On 19 May 2023, Ms Laura Walker of the DPEA confirmed that the Reporters reached an interim ruling and did *"not consider it appropriate to intervene at this time"*. Ms Walker noted that the Reporters *"will reserve their position until all of the closing submissions have been received"*. This position was restated in the email from Ms Walker dated 24 May 2023, in response to an email from those representing the Applicant highlighting procedural concerns relating to the offending passages in the Closing Submission and Summary of Case on behalf of LSEK.
- 9.60. The Reporters' ruling of 19 May leave the Applicant and those representing it in a very difficult position. It is the Applicant's position that the attempt of the Senior Counsel for LSKE to introduce new matters with no evidential basis through Closing

Submission or through the purported summary of the case which has been led is inappropriate as well as procedurally unfair. The Applicant's legal advisers would not be prepared to adopt such a procedurally challengeable position on behalf of the Applicant. If, having reserved their position until receipt of all Closing Submissions, the Reporters decide that the impacts of the KTR Project on the setting of the listed buildings at Knocknalling should be explored at this stage, those representing the Applicant would be professionally obliged to make a motion for an opportunity to present additional evidence from an appropriately qualified expert on this new issue. It would be procedurally unfair to refuse such a motion in circumstances in which it is beyond doubt that the issue of impact on the setting of listed buildings was never part of the case presented on behalf of LSKE until LSKE's Senior Counsel provided his Closing Submission and Summary of Case which has purportedly been led.

- 9.61. For the reasons noted in Chapters III and IV of these Closing Submissions and as explained above, the Applicant's position is that no evidence has been led on behalf of LSKE in relation to adverse effects of the KTR Project on the setting of the listed buildings at Knocknalling. There is no case before the Inquiry on this issue. As such, the offending paragraphs introduced by Senior Counsel on behalf of LSKE in Summary of Case and Closing Submission should be disregarded.
- 9.62. Having regard to the fact that the interim ruling envisages a decision on whether to allow Senior Counsel for LSKE to introduce this new matter being taken after the Applicant's Closing Submissions have been lodged, the only position that can be and is hereby taken on behalf of the Applicant is to:
  - 9.62.1. restate the submissions already made by those representing the Applicant in the emails to the DPEA dated 17 and 19 May 2023 in support of its motion to have the offending parts of the Summary of Case and Closing Submission on behalf of LSKE excluded / disregarded;
  - 9.62.2. reserve the Applicant's position on this new matter pending a decision on this procedural issue by the Reporters after consideration of the

Applicant's Closing Submissions; and

9.62.3. make a motion that if, having previously reserved their position, the Reporters are now minded to accept the offending passages in the Closing Submissions and Summary of Case on behalf of LSKE, and consider that the new matter of relating to the impacts of the KTR Project on the setting of the listed buildings at Knocknalling is a new material consideration, then a post-Inquiry procedure should be set to allow for this issue to be appropriately addressed through expert evidence, and then Closing Submissions on that evidence.

9.63. The issue relating to the impacts of the KTR Project on the setting of the listed buildings at Knocknalling as set out in the Closing Submission and the Summary of Case on behalf of LSKE is also relevant in the context of the necessary wayleave application WAY-170-19. The close relationship between the Applications and the necessary wayleave application WAY-170-19 has been recognised in previous exchanges between those representing the Applicant and the DPEA. In his email of 25 August 2022 (9:10am), Mr Campbell confirmed on behalf of LSKE that the *“objection to the Wayleave (WAY-170-19) is exactly congruent with the objection to the line in the s. 37 case”*. It is also acknowledged by aligning the deadline for Closing Submissions in relation to the necessary wayleave application reference WAY-170-19 and the Applicant’s deadline for Closing Submissions in relation to Applications. In this context, it is submitted that the passages of the Closing Submission and Summary of Case on behalf of LSKE should also be excluded and disregarded in relation to the necessary wayleave application WAY-170-19. The Applicant also submits that in the event that the Reporters are now minded to accept the offending passages in the Closing Submissions and Summary of Case behalf of LSKE, and a post-Inquiry procedure is set to allow for this issue to be appropriately addressed through expert evidence (and then Closing Submissions on that evidence), that evidence should also be taken into account in determination of the necessary wayleave application: reference WAY-170-19. This would be aligned with the approach to other Inquiry

topics (for example technical justification and economic justification for the project, and strategic route selection), where the evidence presented as part of the Inquiry held in respect of the Applications has been adopted for the purposes of the necessary wayleave application reference WAY-170-19.

## **Forestry**

### **Evidence of the witnesses participating in the Forestry Session**

- 9.64. Impacts on forestry were considered during the hybrid Inquiry / Hearing session on 16 November 2023 (“**Forestry Session**”). During that Session, the Applicant was represented by Mr Norman O’Neill, Mr Dan Walker, and Mr Stephen Jack. In addition to the Applicant, the parties who took part in the Forestry Session were Mr Kerr, and Scottish Forestry (“**SF**”) represented by Mr Doug Howieson.
- 9.65. As set out in Appendix 1 to the Applicant’s Inquiry Statement, Mr O’Neill has the relevant qualifications and professional experience necessary to comment on matters relating to the impacts on forestry, including proposed mitigation measures and planting proposals. It is important to note that Mr O’Neil has been providing expert advice on forestry matters in relation to development of overhead lines for the past 25 years. He has experience of routeing and consenting issues relating to overhead lines, and is familiar with the statutory duties and licence obligations binding on the Applicant as well as routeing principles which ought to be observed. The extent and duration of Mr O’Neill’s involvement with the KTR Project mean that he is very well placed to comment on the impacts of the Project on forestry, and the Applicant’s efforts in regards to mitigation of those impacts. The evidence of Mr O’Neill is recommended to the Reporters as the best expert evidence in relation to the impacts of the KTR Project on forestry, and it is submitted that very substantial weight should be placed on his evidence.
- 9.66. Mr Walker’s professional qualifications and experience in relation to landscape and visual impact matters, and matters relating to routeing of overhead line projects, are referred to in his Inquiry Report (APP004.004). Similarly, Mr Jack’s professional

qualifications in relation to routeing and consenting electricity transmission projects are also referred to in the Applicant's Hearing Statement in relation to strategic route selection, design strategy and consultation. Mr Walker and Mr Jack appeared during the Forestry Session as expert witnesses in relation to the matters they gave evidence on, and their evidence is recommended to the Reporters.

9.67. Mr Howieson is the SF Conservator for South Scotland, and has extensive knowledge and experience in respect of forestry-related matters. However, Mr Howieson has no experience of designing, routeing and consenting of electricity transmission projects such as the KTR Project. Given his role within the SF, his evidence firmly centred around the protection of forestry and did not take appropriate account of other matters which have to be considered in the context of overhead line projects. In his evidence, Mr Howieson did not take account of other environmental factors (such as landscape and visual impacts, and impacts on people, ornithological receptors and designates sites), or technical and economic factors which require to be considered in line with the statutory duties and licence obligations binding on the Applicant. In this context, it is submitted that only limited weight can be placed on his evidence.

9.68. Mr Kerr does not have any professional experience or qualifications relevant to the consideration of impacts on forestry in the context of electricity transmission projects. While his participation in the Forestry Session was aligned with the established practice for public inquiries, for the reasons set out in Chapter IV above it is important that the Reporters are informed about the extent to which his evidence can be relied upon. During the Forestry Session, Mr Kerr's evidence revealed a superficial understanding of matters at hand, and betrayed his lack of awareness and confusion about various aspects of the KTR Project. In this context, it is submitted that very limited weight should be placed on Mr Kerr's evidence.

#### Forestry as an important consideration in the context of the KTR Project

9.69. As noted in evidence, forestry was one of the factors carefully considered by the Applicant while selecting the route of the KTR Project. As explained in section 40 of

the Applicant's Summary of Case, the Applicant analysed the impact of the route options on forestry at the routeing stage of the process. This analysis took account of the quality of woodland (reported as a measure of area), type of woodland, and any associated woodland designations including NWSS, ASNW and PAWS. The Applicant has sought to prevent or minimise the impacts on forestry by avoiding such areas unless there was 'no reasonable alternative'.

9.70. As set out in section 40 of the Applicant's summary of case as well as other oral and written evidence, the route was revised to minimise the impact on forestry. This is demonstrated for example by the route adjustments at Slogarie and at the Knocknalling Estate. At Knocknalling Estate, the Applicant has been able to commit to a very limited extent of tree felling to minimise the impact on veteran trees, as discussed in the context of route selection and also as part of the necessary wayleave application process in respect of the land at Knocknalling (WAY-170-19).

9.71. As set out in the context of strategic route selection matters, the approach followed by the Applicant led it to selecting the most appropriate route in line with the Holford Rules (CD006.001). In following this approach, the Applicant complied with its duties to consider the potential adverse environmental impacts of new overhead electricity transmission infrastructure, and to do what can 'reasonably be done' to mitigate any adverse impacts, in line with section 38 of, and Schedule 9 to, the 1989 Act. It is submitted that the Reporters should place significant weight on the evidence of the expert witnesses representing the Applicant during the Hearing Session no. 2, who also represented the Applicant during the Forestry Session.

#### Felling, mitigation and planting proposals

9.72. As explained on a number of occasions in written and oral evidence on behalf of the Applicant, the large scale and central position of the areas of forestry within the Study Area relative to the 'fixed' connection points forming part of the KTR Project (i.e. the Substations) meant that the avoidance of impacts on forestry through route selection and design was not always possible. The impacts on forestry had to be balanced

against other technical and environmental considerations, including landscape and visual impacts as well as effects on people, ornithological receptors and designated sites.

- 9.73. The likely felling requirements resulting from the KTR Project include the felling of trees affected by the KTR Project required for its safe construction and ongoing operation, resulting in the loss of forestry over an area of 242.97ha<sup>209</sup>, including 42.37ha of Ancient Semi Natural Woodland (“ASNW”), Native Woodland Survey of Scotland (“NWSS”) and Plantation of Ancient Woodland Sites (“PAWS”). It is important to note that of the 42.37ha comprising ASNW, NWSS and PAWS to be felled as a result of the KTR Project, the areas designated as PAWS comprise 16.36ha. In other words, approximately 38% of the ASNW, NWSS and PAWS to be felled as a result of the KTR Project are in fact PAWS (i.e. land which has been identified as woodland in the Roy 1st edition maps of 1750, however these areas have been felled and replanted with other tree types which in many cases are non-native mainly coniferous species). The amount of felling likely to be required as a result of the KTR Project is agreed between the Applicant and SF, as confirmed in the Agreed Statement dated 4 and 6 August 2022 (CD010.017).
- 9.74. The Applicant recognises the importance of mitigating impacts on forestry, and has made considerable efforts to propose measures to minimise such impacts. Where possible, the felling requirements would be minimised by micro-siting and crown reduction. The value of this approach was emphasized by Mr O’Neill, and recognised by Mr Howieson. The Applicant has also explained its intention to explore further opportunities to mitigate and offset the impact on forestry through liaison with the individual landowners. Where such measures can be agreed, it would further reduce the extent of tree clearance and utilise the opportunities for retention of trees where these can be managed in line with the Forest Design Concept (FDC, as discussed in Chapter VI and below), through crown reduction and the retention of lower growing

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<sup>209</sup> See Table 8.6 of Chapter 8 (Forestry) of the EIA Report (CD001.014).

trees species. In addition, the Applicant proposes to put in place specific mitigation measures to address the concerns regarding trees alongside the C13 in the area referred to as the 'Beech Avenue'. These measures have been proposed specifically to address the concerns voiced by GWP during Hearing Session no. 4 in relation to traffic and transport (as discussed below in this Chapter IX), and not to mitigate any likely significant effects on the Beech Avenue as none are predicted. The Applicant also intends to explore further opportunities for re-planting in the areas used during construction, and in the corridor of the N and R routes to be removed as part of the KTR Project. These planting proposals seemed not to be understood by Mr Kerr, who sought to undermine their value and questioned the Applicant's intentions. However, as clearly explained by those representing the Applicant, any such planting would be additional to the area to the planting required in line with the compensatory planting requirements. Mr Howieson agreed the benefit of the Applicant's intention to remedy historic fragmentation of forestry, and in particular ASNW.

- 9.75. The matter of compensatory planting required to be carefully considered in light of its statutory duties and licence obligations. The Applicant has been able to make a firm commitment to delivery of compensatory planting, and proposes to deliver the replacement of 242.97ha of woodland cover to be felled as a result of the KTR Project. This compensatory planting would be delivered within the timescale sought by SF. The proposed approach and the wording of the condition to be attached to the section 37 consent for each Connection in order to secure delivery of the compensatory planting have been agreed between the Applicant and SF. The value of compensatory planting offered by the Applicant has been acknowledged by Mr Howieson and has allowed for SF's original objection to the KTR Project on the grounds of the lack of compensatory planting has been resolved, with the exception of matters relating to ASNW, NWSS and PAWS.
- 9.76. As acknowledged in section 43 of the Applicant's Summary of Case, the Applicant recognises that SF remains opposed in principle to the loss/destruction of the 42.37ha



of ASNW, NWSS or PAWS, and accepts that Compensatory Planting would not compensate for the loss of ASNW, NWSS and PAWS resulting from the KTR Project. However, it should be noted that the Applicant has made firm commitments to lessen the impact on forestry as a result of the KTR Project. Importantly, the Applicant proposes that in excess of 42.37ha of the compensatory planting would take the form of native broadleaf woodland. The planting of the native broadleaf woodland would exceed the ASNW, NWSS and PAWS lost in area terms.

9.77. As noted in Chapter VI above, the Applicant has committed to implementation of the Forest Design Concept (FDC) on the land owned by FLS (as illustrated on the map forming Appendix 1 to the Applicant's February 2023 Written Submissions on policy matters). The benefits of the FDC in the context of forestry have been explained in the expert evidence of Mr O'Neill, and include creating linkages underneath the route particularly in areas of higher conservation value and also narrowing the route through the retention of trees e.g. it allows the tree planting and retention to come closer into the towers than it does midspan. More generally, the FDC establishes a mechanism by which individual interventions are targeted to the specific needs of localised biodiversity priorities. The FDC will seek to improve habitat connectivity, at a landscape scale, for these species, ultimately reinforcing and enhancing existing nature networks, embracing the concept of 'Green Networks', which are taken forward in NPF4 as 'Nature Networks'. This approach is beneficial in relation to the impacts on forestry, and would result in additional biodiversity enhancements in line with Policy 3 of NPF4. It is submitted that the Reporters should place weight on this important commitment, both in the context of consideration of impacts on forestry and other environmental receptors, and as part of policy considerations.

9.78. The Applicant is also committed to working with other landowners with a view to implementing the FDC on their land, subject to agreement, with a view to further biodiversity enhancements. In addition, the Applicant has proposed to put in place Nightjar Monitoring Plan and a Green Network Scheme, as discussed in Chapter X below. It is submitted that the Applicant's efforts in respect of providing biodiversity

enhancements and minimising impacts on forestry should be commended, particularly when considered in the context of the fixed points of connection forming part of the KTR Project and the strict regulatory framework binding on the Applicant.

#### Policy considerations

- 9.79. Impacts on veteran trees, woodland and commercial forestry can be described as giving rise to a number of cross-cutting policy issues, to use NPF4 terminology. Such impacts are closely linked to biodiversity policy issues and therefore Policy 3 and Policy 6 of NPF4. Separately, nature conservation issues are also relevant, and should be considered taking account of the written submissions on nature conservation as discussed at the end of this Chapter IX. In this context, Policy 4 and Policy 3 of NPF4 are relevant. A number of the development management criteria for replacement transmission infrastructure contained in sub-paragraph (e) of Policy 11 are engaged; (i.e. criteria (ii), (ix) and (x)). Mr Bell explained the Applicant's position in relation to Policy 11 of NPF4 in his evidence, as explained in Chapter VI above.
- 9.80. The Applicant acknowledges that in terms of Policy 6 of NPF4, some ANSW, NWSS and PAWS cannot be avoided by the proposed route. This is primarily due to the fixed locations of the connection points, the locations of existing substations and also in the context of addressing other important environmental constraints, including residents and more generally people such as tourists. However, the Applicant has made considerable efforts to minimise any impacts on forestry, including firm commitments to compensatory planting (in line with Policy 6 of NPF4) and biodiversity enhancements in terms of Policy 3 of NPF4. As explained in evidence in relation to policy matters and noted in section 19 of the Applicant's Summary of Case, the KTR Project is considered to be in accordance with Policy 4, as there are no unacceptable landscape or visual effects arising (as discussed in Chapter VI, and above in this Chapter IX), and no unacceptable effects in relation to nature conservation interests. As noted above, Chief Planners' letter of 8th February 2023 (CD003.047), makes it clear that NPF4 is to be read as a whole and some conflict

between policies is to be expected. In this case, it is important to note that the KTR Project, being a National Development supported by Policy 11 of NPF4, would deliver considerable public benefits.

- 9.81. As noted in the Applicant's evidence in relation to policy matters, and in particular Chapter 4 of the Hearing Statement by Mr Bell, it is submitted that although there is some non-accordance with Policy NE8 of the LDP, the impacts of the proposed development that would arise in relation to forestry and woodland would not be unacceptable.

#### Conclusion in relation to forestry matters

- 9.82. As explained by the expert witnesses representing the Applicant, the effects of the KTR Project on forestry have been minimised through careful routeing. The proposed mitigation would further assist with minimising such effects. While some felling is unavoidable given the fixed location of the connection points forming part of the KTR Project, the Applicant has firmly committed to compensatory planting and delivery of biodiversity enhancements through implementation of the FCD within the FLS land. It is submitted that any policy tensions must be considered in light of the status of the KTR Project as National Development, and the strong support for the project derived from Policy 11 of NPF4.
- 9.83. For the reasons set out above, it is submitted that the Reporters should prefer and place considerable weight on the evidence of the Applicant's expert witnesses. It is also submitted that the Reporters should place limited weight on the evidence of Mr Howieson representing SF, given his lack of experience of electricity transmission projects and very narrow view of the considerations which have to be taken into account in the context of projects of this kind. It is also submitted that given his lack of understanding of the matters at hand, the Reporters should place very limited weight on the evidence presented by Mr Kerr.

## Traffic and Transport

### Evidence of the witnesses participating in Hearing Session no. 4 regarding traffic and transport impacts

- 9.84. Matters relating to traffic and transport impacts of the KTR Project were discussed during Hearing Session no. 4 held on 22 November 2022. Of the parties participating in the Hearing, only the Applicant was represented by Mr John Dooley and Mr Stephen Jack. In addition to the Applicant, the parties who took part in Hearing Session no. 4 were Mr Kerr, and GWP (represented by Mr Paul Swift, Mr David Hawker and Dr Louise Cumbley). Separately, Dr Ford made comments in relation to traffic and transport matters during other Hearing and Inquiry Sessions.
- 9.85. Of those taking part in the Hearing Session no.4, Mr Dooley appearing on behalf of the Applicant was the only one with the relevant qualifications and professional experience necessary for expert understanding of the significance of predicted effects pertinent to traffic and transport, and the effectiveness of proposed mitigation. Mr Dooley's experience is set out in the Applicant's Hearing Statement in respect of Traffic and Transport impacts – particularly on residential amenity and including the combined implications for residential properties. As such, Mr Dooley provided the only expert evidence in relation to traffic and transport matters, including the appropriateness of the methodology and findings of the assessment of the likely effects of the KTR Project and the suitability of the proposed mitigation measures including the Construction Traffic Management Plan (“CTMP”).
- 9.86. The other representative of the Applicant during Hearing Session no. 4 was Mr Stephen Jack. Mr Jack has the requisite professional qualifications and considerable professional experience in relation to routeing and consenting of electricity developments. Mr Jack has also been closely involved throughout the consultation process with the local communities affected by traffic and transport impacts of the KTR Project, including a number of consultation events and in-person meetings aimed at allowing all stakeholders (including in particular the local residents) to

express their comments on the proposals.

- 9.87. It is submitted that the evidence of both Mr Dooley and Mr Jack can be relied on as expert evidence in relation to the matters they gave evidence on. Taking account of their respective extensive experience and understanding of the relevant subject matters, and the aligned position of the Council as the local roads authority and Transport Scotland as the trunk road authority, it is submitted that the evidence of Mr Dooley and Mr Jack should be preferred to the evidence of the witnesses representing other parties, and that substantial weight should be given to their evidence. This should be contrasted with the evidence of Mr Swift, Mr Hawker and Dr Cumbley representing GWP, and the evidence of Mr Kerr a third party objector.
- 9.88. In the context of the other parties' evidence regarding traffic and transport impacts, it is particularly important to note that, as set out in Chapter IV, it is an established feature of public inquiries that the public are encouraged to participate irrespective of their background knowledge and possession of necessary professional experience to underpin the opinions that they might express. However, as also noted in Chapter IV, the Reporters require to be properly informed as to the evidence that can or cannot be relied upon in relation to a topic that involves expert opinion. Matters relating to traffic and transport impacts are one of such topics, as they require thorough understanding of the established technical methodologies used for assessment of such impacts. Similarly, mitigation of traffic and transport impacts has to be considered in reliance on relevant knowledge and experience. These matters should not be considered solely from a lay perspective, and any judgements in relation to these matters should not be made based on anecdotal data. The need for professional advice in relation to traffic and transport matters was evident from Dr Cumbley's and Mr Swift's confused evidence on methodological issues, which had to be explained in lay terms by Mr Dooley in his oral evidence during the session.
- 9.89. It should be noted that Mr Kerr, Mr Swift, Mr Hawker and Dr Cubmley do not have any qualifications or professional experience of relevance to traffic and transport matters. It was clear throughout Hearing Session no. 4 that their evidence was based

on a simplistic consideration of the potential (rather than likely) effects of the KTR Project, coupled with misunderstandings and a lack of appreciation of the effectiveness of established mitigation methodologies such as the CTMP. For the reasons explained below, it is submitted that the evidence of Mr Kerr, Mr Swift, Mr Hawker and Dr Cubmley cannot be relied on by the Reporters in relation to this matter and should be given very limited weight.

- 9.90. Separately from Hearing Session no. 4 dedicated to traffic and transport matters, Dr Ford proclaimed supposed benefits of his proposed alternative design solution for the G-T Connection, namely the use of twin Trident wood poles. This matter is discussed in more detail in Chapter VII above. However, in summary and of relevance to traffic and transport issues, it was clearly demonstrated by Mr Young appearing on behalf of the Applicant that Dr Ford's purported major benefits of using twin Trident wood poles in regards to decreased traffic movements are no more than a fabrication based on a misunderstanding of technical and engineering requirements. It is strongly submitted that the Reporters should place no weight on Dr Ford's evidence on this matter. It is also submitted that Dr Ford's evidence on should not be admitted as expert evidence.

Appropriateness of the assessment of the likely effects of the KTR Project

- 9.91. As set out in more detail in section 55 of the Applicant's Summary of Case, the assessment methodology adopted for the purposes of carrying out the traffic and transport EIA work reported in Chapter 13 of the EIA Report (CD001.019) is well-established, and is based on industry recognised professional (Institution of Environmental Management and Assessment (IEMA)) guidance. It has been accepted in countless transport assessments supporting Environmental Impact Assessment for major development projects by both local and strategic (national) roads authorities. Similarly, the mitigation measures proposed in relation to the traffic and transport impacts, notably the CTMP, are based on standard methodology which has been accepted and has proven to be effective during delivery of countless major projects.

- 9.92. It is notable that the Council as the local roads authority and Transport Scotland as the trunk roads authority have not objected to the KTR Project. Both of these authorities are content that the impacts predicted in relation to the construction traffic can be managed through appropriate conditions securing the proposed mitigation measures. As explained in Chapter X below and set out in more detail in Chapter K of the Applicant's Summary of Case, the conditions proposed by the Applicant (APP011.003-APP011.007) fully reflect all of those matters which Transport Scotland wished to be addressed in conditions. Similarly, the protections sought by the Council as the local roads authority have been incorporated in the conditions proposed by the Applicant.
- 9.93. As noted in section 73 of the Applicant's Summary of Case, the Applicant also accepts that it would be beneficial to enter into one or more agreement(s) under section 96 of the Roads (Scotland) Act 1984. These agreements would address the recovery by the Council of extraordinary expenses incurred by it in maintaining public roads due to damage from HGVs involved in the KTR Project. A template agreement has been provided by the Council<sup>210</sup>, and its terms have been agreed between the Applicant and the Council.
- 9.94. Notwithstanding the lack of objection from the Council as local roads authority and Transport Scotland as trunk roads authority, a number of members of GWP and other members of the local community, particularly those living in, or within close proximity to, the settlement of Laurieston are vocal in their objections to the KTR Project on the basis of the perceived traffic and transport impacts. These objections that are not based on professional advice from an appropriately qualified and experienced roads engineer, but have been fuelled by the objectors' own perceptions and beliefs.
- 9.95. The objectors' lack of understanding was notable, including amongst others apparent misunderstanding of the proposals forming part of the KTR Project and

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APP011.022

misinterpretation of the assessment methodology adopted in the EIA Report. For example, Mr Kerr appeared not to fully appreciate the proposals for the traffic movements<sup>211</sup>. Similarly, Mr Hawker appeared confused about the location of certain towers forming part of the KTR Project and unclear as to any works proposed at the Beech Tree Avenue (on the C13) despite referencing them as part of his cause for concern<sup>212</sup>. Mr Swift questioned the basic principles of the assessment methodology, which had to be explained by Mr Dooley by reference to the industry standard documents. Likewise, Dr Cumbley did not appreciate how appropriate industry-accepted methodology for assessment should be applied, for example in the context of consideration of “major routes” and “severance” as discussed in more detail in section 56 of the Applicant’s Summary of Case. Similarly, Dr Cumbley and Mr Swift made comments, mostly based on a misunderstanding of what had been assessed, relating to the anticipated traffic levels. Mr Dooley addressed the comments relating to the anticipated traffic levels with reference to the figures clearly presented in Table 13.51 in Chapter 13 (Traffic and Transport) of the EIA Report (CD001.019), essentially pointing out the traffic volumes assessed were in fact much lower than had been assumed by both Dr Cumbley and Mr Swift. Despite the fact that the objectors’ lack of understanding was demonstrated by Mr Dooley’s responses on a number of occasions, they continued to vociferously attack the EIA assessment methodology and findings reported in the EIA Report, the proposed mitigation and the KTR Project more generally. Their comments and concerns homed in on emotive and anecdotal matters (including for example a car accident involving Mr Swift, who also took part in Hearing Session no. 4) which should not be taken into account in objective decision making. Further their concerns showed little link to the appropriately assessed and reported likely effects of the KTR Project and no regard to the adequacy of the proposed mitigation measures accepted by the Council and Transport Scotland.

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<sup>211</sup> Transcript of Hearing Session no. 4, Day 13, 22 November 2023, page 108.

<sup>212</sup> Transcript of Hearing Session no. 4, Day 13, 22 November 2023, page 174.



### Proposed mitigation measures and additional measures

- 9.96. As explained in the Applicant's Summary of Case (including Chapter I in relation to traffic and transport impacts and Chapter K in relation to the proposed conditions) and in the written and oral evidence presented on behalf of the Applicant, the Applicant takes its responsibilities associated with delivery of projects such as the KTR Project very seriously. It is evident that protections for the affected communities and settlements are an integral part of the proposals, as demonstrated by the extensive protective measures that have been included as embedded mitigation in the form of the project wide CTMP (which would address a range of matters, including traffic management and public access) and location specific measures such as the retention of passing places on the A762. Both the Council and the Applicant treat the CTMP as being central to the success of the mitigation strategy for managing potential adverse effects from construction traffic.
- 9.97. In a genuine attempt to overcome the concerns expressed on behalf of GWP in relation to the importance of local input and monitoring of compliance with conditions, the Applicant has proposed the appointment of a Community Liaison Officer ("CLO") and setting up of a Community Liaison Group ("CLG"), both to be secured by conditions attached to the Consents. The CLO and CLG would assist with regular two-way communication between the Applicant and the local communities and businesses (including, but not limited to Laurieston and GKAA), as explained in Chapter X below.
- 9.98. The Applicant's efforts to address concerns raised by the local residents also include specific localised mitigation measures. In particular, in response to the concerns raised by Mr Hawker and GWP, the Applicant has proposed mitigation measures specific to the G-T Connection. Specifically, the Applicant has proposed a condition requiring that appropriate physical measures are installed to prevent any encroachment of HGV and LGVs on to the verge of the Beech Tree Avenue (on the C13). The Applicant has also committed to ensuring that no temporary passing places would be installed along the same stretch of the C13, again for the protection of the

Beech Trees and their root systems. As explained in Chapter X below, this mitigation was not applied to avoid any significant effects on the beech trees in terms of the EIA Report as none were expected, and has been proposed in response to the concerns raised by the community.

- 9.99. It has been emphasised by Mr Jack and Mr Dooley throughout Hearing Session no. 4 that experience demonstrates that the proposed mitigation in the form of the CTMP, appointing a CLO in conjunction with establishing a CLG, and appointing a Planning Monitoring Officer (“**PMO**”), leads to effective mitigation. This would be enhanced through working together with the Council as Planning and Local Roads Authority. In line with its public functions, it must be assumed that the Council would not sign off a CTMP related planning condition unless fully satisfied with the content. Council’s expectation that this approach will provide effective mitigation, as is evident from the Council’s Hearing Statement in relation to the traffic and transport impacts (DGC001.004), and its contributions during Hearing Session no. 6 regarding conditions and legal agreements.
- 9.100. Despite the proposed project-wide mitigation measures (such as the CTMP, establishment of a CLG and engagement of a CLO and PMO) as well as the specific measures aimed at addressing localised concerns, Mr Kerr and those representing GWP continued to raise issues with the approach proposed by the Applicant. The objectors sought to argue that the delivery of the KTR Project would not be appropriately managed, extrapolating from their anecdotal negative experiences of “construction traffic and forestry traffic”<sup>213</sup>. This view was being advanced despite the linear site-based nature of the KTR Project (contrasted to often disperse nature of forestry operations), the statutory duties and licence obligations binding on the Applicant as a holder of an electricity transmission licence, and the Applicant’s evident commitment to ensuring that the KTR Project is delivered in a responsible manner.

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<sup>213</sup> Transcript of Hearing Session no. 4, Day 13, 22 November 2023, page 140.

- 9.101. The objectors' general mistrust towards organisations with public functions has been apparent in evidence. Dr Cumbley sought to argue that that reliance could not be placed on the Council as the local planning authority responsible for ensuring compliance with planning conditions, based on the distance between the Council's offices and the location of the KTR Project. On that basis, Dr Cumbley argued that any mitigation secured in conditions could not be relied on. Similarly, Mr Swift questioned whether the Council has the resources which would be necessary to enforce the CTMP. For the reasons explained in Chapter IV, this approach is entirely inappropriate. Firstly, based on established legal principles, the Scottish Ministers should assume that the Council would apply and enforce relevant conditions if considered appropriate. Secondly and as explained in Chapter X below, the Applicant does not just rely upon legal argumentation – the proposed appointment of a PMO would ensure effective representation of the Council on site during the construction phase regardless of the physical remoteness issue.
- 9.102. The position taken by Mr Kerr and those representing GWP clearly shows that those parties are not minded to accept the KTR Project regardless of the mitigation measures and safeguards offered by the Applicant. These parties believe that the electrical connections to be facilitated by the KTR Project should be delivered by different technology, and / or following a different route. Mr Kerr emphasised on a number of occasions that in his opinion the project should be undergrounded, or follow another alignment. Dr Cumbley argued on behalf of GWP that the route through the settlement of Laurieston should be mandated, despite the lack of objective reasons for doing so based on the EIA Report and the information provided by the Council as the local roads authority. In this context, it should be noted that both the Council and Transport Scotland are comfortable with the KTR Project proceeding as proposed taking account of the existing condition of the roads, subject to the proposed mitigation measures. Separately and in other sessions, GWP argued for alternative route alignments and alternative technology. This position ignores the appropriateness of the proposed mitigation measures, and the need for the KTR

Project – both in respect of the selected route and means of delivery, as well as more generally as approved by Ofgem and supported in policy terms.

#### Policy considerations

- 9.103. As explained at the start of this Chapter IX, the main policy support for the KTR Project is derived from Policy 11 of NPF4. The criterion within Policy 11 of particular relevance to the issue of traffic and transport is criterion (vi), which relates to both local roads and trunk roads and includes consideration of construction traffic impacts. It is accepted that criterion (i) is also relevant, as it is concerned with impacts on communities and the Applicant has always acknowledged to local communities that construction traffic impacts will require to be effectively managed to avoid significant adverse impacts. These impacts have been the subject of detailed assessment and reported upon in Chapter 13 of Volume 1 of the EIA Report (CD001.019). The findings of the assessment work have been accepted by the statutory consultees with a direct interest in managing the road network around the construction activities namely both the Council and Transport Scotland.
- 9.104. As noted in the Applicant's evidence in relation to policy matters, and in particular Chapter 4 of the Hearing Statement by Mr Bell, it is submitted that the KTR Project does not raise any issues which are unacceptable in relation to traffic and transport matters, and that the development is in accordance with the relevant LDP policies on the topic.

#### Conclusion in relation to traffic and transport matters

- 9.105. As explained by Mr Dooley, the assessment of the likely traffic and transport effects of the KTR project has been carried out in line with standard methodology. The Council as the local roads authority and Transport Scotland as the trunk roads authority have not objected to the KTR Project, and are content that the impacts predicted in relation to the construction traffic can be managed through appropriate conditions securing the proposed mitigation measures. The proposed mitigation measures including the CTMP are standard for projects of this scale and kind, and

would be secured by conditions proposed by the Applicant in line with the requirements of Transport Scotland and the Council as the local roads authority. There has been no evidence to suggest that the proposed measures would not be effective or appropriate.

- 9.106. For the reasons set out above, it is submitted that the Reporters should prefer the evidence of Mr Dooley and Mr Jack in relation to traffic and transport matters, and should place considerable weight on their evidence. It is also submitted that the Reporters should place very limited weight on the evidence presented by Mr Kerr, and those representing GWP.

### **Socio-economics**

#### Evidence of the witnesses participating in Hearing Session no. 3 regarding socio-economic, tourism and recreation impacts

- 9.107. Matters relating to socio-economic, tourism and recreation impacts of the KTR Project were discussed during Hearing Session no. 3 held on 21 November 2022. Of the parties participating in the Hearing, only the Applicant was represented by an expert witness, Mr Graeme Blackett. In addition to the Applicant, the parties who took part in Hearing Session no. 3 were GWP represented by Mr Paul Swift, Ms Ester Tacke, Mr Matt Booth and Mr David Hawker, GSAB Partnership represented by Mr John Thomson, and Mr Kerr, a third party objector.
- 9.108. Mr Blackett is an applied economist with 30 years' experience. He has a BA (Hons) in Economics from the University of Strathclyde and is a Member of both the Economic Development Association Scotland and the Institute for Economic Development. Of those taking part in Hearing Session no.3 only Mr Blackett, appearing on behalf of the Applicant, has the relevant qualifications and professional experience necessary for expert understanding of the assessment pertinent to socio-economic, tourism and recreation impacts. A summary of Mr Blackett's experience is set out in Appendix 2 to the Applicant's Hearing Statement in relation to socio-economics, tourism and recreation impacts prepared by Mr Blackett. It is therefore submitted that the

evidence of Mr Blackett can be relied on as expert evidence in relation to the matters he gave evidence on, and that substantial weight should be given to his evidence. It is also submitted that the evidence of Mr Blackett should be preferred to the evidence of the other witnesses appearing at Hearing Session no. 3.

9.109. In the context of the other parties' evidence regarding socio-economics, tourism and recreation impacts, it is particularly important to note that, as set out in Chapter IV and noted above in the context of traffic and transport impacts, it is an established feature of public inquiries that the public are encouraged to participate irrespective of their background knowledge and possession of necessary professional experience to underpin the opinions that they might express. However, as also noted in Chapter IV, the Reporters require to be properly informed as to the evidence that can or cannot be relied upon in relation to a topic that involves expert opinion. Matters relating to socio-economics, tourism and recreation impacts are one such topic, as they require a thorough understanding of socio-economics. These matters should not be considered solely from a lay perspective, and any decisions in relation to these matters should not be made based on anecdotal data. Limited weight should therefore be given to the evidence of the other witnesses appearing at Hearing Session no. 3.

#### Evidence relating to socioeconomic, tourism and recreation matters

9.110. It is the Applicant's position, as stated by Mr Blackett in his Hearing Statement on socio-economics, tourism and recreation impacts<sup>214</sup> and reiterated in Hearing Session no. 3 that there is no reason to believe that the proposed KTR Project will have adverse impacts on the local tourism economy. No evidence has been provided to demonstrate that an adverse impact on tourism and recreation would be expected. For there to be adverse impacts, the question is not whether tourists and recreational visitors might see the proposed KTR Project, it is whether that would lead to a change in behaviour. Given that electricity pylons are a familiar sight in the Scottish

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<sup>214</sup> Hearing Statement on socio-economics, tourism and recreation impacts, paragraph 4.18

landscape, there is no reason to expect such a change in behaviour. It is important to note that the Council as the local planning authority did not object to the Applications on the basis of impacts on socio-economics, tourism and recreation.

- 9.111. The EIA Report notes the absence of any clear empirical link between the visibility of energy infrastructure and visitor numbers to tourist areas and assessed the long term effect of the operation of the KTR Project as a whole on the tourism and recreation sector as minor adverse and not significant (CD001.021. para. 15.193). The Applicant remains of the view that these findings are true and accurate.
- 9.112. During Hearing Session no. 3, Mr Swift read out third party representations suggesting that tourists would not return to the area if the KTR Project goes ahead. The comments contained in those representations should not be considered to be empirical evidence and should be given very limited weight, as these comments represent subjective opinions as to the likely future behaviour of tourists. Importantly, these comments are not empirical evidence gathered on an established methodology. No likelihood of actual change in behaviour has been demonstrated based on evidence.
- 9.113. Representations were made by tourism-related businesses stating that the construction and operation of the KTR Project would have a detrimental impact on the future of their business.<sup>215</sup> As noted at paragraph 52.2 of the Applicant's Summary of Case, these representations may have been motivated by a resistance to change, but it is unlikely that this would lead to a change in the behaviour of tourists.<sup>216</sup> This is because the presence or otherwise of energy infrastructure is unlikely to be a driver of decisions to visit, since there are other drivers that are far more important such as macroeconomic conditions (domestically and in international markets), as that determines whether people have the disposable income to spend on tourism and recreation<sup>217</sup>.
- 9.114. Mr Blackett explained that overhead lines are a familiar sight in forest park locations.

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<sup>215</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 179 and 192.

<sup>216</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 192-194.

<sup>217</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 186-187.

During Hearing Session no. 3, examples were given by Mr Blackett of Cairngorm National Park, which has significant tourism and outdoor recreation activity and where there are high levels of visibility of energy infrastructure, and by Mr John Thomson, representing GSAB Partnership, of Loch Lomond and the Trossachs National Park. As noted in the Applicant's Summary of Case at paragraph 48.3, if there were a link between the visibility of energy infrastructure and visitor numbers to tourist areas, this would be based not on whether visitors might see energy infrastructure, but whether this would lead to behavioural change in terms of decisions to visit the area. Empirical evidence of this could include case studies where energy infrastructure had been developed and there had been a change in tourist numbers. No such evidence has been presented.

9.115. During Hearing Session no. 3, Mr Swift referred to a survey carried out by YouGov on behalf of the John Muir Trust (JMT), that found that *"55% of Scottish adults were 'less likely' to visit scenic areas in Scotland if they contain large scale infrastructure, like commercial wind farms, electricity transmission and super quarries"*. This survey has not been submitted to the Inquiry and is not available to the Reporters. Notably, it is also no longer available on the JMT website. Mr Blackett explained during Hearing Session no. 3<sup>218</sup> that whilst the survey referred to by Mr Swift might be considered empirical evidence in a general sense since it is based on a survey, the findings are not appropriate in the context of the characteristics of the proposed KTR Project and the nature of the location. Mr Blackett explained that the JMT study cannot be relied on as evidence on two grounds. Firstly, the question asked was contained in a survey that was asking respondents on their views of "wild land" which is not relevant to the KTR Project area. Secondly, the question itself specifically references *"commercial wind farms, electricity transmission and super quarries"* and so there is no way of knowing what type of infrastructure the respondents will have been envisaging when answering that question. As the JMT survey referred to by Mr Swift has not been

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<sup>218</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 76-77.



submitted to the Inquiry and is not available to the inquiry, relying on it or any comments building on the survey's conclusions would lead the Reporters and the Scottish Ministers into the errors of law discussed in the context of the unsubstantiated comments regarding the impacts the setting of listed buildings at Knocknalling made by Senior Counsel representing LSKE. It is therefore submitted that no weight should be given to submissions relating to the JMT survey, and that these submissions should be disregarded by the Reporters and the Scottish Ministers.

9.116. As noted in the Applicant's Summary of Case, it is accepted that landscape and scenery are important for Scottish tourism. This applies to the local area surrounding the KTR Project, Dumfries and Galloway more widely, as well as the rest of Scotland. However, that is not to say that tourists will expect to see a landscape that has no features of human activity. Electricity transmission lines can be seen in the landscape in every country in both urban and rural settings, and so tourists will expect that in rural Scotland. Indeed, Mr Blackett highlighted that it is common for tourist routes to coincide with routes for transmission lines. He gave the example of the Beaully-Denny overhead transmission line, noting how tourism continued to thrive in that area following construction of that line.<sup>219</sup>

9.117. During Hearing Session no. 3, Mr Swift pointed to the Dumfries and Galloway Regional Tourism Strategy, noting the importance of tourism to the economy within that Strategy<sup>220</sup>. However, as explained by Mr Blackett in his Supplementary Hearing Statement in respect of socio-economics, tourism and recreation impacts and during Hearing Session no. 3, this strategy is now dated and will need to be updated to take account of developments since it was published. Notably, the dated strategy does not take account of the impact of the Covid-19 pandemic on the tourism sector, the declaration of the climate emergency, the cost of living crisis and the new strategic economic policy context at both national level (National Strategy for Economic Transformation ("NSET") (CD011.009)) and regional level (South of Scotland

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<sup>219</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, page 147.

<sup>220</sup> Hearing Statement in relation to socio-economics, tourism and recreation impacts, page 1.

Regional Economic Strategy (CD011.010)).<sup>221</sup> Based on Mr Blackett's expert evidence, it is submitted that Mr Swift's comments and the dated Dumfries and Galloway Regional Tourism Strategy should be given limited weight.

9.118. As explained by Mr Blackett during Hearing Session no. 3, tourism has a less prominent position in the economic strategy than it used to have<sup>222</sup>. The NSET ambition is for a fairer, greener and wealthier Scotland, and as noted in the Applicant's Summary of Case at paragraph 46.6, this is a challenge for the tourism sector, particularly in Dumfries and Galloway since it is not a driver of growth, it provides low paid jobs, and there are challenges to making the sector low carbon. It is submitted therefore that the tourism sector is not one that can make much of a contribution to national or regional strategic priorities.

9.119. The Applicant's position remains that there is no reason to expect that the KTR Project will harm the tourism sector. This position is based on the comprehensive assessment reported in the EIA Report, which is based on an established methodology and has been peer reviewed by Mr Blackett.

Findings of the EIA Report in relation to socioeconomics, tourism and recreation impacts

9.120. Chapter 15 of the EIA Report (CD001.021) considers the socio-economic, tourism and recreation impacts of the KTR project. The assessment of tourism and recreation effects during the construction phase found a moderate (and so significant) adverse effect on recreational access from Glenlee to Tongland. Otherwise the effects were assessed as none or minor on designated walking and recreational routes, outdoor tourist destinations, hospitality, visitor accommodation, recreational activities in the open countryside and tourists travelling (by road) through the open countryside. The assessment of tourism and recreation effects during the operational phase found moderate adverse and, so significant, effects on designated walking and recreational routes associated with Glenlee to Tongland and with the KTR Project as a whole.

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<sup>221</sup> Paragraph 2.9; Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 45-49.

<sup>222</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, page 45-49; Applicant's Summary of Case, page 114.

Otherwise the effects were assessed as none or minor on outdoor tourist destinations, hospitality, visitor accommodation, recreational activities in the open countryside and tourists travelling (by road) through the open countryside. Overall, the EIA Report noted the absence of any clear empirical link between the visibility of energy infrastructure and visitor numbers to tourist areas and assessed the long term effect of the operation of the KTR Project as a whole on the tourism and recreation sector as minor adverse (not significant).

- 9.121. The conclusion of significant effects does not necessarily mean that there would be adverse effects on the local tourism and recreation sector, since other recreational facilities will remain available and so alternatives would be available during the construction of the KTR Project. Other designated walking and recreational routes are available in the region during the operational period for those tourists or recreational users who do not wish to see the changes arising from the KTR Project.
- 9.122. As set out in paragraph 50 of the Applicant's Summary of Case, the EIA Report also reports a range of likely beneficial socio-economic effects associated with the project as a whole. These are discussed in the Applicant's Hearing Statement in respect of socio-economics, tourism and recreation impacts, but unfortunately appear to be ignored by those opposing the KTR Project. The likely beneficial effects include local socio-economic benefits (defined as within 30 minutes drive time of the KTR Project) of 82 net person years of employment (PYE) and £8.1 million in gross value added (GVA) associated with felling, and 20 net PYEs and £1.1 million GVA associated with construction. At the level of the Dumfries and Galloway economy, the socio-economic benefits have been estimated at 91 net PYEs and £8.9 million GVA associated with felling, and 29 net PYEs and £1.5 million GVA associated with construction.
- 9.123. The assessment reported in the EIA Report also found a moderate (significant) beneficial short-term effect on the forestry sector during the construction phase and a minor beneficial temporary effect on the construction sector. During the operational phase, a moderate (significant) beneficial long term effect was found on the energy sector, by making a contribution to the continued growth of the sector by increasing

the security of supply and reliability of the transmission network.

- 9.124. As discussed during Hearing Session no. 3<sup>223</sup>, the forestry sector employment benefits are equivalent to 13% of the total forestry sector in Dumfries and Galloway and so this would be a noticeable change to that sector's contribution to the economy. The beneficial effects would be substantial enough to provide an opportunity for those organisations undertaking the work to invest in new equipment or otherwise in the development of their business, and so would have longer term economic benefits.
- 9.125. During Hearing Session no. 3, Ms Tacke and Mr Swift representing GWP, and Mr John Thomson representing GSAB Partnership sought to suggest that some of the beneficial effects would occur if the lines were installed underground and so the benefits should be shifted from the installation of the overhead lines to the installation of the cables underground<sup>224</sup>. These comments demonstrate a fundamental misunderstanding of the EIA process and the KTR Project, and are driven by the overarching stated position of the objectors. For the reasons discussed in the earlier Chapters of these Closing Submissions and discussed extensively during Inquiry Session no. 2 and in written evidence on behalf of the Applicant, undergrounding is not an appropriate alternative for the KTR Project. It is submitted that no weight should be given to the submissions on behalf of GWP and the GSAB Partnership in that regard.

#### Policy considerations

- 9.126. As explained in Chapter VI and in evidence of Mr Bell, and noted at the start of this Chapter IX, the main policy support for the KTR Project is derived from Policy 11 of NPF4. It should be noted that tourism is not now a consideration listed in Policy 11 Paragraph (e) whereas it was a consideration under the former SPP (paragraph 169). Policy 11, paragraph (e)(iii) requires project design and mitigation to demonstrate how impacts on public access, including impact on long distance walking and cycling routes and scenic routes are addressed. Paragraph (c) states that "*Development*

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<sup>223</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 156-157, and the discussion at the subsequent pages.

<sup>224</sup> Transcript of Hearing Session no. 3, Day 12, 21 November 2023, pages 165-166 and 168.

*proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.”*

- 9.127. Tourism and recreation interests have been taken into account as part of the strategic route selection and design of the KTR Project. A range of embedded measures have been proposed by the Applicant with a view to minimising negative effects, as set out in Chapter 15 of the EIA Report. It should also be noted that the CTMP, discussed in detail during Hearing Session no. 4 on traffic and transport, will set out measures to mitigate impacts on public access. The findings of the assessment of the likely effects of the KTR Project are set out in the EIA Report, and are briefly noted above, and include a range of benefits associated with the proposal. It is submitted that the NPF4 requirement as stated in Policy 11(c) has been met.
- 9.128. As noted in the Applicant’s evidence in relation to policy matters, and in particular Chapter 4 of the Hearing Statement by Mr Bell, it is submitted that the KTR Project does not raise any issues which are unacceptable in relation to socio-economics, tourism and recreation impacts, and that the development is in accordance with the relevant LDP policies.

#### Conclusion in relation to socio-economics, tourism and recreation matters

- 9.129. The objectors to the KTR Project have sought to argue that the KTR Project would lead to negative impacts on the local tourism sector, and socio-economics more generally. However, their concerns were based on their own fears and resistance to change which would be brought by the KTR Project. As explained in the expert evidence of Mr Blackett, there is no reliable evidence to suggest that the KTR Project would result in changes in tourism behaviour. It is also notable that the objectors did not value any of the beneficial effects likely to result from the KTR Project.
- 9.130. It is submitted that the KTR Project meets the requirements of Policy 11 of NPF4, and is supported by this Policy. More generally and as noted elsewhere in these Closing Submissions, it is submitted that material weight can be placed on the policy support

for the KTR Project.

9.131. For the reasons set out above, it is submitted that the Reporters should prefer the evidence of Mr Blackett in relation to socio-economics, tourism and recreation matters, and should place considerable weight on his expert evidence. It is also submitted that only limited weight can be placed on the evidence of those representing GWP and GSAB Partnership.

**Other relevant matters**

9.132. Matters relating to certain environmental impacts, including ornithology-related matters, have been addressed in Further Written Submissions. Those are referred to in Chapter L of the Applicant's Summary of Case. The Applicant's Further Written Submissions, including the conclusions set out in those Written Submissions, are recommended to the Reporters.

9.133. As noted in Chapter III, the Reporters will be aware that it was a matter of agreement that no further procedure was considered necessary by the lead Reporter or the parties to the Inquiry on construction impacts including noise, impact on peat and geology or on EMF exposure and in relation to dust. The Council as the local planning authority also did not raise any concerns in relation to these matters, and is satisfied that they can be appropriately managed through conditions to be attached to the Consents.

9.134. Issues relating to dust and noise as well as traffic impacts have been raised as issues of particular concern by GWP, and to a lesser extent GKAA. For the reasons set out in Chapter X below, it is submitted that appropriate mitigation measures have been proposed to allow for these matters to be managed in line with established construction practices standard for projects of this scale and type.

9.135. Issues relating to the impact on peat and geology have been raised by Dr Ford on behalf of GWP in the context of the additional Hearing Session no. 7 regarding NPF4 and other Policy Matters listed in Procedure Notice No.4. In particular, in the Hearing Statement in response to Procedure Notice No. 4, Dr Ford raises concerns in relation

to the impact on these receptors by reference to Policy 5 of NPF4. Dr Ford's comment in GWP's Hearing Statement in response to Procedure Notice No. 4 stating that *"approximately 50% of the proposed overhead line route between Glenlee and Tongland (G-T) is located on classified carbon-rich soils"* is a very loose rounding and also a very generic statement which does not seem to serve any purpose in GWP's submission. Whilst some disturbance to peatland is inevitable as these areas could not have been completely avoided through routeing, taking account of the balance of other factors required to be taken into consideration. This is explicitly acknowledged in the EIA Report. In fact, and as seems to be ignored by Dr Ford, the Applicant undertook extensive peat depth surveys (between 2017 and 2019) to gather baseline information and map and appraise these constraints in the routeing process. Hydrological and geological issues such as peatland were weighted against the other key considerations (such as ornithology and landscape) as part of the routeing process. In making the decision to proceed with a western corridor, route and then the alignment of the G-T Connection, the Applicant determined that on balance this alignment represents the best routeing option. The combination of the proposed embedded and committed mitigation measures relevant to geological matters, including in particular Applicant's robust and comprehensive design for the siting of individual steel tower locations, foundations and ancillary infrastructure, allowed for the towers to be microsited to minimise disturbance to all receptors including peat. Whilst the KTR Project has been designed to minimise disturbance to peatland, noting its importance and level of protection in policy terms, it has not been possible to avoid areas of peatland entirely. Where areas of peat were encountered around the infrastructure, these were considered as part of the EIA process (within Appendix 9.5 to the EIA Report, CD001.078). As explained by the witnesses appearing on behalf of the Applicant during Hearing Session no. 2 in relation to strategic route selection, the methodology used to identify and appraise corridor, route and alignment options for the KTR Project Connections has been discussed and agreed between the Applicant, SEPA and NatureScot through the engagement as part of the SSLG. It is highly

relevant that SEPA and NatureScot have not objected to the selection of the proposed corridors, the eventual proposed route and the final design alignment of the KTR Project. These statutory consultees have also not objected to the conclusions of the assessment reported in the EIA Report. Additionally, and as noted above, the Council as the local planning authority also did not raise any concerns in relation to these matters and is satisfied that they can be appropriately managed through conditions to be attached to the Consents. Notably, Dr Ford also appears to have ignored the fact that the KTR Project constitutes essential infrastructure within the meaning of Policy 5 of NPF4.

### **Conclusion**

- 9.136. The effects of the KTR Project have been minimised through careful route selection and design. In addition, a comprehensive suite of mitigation measures has been proposed to manage the impacts of the KTR Project. As explained by the Applicant's expert witnesses, the effects of the KTR Project reported in the EIA Report are typical for a project of this scale and type.
- 9.137. It is important to note that the none of the statutory consultees objected to the KTR Project, subject to imposition of conditions which have been reflected in the suite of conditions proposed by the Applicant. The Council's initial objection related to a narrow matter and was not based on sound reasoning, and was withdrawn prior to the commencement of the Inquiry. Importantly, the Council confirmed that its concerns have been satisfactorily addressed; that impacts were judged to be acceptable; and that there was no longer a planning policy basis for opposing the Applications.
- 9.138. It is submitted that the impacts of the KTR Project are not unacceptable, taking account of the policy background set out in Chapter VI and as noted above. In particular, it should be noted that any policy tensions should be considered taking account of the strong support for the KTR Project on the basis of Policy 11 of NPF4, and the status of the KTR Project as National Development.



## 10. MITIGATION AND PROPOSED CONDITIONS UNDER SECTION 37 OF THE 1989 ACT AND UNDER SECTION 57 OF THE 1997 ACT

### Background

10.1. Throughout the parts of the Applicant's case that address adverse environmental effects and the EIA process, the witnesses have highlighted when relevant to their evidence the proposed mitigation measures and strategy proposed by the Applicant to reduce and minimise the significance of environmental effects associated with the proposed KTR Project. The Applicant's case on proposed conditions and a section 69 legal agreement, in relation to proposed mitigation for the impacts on the road network from construction traffic, is summarised in Chapter K - Conditions/legal agreements (including consideration of the combined implications for residential properties) ("**Chapter K**") of SPEN's Summary Case. The content of that Chapter is adopted and incorporated as part of the Applicant's Closing Submission and where it is considered appropriate to refer to the detail, the relevant sections of the Summary will be cross-referenced.

### Introduction

- 10.2. The background to the drafting of the proposed conditions, as well as evolution in their scope and wording, are set out in Chapter K. The Chapter highlights the extensive efforts made by the Applicant in developing a set of conditions for each Connection which will appropriately safeguard local settlements and local businesses, residential amenity, as well as the environment.
- 10.3. The most recent set of conditions prepared by the Applicant was submitted to the DPEA and shared with other Inquiry parties on 26 April 2023, together with the Summary of Case for the Applicant (APP011.003 - APP011.007).
- 10.4. The extent of agreement with the statutory consultees, non-statutory consultees and with GWP is considerable. The wording of the proposed draft conditions for the G-T

Connection has been largely agreed with the Council<sup>225</sup>. Out of a total of 44 conditions, there is agreement by the Council to 40 of them. That equates to 91%. The wording of the proposed conditions to be applied to the other four Connections reflects the wording proposed for the G-T Connection, in circumstances when the particular conditions is also relevant to the other Connections.

- 10.5. By reference to the G-T Connection, agreement has now been reached with the Council on all aspects of condition 8 – Micrositing and Infrastructure Location Allowance. In terms of the four conditions in respect of which agreement is not absolute, the areas of disagreement are in fact quite modest. As an illustration, on condition 4B - Green Networks Scheme, the only area of disagreement is on whether the Applicant should be placed under an obligation to use reasonable endeavours to secure land agreements. The Council is otherwise happy with the condition. On condition 5 - Community Liaison Group, the Council would prefer additional detail on the remit of the group and governance whereas the Applicant believes that these matters would be addressed by the CLG itself. On condition 13 - CEMP, the only area of disagreement between the Council and Applicant relates to the inclusion of the term best practice. Finally, on condition 18 – Nightjar Monitoring, the Council has questioned whether a condition can be used to require the entering into an agreement. There is not a challenge to the conditions otherwise.
- 10.6. The proposed conditions also fully reflect all of those matters which NatuteScot, the Scottish Environment Protection Agency and Transport Scotland wished to be addressed. These requirements are set out in more detail in section 70 of Chapter K of the Applicant’s Summary of Case.
- 10.7. Scottish Forestry (SF) is content with the wording of the conditions to secure compensatory planting<sup>226</sup> and is understood to be supportive of the conditions which will secure the Forest Design Concept and the Green Networks Scheme.

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<sup>225</sup> In its closing submissions dated 9 May, the Council confirmed that the latest set of conditions reflect its position / comments.

<sup>226</sup> Formal confirmation of the agreement to the conditions including areas of woodland to be replaced was provided by Scottish Forestry on 13<sup>th</sup> December 2022.

10.8. GWP, which represents the interests of the residents of Laurieston and the Gatehouse and Kirkcudbright Angling Association (**GKAA**), is in agreement with the conditions addressing the following matters:

- 10.8.1. CEMP – Condition 13 (and the DEMP– Condition 34);
- 10.8.2. Construction Hours – Condition 21;
- 10.8.3. Construction Traffic Management Plan– Condition 22;
- 10.8.4. Decommissioning Traffic Management Plan– Condition 42;
- 10.8.5. Planning Monitoring Officer in relation to construction – Condition 11;
- 10.8.6. Planning Monitoring Officer in relation to Decommissioning – Condition 32;
- 10.8.7. Community Liaison Group – Condition 5; and
- 10.8.8. Community Liaison Officer – Condition 27.

### **Mitigation Measures**

10.9. In Appendix 5.2 in Volume 3 of the EIA Report a consolidated list of the embedded and additional mitigation measures is provided, together with a note on whether or not monitoring measures are proposed in relation to specific mitigation measures. These are outlined below with particular focus on the measures of relevance to the environmental impacts addressed in Chapter VIII.

### **Embedded Mitigation**

10.10. The design process for the KTR Project described in Chapter 2 of Volume 1 of the EIA Report, adopted embedded mitigation for a range of assessment topics. In this regard the embedded mitigation measures include changes that were made at the early routing stage (i.e. prior to the environmental impact assessment being undertaken) and during the design<sup>227</sup>. This included avoiding areas of 'highest environmental value' from the outset of the project, and moving towers and tracks out of deep areas of peat, and away from archaeological features identified during field survey. In

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<sup>227</sup> This aspect of embedded mitigation is addressed in more detail in Chapter D of the Summary of Case, - 'Strategic route selection, design strategy and consultation', pages 52 to 73.

addition, mitigation embedded through the project design process includes adopting best practice and industry standard measures for construction of projects of this nature, such as treatment and attenuation of run off from construction working areas to ensure that this does not wash into watercourses and cause pollution downstream. These best practice and industry standard measures are assumed to be in place during the construction and operation of the KTR Project.

### **Additional Mitigation**

- 10.11. While mitigation has been embedded through the design process for a range of assessment topics, specific additional mitigation measures ('additional mitigation') is also proposed to prevent, reduce and offset likely adverse effects which could not be avoided through design. These additional mitigation measures have been identified through the EIA process. As an example, the monitoring of private water supplies (PWS) before and during construction, the confirmation of the location of PWS pipework, and the provision of alternative water supplies if required, have been identified as forms of additional mitigation.
- 10.12. By making a distinction between embedded mitigation and 'additional mitigation', and with embedded mitigation forming an integral part of the KTR Project (i.e. being in place for assessment purposes), the EIA Report focussed on the likely significant effects of the KTR Project. This is in line with EIA good practice, including IEMA's guidance on 'Delivering Proportionate EIA' (2017) (CD007.001).
- 10.13. While mitigation was embedded through the design process for a range of assessment topics such as Traffic and Transport<sup>228</sup>, specific additional mitigation measures ('additional mitigation') were also proposed to avoid, reduce and, if possible, remedy identified likely significant adverse effects which could not be avoided through design. Where required, these additional mitigation measures were identified through the EIA process. The approach to mitigation, including the reasons for making a distinction between embedded and additional mitigation, is

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<sup>228</sup>

The Traffic and Transport related effects have been assessed with full regard to local environmental conditions and the embedded mitigation proposals in the form of a framework CTMP.

explained in greater detail in paragraphs 3.92-3.100 of Chapter 3 – Approach to the EIA in Volume 1 of the EIA Report (CD01.009).

10.14. All of the mitigation identified in the EIA Report, post-consent monitoring and potential enhancement measures are summarised within Appendix 5.2 - Embedded and Additional Mitigation and Monitoring Measures (CD001.121). However, as the KTR Inquiry has progressed, the Applicant has developed further mitigation including through its discussions with other parties involved in the PLI process.

10.15. The further mitigation to which the Applicant is committed, and the conditions by which this mitigation is proposed to be secured, are addressed in greater detail below on a topic by topic basis. The further mitigation measures proposed are:

10.15.1. secure additional landscape and environmental mitigation including:

- planting around settlements and access improvements;
- red squirrel and pine martin strongholds; and
- potential Nightjar habitat;

10.15.2. enhance biodiversity;

10.15.3. avoid increased impacts on residential amenity through micrositing;

10.15.4. avoid a net loss of forest and woodland;

10.15.5. avoid areas of 'M23' Ground Water Dependent Terrestrial Ecosystem;

10.15.6. avoid damage to the trees along the area of the C13 known as Beach Tree Avenue

10.15.7. reduce the effects on sensitive fish populations through monitoring;

10.15.8. further mitigation in the form of Nightjar Monitoring and greater understanding of the impact of potential habitat enhancement areas for Nightjar which will be secured via the proposed Forest Design Concepts; and

10.15.9. facilitate community engagement and safeguard two-way communication between the Applicant and the local communities, with a view to minimising impacts resulting from temporary access restrictions and other aspects of implementation of the KTR Project.

### **Landscape and Visual Assessment (Chapter 7 of the EIA Report)**

- 10.16. The Applicant has formally committed to developing its outline proposals for Forest Design Concepts within the wayleave areas, specifically within areas of land managed by Forestry and Land Scotland, on behalf of the Scottish Ministers. The proposed mitigation in these areas will be based on the approach described in Appendix 5.1 of Volume 3 of the Applicant's EIA Report (CD001.120). As noted below, the Forest Design Concepts would be secured via a section 37 condition. The Forest Design Concepts to be developed would deliver additional landscape and environmental mitigation for the KTR Project. On the G-T Connection, condition 4A as attached to the section 37 consent, secures the delivery of the Forest Design Concept.
- 10.17. Green Networks Scheme. The Applicant had previously committed to developing a Green Network Schemes as part of the post-consent period of the KTR Project. The Green Network Schemes would be secured via a section 37 condition and would deliver additional landscape and environmental mitigation for the KTR Project. The Green Network Scheme was not applied to reduce the significance of effects reported in the EIA Report. On the G-T Connection, condition 4B as attached to the section 37 consent secures the delivery of the Green Networks Scheme.
- 10.18. The Applicant has committed to additional protection for Residential Properties within relative proximity to the locations of steel lattice towers and wood poles. While all micrositing is to be implemented and controlled through the proposed detailed Construction Environmental Management Plan and subject to the written approval of the Ecological Clerk of Works (in consultation with the Planning Monitoring Officer), additional safeguards are proposed for towers and poles located in relative proximity (within 200m) of Residential Properties. Specifically, those towers and poles cannot be microsited any closer to Residential Properties without the Planning Authority's written approval. Where the Applicant proposes such micrositing, it shall first instruct an independent chartered landscape architect to provide the Planning Authority with a report taking account of Chapter 3 and Table

4.1 of the Kendoon to Tongland Reinforcement Project Residential Visual Amenity Assessment prepared by LUC and dated August 2022 (APP004.001). The report would address whether the proposed micrositing of towers / wood poles would result in the Residential Visual Amenity Threshold<sup>229</sup> being reached. On the G-T Connection condition 8(f), sets out the process for the approval of micrositing of towers / wood poles within 200m of a residential property.

### **Forestry (Chapter 8 of the EIA Report)**

10.19. The Applicant has formally committed to providing compensatory planting addressing the losses to be sustained in delivering each Connection (and the removal of N and R Route). The proposed compensatory planting would therefore deliver the total replacement of 242.97ha of woodland cover to be felled as a result of the KTR Project. As part of this total, the Applicant has made a commitment to plant a minimum of 44.98ha of native woodland tree species which equates to that area which would be lost. The compensatory planting would be delivered within the timescale sought by Scottish Forestry. The compensatory planting will deliver mitigation which ensures no net loss of forest and woodland, in line with the Scottish Government's Control of Woodland Removal policy. This further mitigation was not previously committed in terms of the measures listed in Appendix 5.2. On the G-T Connection the compensatory planting would be secured via condition 4 (Woodland Planting Strategy) and a similarly condition 4 is proposed for the other four Connections. The main difference between the conditions is that the areas specified for replanting reflect the differences in the areas lost through the installation of the particular Connection. The proposed wording of the condition to be attached to the section 37 consent for each Connection is based on those previously applied by Scottish Ministers on section 37 consents for other overhead line projects, and has been agreed between the Applicant and Scottish Forestry.

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<sup>229</sup> Residential Visual Amenity Threshold means where the effect on development is of such nature and/or magnitude that it potentially affects "living conditions" or "Residential Amenity as described in the Landscape Institute Technical Guidance Note 2/19 - Residential Visual Amenity Assessment (RVAA) (CD009.008).

10.20. The Applicant has formally committed to developing its outline proposals for Forest Design Concepts within the wayleave areas, specifically within areas of land managed by Forestry and Land Scotland, as noted above. The Forest Design Concepts to be developed would deliver additional planting and enhanced biodiversity for the KTR Project.

10.21. 10.21 The Applicant has formally committed to reducing the wayleave area between towers 17, 18 and 19 across the Knocknalling Estate as part of the P-G via K Connection. This would be secured through the terms of the necessary wayleave agreement (NWA) and would ensure the protection of the existing oak trees within the Knocknalling Estate Non-Inventory Designed Landscape (NIDL) Area.

**Geology, Hydrology, Hydrogeology, Water Resources and Peat (Chapter 9 of the EIA Report)**

10.22. In response to concerns raised by SEPA through its consultation response in terms of the section 37 application process, the Applicant has formally committed to securing protection of the 'M23' Ground Water Dependent Terrestrial Ecosystem (GWDTE) areas which coincide with towers 8 and 10 on the G-T Connection. This would be achieved through micrositing which shall be implemented and controlled through the proposed detailed Construction Environmental Management Plan (CEMP) and the Ecological Clerk of Works responsible for approving and monitoring the changes in tower location. Requiring the repositioning of towers 8 and 10 out of the areas of GWDTE represents further mitigation which was not part of the suite of mitigation applied to reduce effects as outlined in Appendix 5.2. On the G-T Connection condition 8 (i) as attached to the deemed planning permission refers.

**Ecology (Chapter 10 of the EIA Report)**

10.23. The Applicant has formally committed to developing its outline proposals for Forest Design Concepts within the wayleave areas, specifically within areas of land managed by Forestry and Land Scotland, as noted above. The Forest Design Concepts to be developed would deliver additional environmental mitigation, including red



squirrel and pine martin strongholds.

- 10.24. In response to the concerns raised by Galloway Fisheries Trust (GFT) through the representation to the section 37 application consultation carried out by the Scottish Ministers, the Applicant has formally committed to preparing and carrying out a Fish Monitoring Plan (FMP) during construction works. This would be secured via a deemed planning condition, to be approved by the Local Planning Authority in consultation with GFT. This provides an additional layer of protection for monitoring sensitive fish populations which was not applied and taken into account to reduce the significance of effects presented in the EIA Report. On the G-T Connection the FMP is secured through condition 19 as proposed to be attached to the deemed planning permission. Equivalent conditions are proposed as condition 18 proposed to be attached to the deemed planning permission for the P-G via K Connection, condition 16 proposed to be attached to the deemed planning permissions for the E-G Connection and the C-K Connection, and condition 19 proposed to be attached to the deemed planning permission for the BG Deviation Connection.
- 10.25. In response to discussions with other parties during the Hearing Session for Traffic and Transport, the Applicant has committed to broadening the scope of the Construction Traffic Management Plan, specific to the G-T Connection, to ensure that appropriate physical measures are installed to segregate the running surface of a section of Beech Tree Avenue (on the C13) to prevent any encroachment of HGV and LGVs on to the verge. In addition, the Applicant has also committed to ensuring that no temporary passing places would be installed along the same stretch of the C13, again for the protection of the Beech Trees and their root systems. This mitigation was not applied to avoid any significant effects on the beech trees in terms of the EIA Report, as none were expected. The measures are to be secured as part of the approval of the Construction Traffic Management Plan under condition 22 as attached to the deemed planning permission.

### **Ornithology (Chapter 11 of the EIA Report)**

- 10.26. The Applicant has formally committed to developing its outline proposals for Forest Design Concepts within the wayleave areas, specifically within land managed by Forestry and Land Scotland, as noted above. The Forest Design Concepts to be developed would deliver additional environmental mitigation, including through the improvement of potential nightjar habitat.
- 10.27. The Applicant has formally committed to securing a Nightjar Monitoring Plan (through the entering into of a separate legal agreement) for the KTR Project in partnership with the Local Planning Authority and RSPB (on behalf of the Dumfries and Galloway Nightjar Study Group). This agreement would help fund monitoring for Nightjar in the pre-construction phase, during construction and for a further period of five years following commissioning of the G-T Connection. The monitoring will provide accurate data on the success of the species within the KTR Project area affected by the G-T Connection and would also allow for a greater understanding of the impact of potential habitat enhancement areas for Nightjar, which would be secured via the proposed Forest Design Concepts. On the G-T Connection, condition 18 as attached to the deemed planning permission will secure the further mitigation in the form of Nightjar Monitoring.

### **Traffic and Transport (Chapter 13 of the EIA Report)**

- 10.28. In response to discussions with other parties during the Hearing Session for Traffic and Transport, the Applicant has committed to broadening the scope of the Construction Traffic Management Plan, specific to the G-T Connection, to ensure that appropriate physical measures are installed to segregate the running surface of a section of Beech Tree Avenue (on the C13) to prevent any encroachment of HGV and LGVs on to the verge. In addition, the Applicant has also committed to ensuring that no temporary passing places will be installed along the same stretch of the C13, again for the protection of the Beech Trees and their root systems. This mitigation was not applied to avoid the potential significant effects on this receptor in the EIA presented

in the EIA Report. The measures are to be secured as part of the approval of the Construction Traffic Management Plan under condition 22 as attached to the deemed planning permission.

- 10.29. The Applicant has formally committed to providing a dedicated Community Liaison Officer (CLO) for the duration of the construction period to ensure effective 'two-way' communication between the KTR Project team and communities affected by the construction works. This has a natural connection with the CTMP condition (22) and will assist in providing a direct and immediate link between communities, including Laurieston, and the KTR Project team. This mitigation was not applied to reduce the significance of effects presented in the EIA Report. On the G-T Connection, the appointment of the CLO is secured through condition 27 as attached to the deemed planning permission. Equivalent conditions are proposed as condition 26 proposed to be attached to the deemed planning permission for the P-G via K Connection, condition 24 proposed to be attached to the deemed planning permissions for the E-G Connection and the C-K Connection, and condition 27 proposed to be attached to the deemed planning permission for the BG Deviation Connection.
- 10.30. The Applicant has formally committed to setting up a Community Liaison Group (CLG) to be comprised of the project CLO, elected members representing the ward areas affected by construction works, local planning authority, Scottish Government and the Applicant itself. This will provide a further platform for strategic communication between the Applicant and communities e.g. planned community events which may impact or be impacted by construction vehicle movements. This mitigation was not applied to reduce the significance of effects presented in the EIA Report. On the G-T Connection the CLG is secured by condition 5 as attached to the section 37 consent. Equivalent conditions are proposed as condition 7 proposed to be attached to the section 37 consent for the P-G via K Connection, and condition 6 proposed to be attached to the section 37 consents for the E-G Connection, the C-K Connection, and the BG Deviation Connection.

## **Enhancement Measures**

### **Policy 3 of NPF 4 – Biodiversity**

10.31. As noted in the Applicant’s Summary of Case, Policy 3 of NPF4 does not provide any guidance on how “significant biodiversity enhancements” as referred to in subparagraph b) iv. would be measured and assessed. Rather, it simply states that “best practice assessment methods should be used”. In addition, the Explanatory Report (CD003.048) which was issued alongside Revised Draft NPF4 states that guidance is still to be issued. The need for further guidance is also acknowledged in Chief Planner’s letter issued on 8 February 2023 (CD003.047). Nevertheless and notwithstanding the current lack of policy guidance, the Applicant has sought to introduce biodiversity enhancements that support both long-established national and local policy, and the emerging requirements of NPF4. These are addressed below.

### **Forest Design Concept**

10.32. As noted above, the Applicant has committed to developing its outline proposals for Forest Design Concepts (“FDCs”), as described in Appendix 5.1 of the Project’s EIA Report (CD001.120). The FDCs seek to maximise the ecological value of the wayleave by replacing targeted areas of commercial forestry with sensitively designed natural habitats. Crucially, the FDC establishes a mechanism by which individual interventions are targeted to the specific needs of localised biodiversity priorities. The Applicant has proposed a section 37 condition (in respect of the G-T and the P-G via K Connections) and which would secure the implementation of the FDC on land managed by Forestry and Land Scotland on behalf of the Scottish Ministers. The FDCs would deliver additional landscape and environmental mitigation for the KTR Project. The Council has confirmed that it agrees with the terms of the FDC condition as drafted.

### **Green Network Schemes**

10.33. In addition to the FDC, the Applicant is also committed to the delivery of Green

Networks to promote and secure additional schemes of environmental mitigation within the areas and communities affected by the Connections known as the KTR Green Networks Scheme (“GNS”). These would comprise areas within 1-2km of each of the proposed Connections, where schemes can be expected to provide landscape mitigation linked to the KTR Project. The Applicant is committed to working in partnership with stakeholder such as the Scottish Government, the Council and local communities to establish a community led approach to the identification and delivery of potential schemes. A GNS has operated successfully within the Stirling area as part of the Beaully Denny Overhead Transmission line project and the Applicant firmly believes that similar levels of successes could be achieved on the KTR Project.

- 10.34. The Applicant had previously committed to developing GNS as part of the post-consent period of the KTR Project. The commitment was made as one of the proposed benefits of the KTR Project, and not to avoid any significant effects of the proposal. The Applicant has proposed that a section 37 condition to secure the proposed GNS be attached in respect of each of the five Connections.
- 10.35. The proposals for FDCs and GNSs which are to be secured by conditions are considered to be in accordance with the Paragraph b) of Policy 3, as discussed in section 19 of the Applicant’s Summary of Case. In particular, the relevant criteria can be met and overall the KTR Project as a whole would meet and address the policy intent and support the policy outcomes.

**Conditions in relation to the consent to be granted under section 37 of the 1989 Act**

- 10.36. The background to the drafting of the proposed conditions and iterations of the proposed conditions is addressed within Chapter K of the Applicant’s Summary of Case and is not repeated again here. In light of the extent of the agreement between the Applicant and the Council and GWP on the wording of the conditions for the G-T Connection and as documented within the Summary of Case as Table APP011.03 its not considered necessary to address all of these in detail here. However, the Applicant would make reference to certain of the ‘non standard’ conditions which

are proposed to be attached to the section 37 consents for each Connection.

### **Compensatory Planting**

10.37. As noted above, a compensatory planting condition has been prepared in respect of each Connection. Each has been framed to secure planting to replace the losses to be sustained in delivering the Connections (and the removal of the N and R routes), as reported in Tables 8.5 and 8.6 of the EIA Report. The proposed compensatory planting would deliver at least 242.97ha of woodland cover of which a minimum of 44.98ha would be of native woodland tree species. The compensatory planting would be delivered within 5 years of the date of the section 37 consents as agreed with Scottish Forestry. The wording of the proposed conditions is based on those previously applied by Scottish Ministers on section 37 consents for other overhead line projects.

### **Forest Design Concept**

10.38. The Applicant has also formally committed to developing its outline proposals for Forest Design Concepts within the wayleave areas, specifically within areas managed by Forestry and Land Scotland. These areas will reflect the terms of Appendix 5.1 of the Applicant's EIA Report (CD001.120). These would be secured via a section 37 condition attached to the G-T and P-G via K Connections. Further detail on the scope of the Forest Design Concepts and the biodiversity and other enhancements these will deliver are addressed above.

### **Green Network Scheme**

10.39. The Green Network Schemes as described above, would be secured via a section 37 condition attached to each Connection. The Green Network Scheme would deliver additional landscape and environmental mitigation for the KTR Project.

### **Community Liaison Group**

10.40. The formation and operation of a Community Liaison Group as described above will be secured by a condition attached to the section 37 consent for each Connection. The

Community Liaison Group would be comprised of the project Community Liaison Officer (to be appointed under a deemed planning condition), elected members representing the ward areas affected by construction works, representatives of the local planning authority and Scottish Government and the Applicant itself. The Group would ensure a proper mechanism for discussion between the Applicant and the communities from the period prior to the Commencement of Development (as defined in the conditions) until restoration and reinstatement is complete. The proposed conditions would ensure that the community is informed of progress of the KTR Project, particularly activities which may give rise to increased construction traffic, and significantly that the Applicant receives stakeholder feedback on matters such as local road issues. The views of stakeholders would inform the implementation of the KTR Project, including the traffic management measures forming part of the CTMP and DTMP.

**Conditions in relation to the planning permission deemed to be granted under section 57 of the 1997 Act**

10.41. Again, the extent of the agreement between the Applicant and the Council and GWP on the wording of the conditions for the G-T Connection is as documented within the Table of Conditions submitted with the Applicant's Summary of Case, document APP011.003, and it is not considered necessary to address all of these conditions in Closing Submissions. Attention has been drawn above to the new conditions and the additional mitigation measures proposed. However, in response to the particular concerns from the residents of Laurieston and from the GKAA, the Applicant considers that it is appropriate to address in this Chapter of Closing Submissions the adequacy of the protections which are proposed as deemed planning conditions for these groups of affected third parties.

**Protections for Laurieston**

10.42. The Applicant recognises that the residents of Laurieston and the surrounding area are concerned about the impacts of Heavy Goods Vehicles (HGVs) and the overall

volume of construction traffic including Light Goods Vehicle (LGV) driving through the settlement and the part of the C13 referred to as 'Beech Tree Avenue' as a result of the KTR Project, during the construction period. These concerns are set out in various written representations and were raised on behalf of GWP at Hearing Session No.6. The Applicant takes these concerns very seriously. Given the existing roads network and the location of Laurieston and Beech Tree Avenue, these routes cannot be avoided by the traffic associated with the KTR Project. While GWP state in its Closing Submission that the C13 is obviously unsuitable, this position is not supported by any evidence from a qualified roads engineer. It is also at odds with the professional opinion of: 1) Mr John Dooley, the only expert witness, who gave evidence at the Traffic and Transport Hearing Session, with the relevant qualifications and professional experience, both of which are necessary pre-requisites to understanding the significance of predicted effects and, also, the effectiveness of proposed mitigation; and 2) Kevin Morrison, the Council's Team Leader in Roads Planning.

10.43. As discussed in detail during Hearing Session No. 4 relating to Traffic and Transport, the Applicant proposes that the traffic is managed through the CTMP and the DTMP. These measures reflect the well-established practices that have become standard for large construction projects and have been accepted as appropriate mitigation by the Council as the local roads authority and the local planning authority over a considerable number of years. Experience has shown that they are effective, and that should be weighed against the local community's scepticism as reflected in GWP's Closing Submission.

10.44. As explained during Hearing Session No. 4, all contractors engaged in implementation of the consents for the KTR Project would be required to comply with the measures set out in conditions attached to the KTR Project Consents, including the CTMP and DTMP.

10.45. The CTMP and DTMP would be 'live documents' and would continue to evolve as the KTR Project progresses. The measures set out in these documents would be



revised as appropriate throughout the construction and decommissioning period, including revisions to address the concerns of stakeholders. This approach is known to provide effective mitigation in relation to the concerns expressed by members of the GWP involved in Hearing Session No.4 and the Evening Session on 1 November 2022.

10.46. In light of the discussions during those Sessions held in November 2022, the Applicant has proposed additional conditions to provide a means of addressing the concerns raised by the residents of Laurieston. These include the proposed specific protections for Beech Tree Avenue forming part of C13, and conditions requiring the establishment and operation of the CLG<sup>230</sup> and engagement of the CLO, to ensure that a proper mechanism for discussion between the Applicant and the communities is in place from the period prior to the Commencement of Development (as defined in the conditions) until restoration and reinstatement is complete. The proposed conditions would ensure that the community is informed of progress of the KTR Project, particularly activities which may give rise to increased construction traffic, and that the Applicant receives stakeholder feedback on matters such as local road issues. It is proposed that the views of stakeholders would inform the implementation of the KTR Project, including the traffic management measures forming part of the CTMP and DTMP.

10.47. The residents of Laurieston are protected through the following conditions proposed for the G-T Connection:

10.47.1. “Implementation in accordance with approved plans and requirement of this consent” (condition 6 in relation to the new OHL, and condition 31 in relation to Decommissioning) – these conditions ensure that the Development (the new OHL and the decommissioning of R route (south)) is implemented in accordance with the Application and the accompanying Environmental Impact Assessment (EIA) Report,

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<sup>230</sup> Although the Applicant has proposed that the Community Liaison Group condition would be attached to the section 37 consent for each Connection including G-T) its included within this section as its part of the overall suite of controls, the majority of which are secured as deemed planning conditions.

including measures detailed within Appendix 5.2: Embedded and Additional Mitigation and Monitoring Measures. These measures provide a wide range of protections (including measures relating to Traffic and Transport, such as the Construction Traffic Management Plan) which are proposed as part of the KTR Project.

- 10.47.2. “Construction Hours” (condition 21) – this condition controls the working hours in order to control impacts on residential amenity. The effects of the proposed works within the hours referred to in the condition have been considered in the assessments reported in the EIA Report. Any changes to these construction hours would be subject to approval by the Planning Authority.
- 10.47.3. “Construction Traffic Management Plan” (i.e. condition 22) and “Decommissioning Traffic Management Plan” (i.e. condition 42) – these conditions will control matters relating to traffic movements (including a detailed programme, breakdown of deliveries by type and month, agreed access and excluded routes, mitigation measures, vehicle tagging system details and contact lists). As discussed during Hearing Session No. 4, these documents will be ‘living documents’, and will be revised as appropriate to address concerns / views of stakeholders (which will be gathered on a regular basis, as per the arrangements for the CLG and CLO discussed below).
- 10.47.4. Specific measures relating to various aspects of roads safety are addressed in a series of conditions relating to roads. These will be monitored and enforced by the Council.
- 10.47.5. “Community Liaison Group” (condition 5) – as discussed during the Hearing Sessions No.4 and No. 12 (the Hearing Session regarding conditions), the Applicant is committed to ongoing engagement with local stakeholders. The proposed condition would ensure that the views and concerns of the local stakeholders are shared with the

Applicant on a regular basis and are appropriately considered and addressed until all restoration and reinstatement works are completed on site.

- 10.47.6. “Community Liaison Officer” (condition 27) – this condition would ensure that the appointed Community Liaison Officer engages with local stakeholders in relation to the construction and decommissioning works, including providing stakeholders’ feedback to the Applicant. This relationship will allow for specific requirements of stakeholders (such as impacts of Traffic and Transport) to be considered by the Applicant in the context of the programme of works.
- 10.47.7. “Planning Monitoring Officer” (condition 11) – this condition would ensure (amongst others) that compliance with conditions is monitored, and any breach of condition is reported to the Council immediately.

**The Applicant’s consideration of the concerns raised by the GKAA**

- 10.48. The Applicant has carefully considered the concerns raised by the GKAA as a local business. These concerns relate principally to the impact of noise, vibration and restrictions on access.
- 10.49. As explained in Chapter K of its Summary of Case, the Applicant proposes a range of protective measures addressing noise and restrictions on access resulting from implementation of the KTR Project. These conditions include measures relating to implementation of the KTR Project in accordance with amongst other things Appendix 5.2 of the EIA Report, borrow pit works and blasting, construction hours, the Construction Traffic Management Plan as well as conditions relating to the formation of the Community Liaison Group and the appointment of a Community Liaison Officer. The conditions relating to the community engagement would safeguard two-way communication between the Applicant and the local communities, with a view to minimising impacts resulting from temporary access

restrictions and outer aspects of implementation of the KTR Project.

10.50. The particular conditions which will deliver protections for the GKAA are as follows:

10.50.1. “Implementation in accordance with approved plans and requirement of this consent” (condition 6 in relation to the new OHL, and condition 31 in relation to decommissioning) – as noted above, this condition ensures that the Development will be implemented in accordance with the Application and the accompanying Environmental Impact Assessment (EIA) Report, including measures detailed within Appendix 5.2: Embedded and Additional Mitigation and Monitoring Measures.

10.50.2. “Borrow Pits – Scheme of Works” (condition 9) – this condition ensures that all works relating to borrow pits will be carried out in accordance with a plan to be approved by the Planning Authority (in consultation with SEPA), which will control matters such as the programme for implementation of the works.

10.50.3. “Borrow Pits - Blasting” (condition 10) – this condition controls the proposed timing and ground vibrations resulting from borrow pit works, to control the impact on amenity.

10.50.4. “Construction Hours” (condition 21) – as per above, this condition controls the working hours to control the impact on amenity.

10.50.5. “Construction Traffic Management Plan” (i.e. condition 22) and “Decommissioning Traffic Management Plan” (i.e. condition 42) – as per above, these conditions will control matters relating to Traffic and Transport.

10.50.6. “Community Liaison Group” (condition 5) – as per above, this condition will ensure that the views and concerns of the local stakeholders are shared with the Applicant on a regular basis until all restoration and reinstatement works are completed on site, and are appropriately considered and addressed.

- 10.50.7. “Community Liaison Officer” (condition 27) – as per above, this condition will ensure that the appointed Community Liaison Officer engages with the local stakeholders in relation to the construction and decommissioning works, including providing stakeholders’ feedback to the Applicant. This relationship will allow for specific requirements of stakeholders (such as timebound access requirements referred to by the GKAA) to be considered by the Applicant in the context of the works.
- 10.50.8. “Planning Monitoring Officer” (condition 11) – as noted above, this condition would ensure (amongst others) that compliance with conditions is monitored, and any breach of condition is reported to the Council immediately.

**Lack of requirement for a dedicated ‘Laurieston condition’ / a dedicated ‘GKAA condition’**

- 10.51. In its closing submission submitted on 10 May 2023, GWP indicated for the first time that it felt a bespoke “Laurieston Condition” was needed. However, no reason for the position was given and no explanation offered as to why a bespoke condition would offer any additional protections over and above the suite of conditions already prepared, the wording of which have been agreed by GWP. These include those for the Construction Traffic Management Plan, Decommissioning Traffic Management Plan, Planning Monitoring Officer, Construction Hours, Community Liaison Officer and Community Liaison Group.
- 10.52. GWP’s stance on seeking a bespoke condition is also in contradiction with its extremely unreasonable position that all conditions “will be useless for Laurieston because there is nobody nearer than Dumfries to enforce them and DGC do not have the resources”. There is no explanation as to why GWP feel a bespoke condition would be effective. GWP’s position is unsupported and unsupportable. Firstly, the Council as with any planning authority must be presumed to have adequate

resources to discharge its functions as planning authority. As Lord Doherty held in the Outer House first instance decision in the case of *Trump International Golf Club v Scottish Ministers*<sup>231</sup>: “different decision makers ought to be able to approach matters on the assumption that, if and when an application is made under the other régime, that régime’s requirements will be properly applied and enforced”.

- 10.53. In addition, in this case the Applicant has proposed the appointment of a Planning Monitoring Officer (PMO) whose role will be to monitor compliance and report any breach of condition to the Council immediately. This addresses GWP’s complaint that planning officers based in Dumfries are too remote to ensure compliance with planning conditions; the role of the PMO is designed to ensure the Council is effectively represented “on the ground”. Secondly, as noted above GWP has agreed to the wording of the relevant conditions including the Construction Traffic Management Plan, Decommissioning Traffic Management Plan, Planning Monitoring Officer, Construction Hours, Community Liaison Officer and Community Liaison Group.
- 10.54. The Applicant submits that GWP’s negative attitude towards the effectiveness of conditions which have been prepared to protect Laurieston is in fact due to its total opposition to construction traffic and to the G-T Connections. As stated in GWP’s closing submission at paragraph 17, “The C13 is so obviously unsuitable that it simply cannot be used”. This view is not shared by Mr Dooley or the Council as roads authority.
- 10.55. The Applicant has already indicated within section 75 of Chapter K of its Summary of Case, the basis upon which it does not consider that such a dedicated or bespoke condition is either necessary or appropriate; (arguments which have been endorsed by the Council as local planning authority and repeated again in paragraph 3.5 of its closing submission of 9 May).

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cf. 2014 S.L.T 406.

### **The Position of the Reporters on dedicated mitigation/dedicated conditions**

- 10.56. Within the email attaching its Summary of Case and updated sets of proposed conditions as issued to the DPEA on 26 April 2023 at 18.15pm, the Applicant indicated that it wished to understand whether the Reporters were adhering to the position set out in the email of 1 March 2022 at 10.25 am from Colin Bell. In the final sentence of that email, it was stated that the Reporters intend to *'take into consideration, the lack of any dedicated mitigation measures proposed by the applicant for this local village and local business, despite the direct adverse impacts identified during the hearing session and in representations, when preparing their report and recommendations for Ministers'*. The email also separately refers to dedicated conditions, namely: *"The reporter notes that, despite her request at the hearing session, for dedicated planning condition wording, the applicant (supported by the council) has instead submitted comments on the inappropriateness of dedicated planning conditions...."*
- 10.57. Within its Summary of Case, the Applicant provided a direct response to the apparent conclusion being drawn by both Reporters that the mitigation measures for the receptors of Laurieston and the Gatehouse and Kirkcudbright Angling Association (GKAA) are inadequate. The Applicant pointed out in the email of 26 April that in its opinion there was a material difference between a lack of dedicated mitigation measures as referred to in the final sentence of the email dated 1 March 2023, and a lack of dedicated conditions raised at the beginning of that email and at the Hearing Session.
- 10.58. In the email of 26 April, it was explained that in the respectful opinion of the Applicant's legal advisers the question which required to be answered was a simple one; namely whether the suite of conditions proposed by the Applicant is sufficient to mitigate the adverse effects identified and make the KTR Project (including the G-T Connection) acceptable in planning terms. It was strongly submitted on behalf of the Applicant that the proposed conditions, augmented in response to the concerns raised, were appropriate and provide the mitigation required. In addition, it was pointed out that the advisers for the Applicant and the Council, who have extensive

experience in considering the legality of proposed planning conditions, are in agreement that dedicated conditions for Laurieston and the GKAA are not necessary and do not meet the tests set out in Circular 4/1998.

- 10.59. The Applicant made clear that it had carefully considered the concerns expressed by the GKAA and the residents of Laurieston in written evidence and during the oral sessions of the Inquiry. In light of that, the Applicant had brought forward proposed additional mitigation measures and conditions, specifically to address the impacts that were discussed at the Hearing Sessions. These conditions were proposed to address particular concerns where the Applicant agreed that the concerns of residents of Laurieston and the GKAA could be addressed through additional measures secured through conditions. The proposed suite of conditions to be attached to consents for the KTR Project would be relied on by the planning authority to ensure that local amenity concerns (including the concerns of the residents of Laurieston and the GKAA) are appropriately addressed during the construction and operation phases.
- 10.60. In the final paragraph of the email of 26 April, the Applicant's legal advisers stated that if the Reporters were in fact adhering to their position as expressed in the email dated 1 March 2023, namely that there is "*a lack of any dedicated mitigation measures*" for Laurieston and for the GKAA, then as a matter of fairness the Applicant believed that the Reporters should indicate which **significant** effects or impacts discussed at the Hearing Session, in their opinion, are not adequately covered by the revised Final conditions for the KTR Project enclosed with the email, and in particular the set of conditions proposed for the G-T Connection. It was respectfully requested that the Reporters' response should be provided to the Applicant and the other parties as soon as possible to ensure that the Applicant and the other parties are provided with notice of any residual concern that the Reporters might have, following receipt of the Applicant's Summary of Case. This request was made to allow the Applicant to address the response from the Reporters and any comments from the other parties in its Closing Submissions.



- 10.61. By email of 3 May at 10.10am, the DPEA confirmed that “The reporters have nothing further to add to their email dated 1 March 2023 (not 2022) and will take into account the views of all parties, in their report to Ministers”. As this response did not provide the explicit clarification sought by the Applicant, a further request was issued to the DPEA by email on 3 May at 14.01pm. In that email the Applicant advised that it was interpreting that response as signifying that the Reporters:
- 10.61.1. are adhering to their position as expressed in the email of 1 March, namely that there is “a lack of any dedicated mitigation measures” for Laurieston and for the GKAA”; and
  - 10.61.2. feel the proposed additional mitigation and the revised and updated conditions issued on 26th April do not adequately address impacts that were discussed at the Hearing Session.
- 10.62. The email concluded by stating that assuming the Reporters’ position had been correctly interpreted, the Applicant respectfully asked once again that the Reporters confirm which significant effects or impacts discussed at the Hearing Session, in their opinion, are not adequately covered by the revised conditions. The Applicant made clear it would like the opportunity to address what appeared to be residual concerns (but which have not yet been articulated) within its Closing Submissions.
- 10.63. In an email from the DPEA of 4 May 2023 timed at 17.50pm, it was stated that *“In the reporters’ view, the community of Laurieston and the GKAA have been clear in expressing their concerns about the effects/impacts of the proposal, both before and during the inquiry. If the applicant requires further clarification on what could be included in dedicated planning conditions, then they should contact the residents of Laurieston, the Galloway Without Pylons Group and the GKAA directly.”* This is a quite astonishing response. Encouraging discussions directly with GWP and the GKAA completely side steps the fact that the Applicant was seeking to establish if the Reporters were adhering to the position they (and they alone) had expressed on 01 March [emphasis added]. Despite very considerable efforts made to understand if the Reporters retain concerns, the

Applicant remains in the dark.

- 10.64. In the opinion of the Applicant, based on legal advice, the question which requires to be answered in this case is a simple one; namely, whether the suite of conditions proposed above are sufficient to mitigate the adverse effects identified and make the KTR Project acceptable in planning terms.
- 10.65. The Applicant firmly believes that the conditions (which have been augmented in response to concerns raised) are sufficient.

### **Conclusions**

- 10.66. The Applicant respectfully submits that the direct and indirect impacts of the KTR Project, including those discussed during all oral sessions held in October and November 2022 and referred to in representations, have been carefully considered. The wide range of protective measures proposed as part of the draft conditions to be attached to the consents for the KTR Project would appropriately safeguard local settlements and local businesses, residential amenity, as well as the environment. These protections would be applied equally for the benefit of all settlements and businesses, including Laurieston and the GKAA as well as all other local communities and businesses operating in the vicinity of the KTR Project.
- 10.67. The Applicant respectfully recommends that if section 37 consents and deemed planning permissions are to be granted for the Connections that this should be based upon the conditions included with the final set of conditions appended to the Summary of Case as Tables APP011.003 – APP011.007.

## 11. CONCLUSION AND DECISION MAKING OUTCOME

### Introduction

11.1. This Chapter XI is divided into two main parts. The first part provides a summary of the conclusions set out in the preceding Chapters of these Closing Submissions. It is submitted that the Reporters can and should rely on those conclusions. The second part of this Chapter XI sets out the decision making outcome which the Reporters are invited to recommend to the Scottish Ministers.

### Conclusions

- 11.2. In terms of the planning policy framework it should be concluded that the delivery of this essential transmission infrastructure will substantially assist in facilitating existing and future transmission of electricity generated from renewable sources and thereby help deliver on both of the renewable energy generation targets and Net Zero legislative targets, which provides positive and urgently needed support for the policy imperatives contained in NPF4. Time is of the essence in terms of the NPF4 policy imperatives and time is of the essence for the KTR Project. These objectives are coincident and are a consequence of the KTR Project being designed in such a way to ensure compliance with both existing and emerging Government energy and national planning policy.
- 11.3. The evidence presented on behalf of the Applicant demonstrates the clear technical and economic need for the KTR Project. The determining issues, as set out in evidence for the Applicant and referred to in these Closing Submissions, provide compelling reasons and very substantial support to grant the necessary statutory consents for the construction and operation of the KTR Project.
- 11.4. The effects of the KTR Project have been minimised through careful route selection and design. The Applicant has taken great care in minimising the impacts of the KTR Project, and has committed to delivery of additional biodiversity enhancements. It is submitted that the EIA for the KTR Project has been undertaken in compliance with the EIA Regulations and in line with the relevant good industry practice, and that the

obligations of the Applicant under Schedule 9 of the 1989 Act have been met.

- 11.5. The Applicant respectfully submits that the direct and indirect impacts of the KTR Project, including those discussed during all oral sessions held in October and November 2022 and referred to in representations, have been carefully considered. The wide range of protective measures proposed as part of the suite of draft conditions to be attached to the consents for the KTR Project would appropriately safeguard local settlements and local businesses, residential amenity, as well as the environment. These protections would be applied equally for the benefit of all settlements and businesses, including Laurieston and the GKAA as well as all other local communities and businesses operating in the vicinity of the KTR Project. As explained by the Applicant's expert witnesses, the effects of the KTR Project reported in the EIA Report are typical for a project of this scale and type.
- 11.6. It is important to note that the none of the statutory consultees objected to the KTR Project, subject to imposition of conditions which have been reflected in the suite of conditions proposed by the Applicant. The Council's initial objection related to a narrow matter and was not based on sound reasoning, and was withdrawn prior to the commencement of the Inquiry. Importantly, the Council confirmed that its concerns which led to the initial objection have been satisfactorily addressed; that impacts were judged to be acceptable; and that there was no longer a planning policy basis for opposing the Applications.
- 11.7. As explained by the expert witnesses representing the Applicant, the effects of the KTR Project on forestry have been minimised through careful routeing. The proposed mitigation would further assist with minimising such effects. While some felling is unavoidable given the fixed location of the connection points forming part of the KTR Project, the Applicant has firmly committed to compensatory planting and delivery of biodiversity enhancements through implementation of the FDC within the FLS land. It is also submitted that the impacts on forestry should be considered taking account of the wider policy framework. It is therefore respectfully submitted that limited weight should be given to the evidence on behalf of SF.

- 11.8. The evidence presented by Mr Thomson on behalf of the GSAB does not weigh against the granting of consent for the KTR Project. The objection is not based on grounds that are founded in either national planning policy or the LDP. The opinions that have been expressed by Mr Thomson are not supported by expert evidence. It is therefore respectfully submitted that little weight should be given to the GSAB objection.
- 11.9. The evidence of Mr Kerr is based on a superficial understanding of the various issues discussed during the Hearing and Inquiry Sessions, and has been predicated upon his overriding objection to the KTR Project. It is respectfully submitted that little weight should be given to Mr Kerr's evidence.
- 11.10. The evidence on behalf of LSKE is aimed at protecting the interests of LSKE at the cost of the residents of other properties in the area. It is underpinned by very limited understanding of the relevant technical and costs considerations, and poor application of route selection principles. It is respectfully submitted that little weight should be given to the evidence on behalf of LSKE.
- 11.11. As noted throughout these Closing Submissions, the main witness representing GWP, namely Dr Ford, has discredited himself as an expert witness. His evidence is based on his own unsubstantiated theories which are not supported by facts. It is submitted that Dr Ford's evidence should not be admitted as expert evidence, and no weight should be placed on it. It is also submitted that very limited weight should be placed on the evidence of others representing GWP.
- 11.12. The representations received from third parties have been addressed by the Applicant in a separate comprehensive submission. It is submitted that those representations should be considered through the objective lens of the planning policy framework and the all important statutory context.

### **Decision making outcome**

- 11.13. In carrying out their decision-making function under section 37 of Part I of the 1989 Act, as to whether or not to grant consent for the transmission infrastructure

proposal, the Scottish Ministers must act in accordance with, or have regard to, a range of different legal requirements. These are summarised in the Closing Submissions presented above in relation to the statutory framework, which forms the first part of Chapter IV. There are a number of different sources that give rise to the relevant statutory obligations and legal requirements that the Ministers must have regard to and comply with when carrying out their decision-making functions under section 37 and Schedule 9 to the 1989 Act.

11.14. In terms of the need to ensure that the decision does not frustrate the policy and object of the 1989 Act, the main provision to which the Scottish Ministers must have regard is section 3A in Part I of the 1989 Act. As noted above, the Gas and Electricity Markets Authority (GEMA) is placed under the same obligations in terms of section 3A of the 1989 Act as the Scottish Ministers.

11.15. The Applicant as the transmission licence holder for *inter alia* the south west of Scotland, including Dumfries and Galloway, is obliged to act in accordance with the obligations referred to in the evidence presented on behalf of the Applicant during the Inquiry. The principal regulatory obligations are contained in section 9 of the 1989 Act, in terms of which the Applicant has the following statutory duties:

- (i) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and,
- (ii) to facilitate competition in the supply and generation of electricity.

11.16. The Applicant has brought forward the KTR Project in fulfilment of those obligations and has secured approval from Ofgem for the proposed investment in the KTR Project under the RIIO-T2 Price Control process. Ofgem uses this performance based model, RIIO<sup>232</sup>, to ensure that consumers get the necessary investment by transmission owners in the electricity transmission network at a fair price. The regulatory period that is referred to as RIIO-T2 covers the period 2021-2026 and the Ofgem RIIO-T2 final determinations<sup>233</sup> specifies what Ofgem expects electricity

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<sup>232</sup> Revenue=Incentives+Innovation+Outputs; paragraphs 5.5 to 5.8 and section 12 of Mr Kadar's Inquiry Report (APP001.001)  
<sup>233</sup> CD008.006

transmission owners to deliver for their customers over that period. The KTR Project with both of the primary investment drivers are included in Ofgem's final determinations for that regulatory period.

11.17. As presented to Ofgem, and approved by Ofgem, the KTR Project has two key investment drivers which are:

- replacement of the end-of-life existing 132kV transmission assets between Polquharity and Tongland, and which is the primary investment driver for the G-T Connection; and,
- the provision of already overdue and much needed additional transmission capacity to facilitate the connection of the NGENO<sup>234</sup> contracted renewable generation, which is the primary investment driver for the P-G via K Connection, but also of relevance to the timely delivery of the G-T Connection.

11.18. It is therefore clear that the Ofgem approved drivers are material considerations for the consenting of the KTR Project. Not least because they are directly linked to the fulfilment of the Scottish Ministers' obligations under section 3A(1A) of the 1989 Act when determining the section 37 Applications for the KTR Project.

11.19. The Scottish Government's Net Zero energy policy and strategy to achieve the 100% Net Zero greenhouse gas emissions target by 2045 at the latest, reflects the declaration of climate emergency by the Scottish Government in April 2019 and the legislative changes to reflect that emergency with the requirement increased to 75% reduction by 2030. It is also more ambitious than the UK Government's Net Zero strategy. Both the UK and Scottish Government have acknowledged in terms of their national energy policy responses that this requires rapid deployment of both offshore and onshore renewables low-carbon sources of generation. The substantial 40%-60% expected increase in demand for electricity to support the decarbonisation of each sector of the UK economy by 2050 increases the need for the rapid deployment of renewables generation. It is recognised that to meet that need, there is an equally

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<sup>234</sup> National Grid Electricity System Operator

urgent response required to meet the dependent need for the expansion of the transmission grid.<sup>235</sup>

11.20. At present, the existing transmission system can securely connect 85MW of generation from the area. Following commissioning of the KTR Project that export capability will increase the secure export capability of the system to 334MW. In addition to the 334MW secure access to the transmission system, an additional 334MW of generation can be connected to the transmission system in this part of south west Scotland on a non-firm basis<sup>236</sup>. Separately, the end of life asset condition for all five Connections that was assessed more than 7 years ago does not just put at risk security of supply for the customers served by the existing 132kV transmission system in the area, but also the connection service currently provided to existing generators.

11.21. It is therefore clear that the public interest involved in the delivery of the KTR Project is coincident with the UK and Scottish Government's national energy policy objectives and statutory obligations to achieve Net Zero in the wider public national interest and global interests of society. In addition the KTR Project is consistent with, and coincident with, the Scottish Ministers' statutory obligations under section 3A to consider the manner in which determining the section 37 Applications can best protect the interests of consumers through facilitating effective competition amongst generators, and delivering in respect of the consumers' interests in the reduction of electricity-supply emissions of targeted greenhouse gases, and, the interests of consumers in this part of south west Scotland in the maintenance of security of the supply of electricity to them.

11.22. In that regard, the technical and economic justifications for the KTR Project are beyond question as Ofgem has approved the Applicant's business case for this Project. The KTR Project is essential and urgently required to facilitate the transmission of existing, committed and proposed connection of new low carbon

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<sup>235</sup> Sections 2.3 and 2.4 of the Hearing Statement dated August 2022 produced by Mr David Bell on behalf of the Applicant in relation to national energy policy of the UK and Scottish Governments.

<sup>236</sup> Paragraph 2.6.2 of Mr Bell's Hearing Statement dated August 2022



generation, and, to safeguard the security of supplies to SPEN's customers in this part of the south west of Scotland who are currently supplied by a part of SPEN's 90 year old transmission system that has been assessed as end-of-life.

- 11.23. The Scottish Government, in recognition of the urgent need for a very significant increase in both onshore and offshore renewables generation, and, the related expansion of the capability of the transmission systems, has brought forward and adopted strong national planning policy support for such development. The new national planning policy framework in support of the Scottish Government's national energy policy objectives provides the most up-to-date and relevant planning policy framework for the Scottish Ministers' decisions on the five section 37 Applications for consent to construct and operate the KTR Project in the public interest, and, in the wider national interest.
- 11.24. The KTR Project requires to be treated as national development as it falls within the description of strategic transmission infrastructure and supports the delivery of sustainable places<sup>237</sup>. The designation and description of the classes of such development is contained in section 3 of Annex B of NPF4, within pages 103 and 104. The Project involves the replacement and upgrade of onshore high voltage electricity transmission lines. The statement of need is that additional transmission capacity of scale is *"fundamental to achieving a net zero economy and supports improved network resilience in rural and island areas"*<sup>238</sup>.
- 11.25. For development management purposes in relation to decision-making in the consenting process for such renewable energy related development, the recently adopted policy framework in NPF4 provides a positive and incisive lead. For the reasons discussed in Chapter VI, Policy 11 requires to be treated as the lead policy for decision-making on electricity replacement transmission infrastructure applications that support the policy intent and policy outcomes of Policy 11. The wording of Policy 11 (a) (ii) is unequivocal in its terms to the effect that development

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<sup>237</sup> Page 7 of NPF4 (CD003.042)

<sup>238</sup> Page 103 of NPF4

proposals for renewable related energy development, which expressly includes enabling works such as the KTR Project that will deliver essential grid infrastructure capacity for the transmission of additional renewable generation from wind farms, **will be supported.**

11.26. In terms of Policy 11 this support is not without qualification in that there are clear caveats associated with adverse impacts on nationally, and internationally, designated environmental sites, and on receptors adversely affected by the impacts from such development. This is reflective of, and supportive of, the statutory obligations on Scottish Ministers that are related to the protection of the environment under the Environmental Impact Assessment Regulations, and, under Schedule 9 to the 1989 Act.

11.27. It is the Applicant's position that it has demonstrated through the evidence presented to the Inquiry in relation to the EIA work carried out for the KTR Project, as reported upon in the EIA Report and additional information, that adverse effects have been avoided through the design and routing strategy. Separately, and in addition, the unavoidable adverse effects from the construction and operation of the KTR Project can be managed through the Applicant's mitigation strategy that effectively combines embedded mitigation measures and additional mitigation measures, which can be secured through appropriate planning conditions. The overall conclusion that should be reached is that the KTR Project can be considered acceptable in terms of the environmental related criteria set out within Policy 11 of NPF4. The Applicant has also thereby demonstrated that it has fulfilled the duties imposed by paragraph 3(1) of Schedule 9 to the 1989 Act and, in particular, has identified suitable mitigation in accordance with paragraph 3(1)(b) of Schedule 9.

11.28. As noted in Chapter III above, following the withdrawal of the Council's objection on 12 October 2023, the ECU confirmed on behalf of the Scottish Ministers that the Public Inquiry should proceed as planned in light of the number of third party representations containing objection to the Applications. The Applicant has carried out a thorough and detailed analysis of 953 representations and as explained in

Chapter III, the representations relate predominantly to potential adverse environmental impacts. The public have been given ample opportunity to participate in the Public Inquiry, which has received both written and oral evidence on many of the grounds of objection expressed in the third party representations. In addition, the lead Reporter held an Evening Session for the purposes of allowing objectors to state their views on the KTR Project, in the knowledge that the Applicant's representatives would not be permitted to challenge their statements to the Reporter. Site visits have been carried out by the Reporters in relation to locations that would be adversely affected to varying extents by the installation of the Connections.

11.29. The Applicant's conclusion from the EIA work carried out for the proposed design of the KTR Project was that there were no adverse effects of such significance that led to a conclusion that an alternative design to the proposed continuous overhead line Connections should be considered. Nor was it considered that alternative routes required to be considered. It is the Applicant's position that the residual significant effects after the implementation of proposed mitigation measures are acceptable and proportionate as regards the nature and extent of adverse effects to be expected from the installation of 132kV overhead transmission lines. In terms of Policy 11 of NPF4 the Applicant has demonstrated effective mitigation through routing decisions and the proposed mitigation measures that can be secured through conditions attached to the statutory consents. Although a number of objectors have argued that the only suitable mitigation is the undergrounding of the proposed Connections, particularly from GWP and Mr Kerr in relation to the G-T Connection, the Applicant has demonstrated through reliable evidence that there is a sound judgement and basis for the decision taken at a senior management level to proceed with the selected design solution of a continuous overhead line between Polquhanity to Tongland. The Applicant's design solution is compliant with the statutory obligations to develop and maintain an efficient, co-ordinated and economical system of electricity transmission. The objectors who participated in the Inquiry process have not undermined the conclusions from the EIA process, nor demonstrated that the

significance of adverse landscape and visual effects at any location along the route of the proposed OHL, requiring the use of an alternative technology in the form of undergrounding.

- 11.30. The Reporters are invited to recommend to the Scottish Ministers that they should grant consent for the five Applications under section 37 of the 1989 Act for the installation and operation of the five overhead line Connections that together form the KTR Project, and, the related ancillary development as described in Chapters 4 and 5 of the EIA Report<sup>239</sup>. The Reporters are also invited to recommend that deemed planning permission should be granted under section 57 of the 1997 Act for each of the Connections, and the related ancillary development.
- 11.31. It is the Applicant's position that the grant of the necessary statutory consents for the construction and operation of the five Connections should be subject to the draft Conditions that have been tendered by the Applicant, in accordance with the arrangements set out in the PEM Note. As discussed in greater detail in Chapter X, the Applicant and their legal advisers have made extensive efforts to develop a set of conditions for each Connection which will appropriately safeguard the environment, local settlements, businesses, and residential amenity, which may be adversely affected by the installation and operation of the KTR Project. The planning authority has agreed to over 90% of the proposed draft conditions and the remaining differences are relatively minor, and in respect of which the Applicant is content that the Reporters and/or the ECU can resolve the differences. The most up-to-date set of conditions were submitted to the DPEA and shared with the other parties to the Inquiry on 26 April 2023; APP011.003 to APP011.007. The proposed conditions secure a suite of effective mitigation measures as discussed in Chapter X. The mitigation strategy developed and adopted for the KTR Project is considered by the Applicant's EIA consultants and legal advisers to provide an approach to the proposed mitigation of likely significant effects that is reasonable, having regard to the circumstances that

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CD001.010 and CD001.011

relate to this essential transmission infrastructure replacement and reinforcement project.

11.32. As discussed throughout these Closing Submissions, there are very limited significant adverse effects associated with this transmission infrastructure project that has national development status. If consents are not forthcoming under the newly adopted and strongly supportive national planning policy framework (NPF4) in circumstances in which there are no unacceptable environmental impacts identified, then there would be serious and long terms ramifications for transmission owners and Scottish Ministers, in terms of a failure to deliver the policy imperatives that are identified and responded to in NPF4.

## APPENDIX 1: A SUMMARY CHRONOLOGY OF THE APPLICATION PROCESS

Date	Event
28 August 2020	The Applicant submits applications for the section 37 consent and deemed planning permission for the KTR Project
7 September 2020	The ECU validates the Applications
13 November 2020	Deadline for consultation responses regarding the Applications
20 November 2020	The ECU requests additional environmental information, as requested by SEPA
19 January 2021	The Applicant provides the requested additional environmental information
14 April 2021	The Planning Applications Committee of the Council decides to object to the Applications
16 April 2021	The Council submits its formal objection to the Applications
9 July 2021	The Applicant provides further additional environmental information (due to the SEPA cyber attack)
24 September 2021	Deadline for consultation responses regarding the additional environmental information
1 February 2022	The DPEA receives the Applications from the ECU
6 April 2022	The DPEA notifies parties that a Reporter (Ms Rice) has been appointed
12 May 2022	The DPEA confirms arrangements for the pre-examination meeting
15 June 2022	The pre-examination meeting is held
28 June 2022	The DPEA issues the note of the pre-examination meeting
29 June 2022	The Council withdraws its objections in relation to three of the Applications
16 August 2022	The DPEA notifies the parties that a second Reporter (Mr Buylla) will be appointed to have responsibility for two inquiry sessions
12 October 2022	The Council withdraws its objections to the remaining two Applications
24 October 2022	The KTR Project Inquiry opens with an inquiry session on 'Technical justification and economic justification for the project'

25 October 2022	Technical justification and economic justification for the project – inquiry session (continued)
27 October 2022	Strategic alternatives, including undergrounding, comparison of benefits and harms – inquiry session
1 November 2022	Local amenity impacts – evening session
2 November 2022	Statutory context and national energy policy/national planning policy – hearing session
	Strategic alternatives, including undergrounding, comparison of benefits and harms – inquiry session (continued)
9 November 2022	Strategic route selection, design strategy and consultation – hearing session
	Strategic alternatives, including undergrounding, comparison of benefits and harms – inquiry session (continued)
10 November 2022	Strategic alternatives including undergrounding, comparison of benefits/harms – inquiry session (continued)
	Strategic route selection, design strategy and consultation – hearing session (continued)
11 November 2022	Justification for Environmental Impact Assessment (EIA) methodology – inquiry session
14 November 2022	Landscape and visual impact (including cumulative and sequential impacts, impacts of the on and off-site access works, visual impact on residential amenity and the combined implications for residential properties) – inquiry session
15 November 2022	Landscape and visual impact (including cumulative and sequential impacts, impacts of the on and off-site works, visual impact on residential amenity and the combined implications for residential properties) – inquiry session (continued)
16 November 2022	Impact on forestry – inquiry/hearing session
21 November 2022	Socio-economics, tourism and recreation impacts – hearing session
22 November 2022	Traffic and transport impacts – particularly on residential amenity and including the combined implications for residential properties – hearing session
23 November 2022	Conditions/legal agreement (including consideration of the combined implications for residential properties) – hearing session

28 November 2022	Development plan and other relevant planning guidance - both existing and emerging – hearing session
29 March 2023	National Planning Framework 4 (2023), Scottish Government Onshore Wind Policy Statement (2022), draft Energy Strategy and Just Transition Plan (2023), draft Scottish Biodiversity Strategy to 2045: Tackling the Nature Emergency (2022) and the Chief Planner letter: transitional arrangements for NPF4 (2023) – hearing session



## APPENDIX 2: LIST OF ALL OF THE INQUIRY AND HEARING SESSIONS

Topic No.	Topic	Procedure	Day / relevant section
1	Technical Justification and Economic Justification for the Project	Inquiry Session No. 1	Day 1, 24 October 2022
			Day 2, 25 October 2022
2	Strategic Alternatives, including Undergrounding – Comparison of benefits and harms	Inquiry Session No. 2	Day 3, 26 October 2022
			Day 5, 2 November 2022 - afternoon session, pages 77 to 230
			Day 6, 9 November 2022 - afternoon session, pages 143 to 245
			Day 7, 10 November 2022 (Mr Young and Dr Ford on HGV movements for Twin Trident), pages 1-83. Mr Kerr's evidence pages 84 -90.
3	Local Amenity Issues – Evening Session for third party objectors	Evening Session	Day 4, 1 November 2022
4	Statutory Context and National Energy and Planning Policy	Hearing Session No. 1	Day 5, 2 November 2022
5		Hearing Session No. 2	Day 6, 9 November - morning session, pages 1-136

	Strategic Route Selection, Design Strategy and Consultation		Day 7 10 November 2022 - afternoon session, pages 90-190
6	Justification for Environmental Impact Assessment (EIA) Methodology	Inquiry Session No. 3	Day 8, 11 November 2022
7	Landscape and visual impact (including cumulative and sequential impacts, impacts of the on and off-site access works, visual impact on residential amenity and the combined implications for residential properties)	Inquiry Session No. 4	Day 9, 14 November 2022, evidence-in-chief of Mr Dan Walker, cross-examination, and questions by the Reporter
			Day 10, 15 November 2022, continued questions by the Reporter of Mr Dan Walker, and evidence of Mr Mark Steele
8	Impact on Forestry	Inquiry Session No. 5	Day 11, 16 November 2022
9	Socio-economic, tourism and recreation impacts	Hearing Session No. 3	Day 12, 21 November 2022
10	Traffic and Transport Impacts – particularly on residential amenity and including the combined implications for residential properties	Hearing Session No. 4	Day 13, 22 November 2022

11	Development Plan and other relevant planning guidance – both existing and emerging	Hearing Session No. 5	Day 15, 28 November 2022
12	Conditions/legal agreement (including consideration of the combined implications for residential properties)	Hearing Session No. 6	Day 14, 23 November 2022
13	NPF4 and other Policy Matters listed in Procedure Notice No.4	Hearing Session No. 7	Day 16, 29 March 2023