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The Scottish Government

28/01/2019

Dear Mr McFadden,

**THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017
ELECTRICITY ACT 1989: APPLICATION FOR SECTION 36 CONSENT FOR THE PROPOSED RED JOHN PUMPED STORAGE SCHEME IN THE PLANNING AUTHORITY AREA OF THE HIGHLAND COUNCIL**

Thank you for your email of 21 November 2018 requesting observations on the above application. We gratefully acknowledge the additional time allowed for our response.

The National Catalogue of Rights of Way does not show any rights of way affected by the area outlined in red on *Figure 1.2 The Proposed Development Site*. As there is no definitive record of rights of way in Scotland, there may be other routes that meet the criteria to be rights of way but have not been recorded as they have not yet come to our notice.

You will no doubt be aware there may now be general access rights over any property under the terms of the Land Reform (Scotland) Act 2003. We understand that the applicant has consulted the Core Paths Plan, prepared by Highland Council's access team as part of their duties under this Act.

This application contains proposals for the closure (both permanent and temporary) of recreational access routes including associated diversions. The details are given within an Outline Access Management Plan (OAMP) *Vol 5 Appendix 14.3*

As the applicant is proposing to alter the lines of core paths and other recreational access routes across the site, it may be useful to set out some of the criteria we consider when determining whether we find a proposed diversion to be acceptable; these include:

- the diversion should be of at least an equivalent standard,
- be not significantly longer,
- be no less convenient,
- be accessible to at least the same categories of access taker as use it at present,
- be available for use before the present route becomes unavailable

A number of diversions are proposed within the OAMP: these are confusingly presented so we are not going to consider each one in detail here. However as an example we will look at Diversion 3. The OAMP states in *Table 14.1* that *National Cycle Route 78 will be partially closed for the duration of the construction period. It will be diverted via Diversion 3 allowing access through the Development Site for the duration of the consent. Refer to Figure 14.3.2*

It should be noted that *Figure 14.3.2 Construction – Core Paths and National Cycle Route* shows National Cycle Route (NCR) 78 running along the B852 whereas *Figure 14.3.3* shows Diversion 3 but with no reference to NCR 78, so the proposal is unclear. Regardless of the

incorrect references, when considering *Diversion #3* in relation to the criteria listed above questions are raised regarding how this diversion can be seen to be acceptable to cyclists or indeed walkers as it appears to have a steep gradient at either end. The Society has not been able to locate any clear proposals as to the construction of this alternative route to show that it will be of equivalent standard. It remains unclear as to how this diversion would meet the considerations noted above and thus be acceptable.

Noting the above and from other confusing information provided for the other diversions it is hard to determine the exact intent for public access routes within the application site as a whole.

It is important to note that the OAMP contains several inaccurate and confusing references: the incorrect reference in Table 14.1 noted above is not the sole inaccurate reference within that table and there are many incorrect references within Appendix 14.3.

The application itself incorrectly references the Outline Access Management Plan as (*Appendix 14.1 Volume 5*) when it is Appendix 14.3. Additionally *Volume 2, Chapter 14 Table 14.11 Summary of Effects* incorrectly references the *Figures* for the three core path diversions eg *It will be diverted via Diversion 4 as shown on Figure 14.1.5*

Within the OAMP the applicant states *14.4.4* that details of the existing recreational routes to be upgraded post-construction will be provided when a construction contractor has been appointed. In order to comment fully on how these upgrades will affect outdoor access we suggest details of these upgrades need to be provided to consultees for their consideration.

The OAMP states *14.3.1 It should be noted that any diversion on figures are indicative at this stage.* For clarity a defined, not outline, Access Management Plan is required. This should then show accurate references to figures and provide accurate details of the defined routes with the proposed diversions at all stages of the proposed scheme. It should detail the proposals for the construction materials to be used, the types of post construction reinstatement and path upgrades rather than the developer providing details of these once a Construction Contractor has been appointed.

This AMP needs to be produced prior to the application being considered by the planning authority in order that all the relevant bodies can be consulted.

We would strongly recommend that the applicant consult with the access team at Highland Council with regard to any proposals for closure/diversions of recreational routes across the site. Any diversions should be agreed prior to the development being granted planning permission and in conjunction with Access Team at Highland Council.

As this application affects part of the National Cycle Network we would seek reassurance from the developer that Sustrans Scotland has been consulted. If we have inadvertently overlooked this we would be grateful to have it brought to our attention.

Due to the lack of clarity and the confusing information contained within the OAMP this response should be seen as an **objection**.

I hope the information provided is useful to you. Please do not hesitate to contact me if you need more detail or if you have any queries.

Yours sincerely,

Lynda L Grant
Access Assistant

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Red John Pumped Storage Scheme

Scotways Section 36 Response

Thank you for your response dated 28th January 2019. The Applicant has reviewed the comments and wishes to provide the following responses:

Scotways Comments	Applicants Response
<p>The National Catalogue of Rights of Way does not show any rights of way affected by the area outlined in red on Figure 1.2 The Proposed Development Site. As there is no definitive record of rights of way in Scotland, there may be other routes that meet the criteria to be rights of way but have not been recorded as they have not yet come to our notice.</p> <p>You will no doubt be aware there may now be general access rights over any property under the terms of the Land Reform (Scotland) Act 2003. We understand that the applicant has consulted the Core Paths Plan, prepared by Highland Council's access team as part of their duties under this Act.</p>	<p>The Applicant has liaised with the Access Officer of The Highland Council. A copy of our response is attached below for information.</p>
<p>This application contains proposals for the closure (both permanent and temporary) of recreational access routes including associated diversions. The details are given within an Outline Access Management Plan (OAMP) Vol 5 Appendix 14.3</p> <p>As the applicant is proposing to alter the lines of core paths and other recreational access routes across the site, it may be useful to set out some of the criteria we consider when determining whether we find a proposed diversion to be acceptable; these include:</p> <ul style="list-style-type: none"> - the diversion should be of at least an equivalent standard, - be not significantly longer, - be no less convenient, - be accessible to at least the same categories of access taker as use it at present, 	<p>The Applicant confirms that when devising diversions, these criteria have been applied in conjunction with feasibility and viability of the diversion, proximity and safety of the user, and also in consultation with the South Loch Ness Access Group.</p> <p>We apologise for any confusion. However to show all the existing routes, both inside and outside the Development Site Boundary, and the associated diversions on one figure per phase and at a suitable scale would have also been very confusing for the reader. By grouping specific routes in the Construction and Operational phases, it was intended to show the proposed diversions and closures clearly, and how these would be reinstated.</p> <p>Figure 14.3.3 shows long distance routes, but for completeness we can add the NCR 78 on this figure. The Outline AOMP is not finalised and we welcome suggestions on how Diversion #3 can be made acceptable to all users, including considerations of gradient. Diversion #3 is also located in an area of ancient woodland.</p> <p>Figure 14.3.5 shows that Diversion #3 will be removed after the construction phase has finished (or earlier if possible), and the original route of the NCR 78 reinstated.</p>

Scotways Comments	Applicants Response
<p>- be available for use before the present route becomes unavailable</p>	
<p>A number of diversions are proposed within the OAMP: these are confusingly presented so we are not going consider each one in detail here. However as an example we will look at Diversion 3. The OAMP states in Table 14.1 that National Cycle Route 78 will be partially closed for the duration of the construction period. It will be diverted via Diversion 3 allowing access through the Development Site for the duration of the consent. Refer to Figure 14.3.2</p> <p>It should be noted that Figure 14.3.2 Construction – Core Paths and National Cycle Route shows National Cycle Route (NCR) 78 running along the B852 whereas Figure 14.3.3 shows Diversion 3 but with no reference to NCR 78, so the proposal is unclear. Regardless of the incorrect references, when considering Diversion #3 in relation to the criteria listed above questions are raised regarding how this diversion can be seen to be acceptable to cyclists or indeed walkers as it appears to have a steep gradient at either end. The Society has not been able to locate any clear proposals as to the construction of this alternative route to show that it will be of equivalent standard. It remains unclear as to how this diversion would meet the considerations noted above and thus be acceptable.</p>	<p>We welcome the opportunity to meet and discuss these if this would assist.</p>
<p>Noting the above and from other confusing information provided for the other diversions it is hard to determine the exact intent for public access routes within the application site as a whole.</p>	<p>We welcome the opportunity to meet and discuss these if this would assist.</p>
<p>It is important to note that the OAMP contains several inaccurate and confusing references:</p> <ul style="list-style-type: none"> - The incorrect reference in Table 14.1 noted above is not the sole inaccurate reference within that table and there are many incorrect references within Appendix 14.3. - The application itself incorrectly references the Outline Access Management Plan as (Appendix 14.1 Volume 5) when it is Appendix 14.3. Additionally Volume 2, Chapter 14 Table 14.11 Summary of Effects incorrectly references the Figures for the three core path diversions eg It will be diverted via Diversion 4 as shown on Figure 	<p>We have proposed several amendments within our response to the THC Access Officer, and will make further corrections as appropriate. We are meeting THC on the 5th February to discuss their response and then will make the full amends.</p>

Scotways Comments	Applicants Response
14.1.5	
<p>Within the OAMP the applicant states 14.4.4 that details of the existing recreational routes to be upgraded post-construction will be provided when a construction contractor has been appointed. In order to comment fully on how these upgrades will affect outdoor access we suggest details of these upgrades need to be provided to consultees for their consideration.</p>	<p>A planning condition has been proposed by the THC Access Officer, and this can be amended to provide this detail once the detailed design of the Development and its above ground infrastructure is confirmed.</p>
<p>The OAMP states 14.3.1 It should be noted that any diversion on figures are indicative at this stage. For clarity a defined, not outline, Access Management Plan is required. This should then show accurate references to figures and provide accurate details of the defined routes with the proposed diversions at all stages of the proposed scheme. It should detail the proposals for the construction materials to be used, the types of post construction reinstatement and path upgrades rather than the developer providing details of these once a Construction Contractor has been appointed.</p>	<p>A planning condition has been proposed by the THC Access Officer, and therefore the finalised AMP will be prepared prior to the commencement of development.</p>
<p>This AMP needs to be produced prior to the application being considered by the planning authority in order that all the relevant bodies can be consulted.</p>	<p>A planning condition has been proposed by the THC Access Officer, and therefore the finalised AMP will be prepared prior to the commencement of development.</p>
<p>We would strongly recommend that the applicant consult with the access team at Highland Council with regard to any proposals for closure/diversions of recreational routes across the site. Any diversions should be agreed prior to the development being granted planning permission and in conjunction with Access Team at Highland Council.</p> <p>As this application affects part of the National Cycle Network we would seek reassurance from the developer that Sustrans Scotland has been consulted. If we have inadvertently overlooked this we would be grateful to have it brought to our attention.</p>	

Response to THC Access Officer

Response from THC Access Officer	Applicants Response
<p>The plan is in “outline” and does not offer enough detail to be able to assess the full impact of the scheme on public access. I like the table and plan format but would like more commitment and detail from the developers at this stage rather than them abdicating responsibility to the Construction Contractor. We see this quite a bit. If contractors are unaware of their access management responsibilities at the outset i.e. the tender stage they are less inclined to meet reasonable standards. For example “Details of the types of reinstatement will be provided when a construction contractor has been appointed.” In line with our policies we will be looking for paths, surfaces and reinstatement that offers a better resource for access takers inconvenienced by a long construction period and proposed diversions. How can developers or contractors price work on that basis? How can we reasonably expect contractors and developers to deliver higher quality routes if they remain uncommitted to them?</p>	<p>As stated in Section 14.1.4 of Appendix 14.3, the plan submitted as part of the Section 36 application is an outline plan with the aim of demonstrating the Applicant’s commitment to addressing and maintaining access requirements.</p> <p>There are some details that are not available at this stage of the Development design and will require input from the Construction Contractor. However, the diversions, upgrades and timing of implementation have been integrated in to the Development design – as set out in Chapter 2: Project and Site Description and as such will form part of the construction contractor tender.</p> <p>Initial comments were requested from the Access Officer prior to the submission but unfortunately comments were received too late to make any changes. However the diversions and management of the paths were discussed with the landowner and the South Loch Ness Access Group, who approved the proposals.</p> <p>As the Access Management Plan is proposed to be updated post-consent for approval by the Highland Council, having early sight of this outline plan provides an opportunity for early consultation in addition to that entered into prior to submission.</p>
<p>[Section] 14.4.5 [of Appendix 14.3] Standards makes references to irrelevant legislation and consultation at too late a stage to secure the standards we will seek.</p>	<p>The Applicant proposes updating the section on standards within the Access Management Plan to reference the Upland Path Advisory Group’s guidance on path construction standards and management¹, The British Horse Society’s Advice for Surfaces and Horses², and Sustrans’ Handbook for Cycle Friendly Design³. This will be undertaken once all other comments have been addressed so a complete revision can be submitted prior to determination.</p>
<p>An Access Management Plan should be submitted to the Planning Authority for its written approval prior to construction starting. That approved plan is what should be communicated to the public using means outlined in that plan.</p>	<p>This aligns with the Applicant’s understanding of the process and agrees with the statement as set out in sections 14.1.4 and 14.4.7 of Appendix 14.3.</p>
<p>The proposal seeks significant temporary and permanent diversion of 2 core paths. I recommend that consent be conditional on the successful diversion of those core paths under Section 208 of the Town and Country Planning (Scotland) Act 1997 and that the</p>	<p>The Applicant wishes to clarify as follows regarding the two core paths:</p> <ul style="list-style-type: none"> - During construction both IN12.04 and IN12.05 will be diverted. Diversion 1 will apply to both routes and Diversion 2 will apply to IN12.05 only. This can be

¹ <https://www.outdooraccess-scotland.scot/access-management-guidance/path-management> [Accessed 10/01/2018].

² <http://www.bhs.org.uk/advice-and-information/riding-out/free-leaflets-and-advice>. [Accessed 10/01/2018].

³ https://www.sustrans.org.uk/sites/default/files/file_content_type/sustrans_handbook_for_cycle-friendly_design_11_04_14.pdf. [Accessed 10/01/2018].

Response from THC Access Officer	Applicants Response
<p>developer be required to pay for those orders whether or not they are successful.</p>	<p>viewed on Figure 14.3.2 of Appendix 14.3.</p> <ul style="list-style-type: none"> - During operation: <ul style="list-style-type: none"> o IN12.05 will be reopened along its original alignment; o IN12.04 will have a minor diversion around Construction Compound 1 and will join the IN12.05 approximately 200 m south of the existing junction; o Diversions 1 and 2 as constructed during the pre-construction phase of the Development will be retained as <i>additional</i> paths increasing access options in the area. o The operational routes can be viewed on Figure 14.3.5 of Appendix 14.3. The path (IN12.05) through Compound 1 during operation can be viewed on Figure 2.20 in Volume 3. <p>The Applicant has committed to installing the proposed construction diversions as set out within Appendix 14.3 at the pre-construction phase of the Development. The diversions will be in place before access is restricted on the existing network.</p>
<p>The South Loch Ness Trail follows the B852 here. I recommend that the developer be required to install a traffic-free, off-road 2m wide aggregate path suitable for walkers, cyclists and horse riders that the operators of the scheme maintain for the lifespan of that scheme. This is in common with Stronelaig’s commitment to the South Loch Ness Trail between Fort Augustus and Glen Doe.</p>	<p>The Applicant proposes to provide a new path to the standards requested. There are two options for this new path which are subject to the final location of the valvhouse (which is shown on Figure 2.11 immediately adjacent to the B852) and the overall detailed design of the Tailpond Infrastructure::</p> <ul style="list-style-type: none"> - The path could be moved south to the opposite side of the road (subject to private land agreements); or - If the security of the Tailpond Infrastructure is not compromised, then the route would continue alongside the lochside. <p>It should be noted that this is an enhancement to the current route, and will be confirmed as part of the detailed design of the Development.</p> <p>The Applicant proposes to commit to providing funding for the maintenance of the path under a Section 75 agreement as part of the Development’s community benefit. This would rationalise conditions on the Development. It should also be a noted that a condition on the operational lifespan of the Development is not equivocal to the agreement with Stronelaig Wind Farm given the significantly longer lifespan of the Development of 80 years or greater compared to 25 years for a wind farm.</p>