

BY FAX, EMAIL AND FIRST CLASS POST

Lesley Thomson and Denise Manzor  
Scottish Executive  
Enterprise, Transport and Lifelong Learning  
Department  
Energy and Telecommunications Division  
Consents and Emergency Planning Unit  
Meridian Court  
5 Cadogan Street  
Glasgow  
G" 6AT

25 February 2005

Dear Lesley

**Ref: IEC/3/49**  
**Electricity Act 1989**  
**The Electricity Works (Environmental Impact Assessment) (Scotland)**  
**Regulations 2000**  
**Section 36 Application for the Lewis Windfarm on the Isle of Lewis, Western**  
**Isles**

Thank you for providing RSPB Scotland with the opportunity to comment on the above application. The RSPB wishes to register its **OBJECTION** to this proposal, as set out in detail in Annex 1.

We appreciate the extended consultation period that has been provided to us by the developer and the Scottish Executive but also appreciate that additional information for the Environmental Statement is anticipated shortly. We therefore reserve the right to make further comments on any additional information which becomes available.

The Lewis Wind Farm proposals will result in the loss of and disturbance to wildlife habitats which are of local, national and international importance. Impacts, as identified by the ES, include:

- The loss of at least 20 red-throated divers due to collision with turbines during the lifetime of the development (although we believe this figure to be inaccurate due to a basic spreadsheet error and should in fact be 75-150 divers due to collision);

- The loss of at least 50 golden eagles due to collision with turbines and the displacement of one breeding pair for the lifetime of the development;
- The loss of 50 merlin due to collision with turbines and the displacement of 5 breeding pairs for the lifetime of the development;
- The loss of 350 pairs of golden plover (1.5% of the GB and Ireland population) due to displacement;
- The loss of 314 pairs of dunlin (4% of the GB and Ireland population and 3% of the entire temperate population of *schinzii* dunlin) due to habitat loss and displacement impacts;

Notwithstanding the enormity of these statistics we believe many of the impacts in the ES to be underestimated, in particular those relating to habitat. In order to evaluate more closely the information provided on habitat and hydrology we have commissioned an independent review of the data by a recognised expert which we would be happy to provide to the Executive in due course. The conclusions from this work indicate that the level of habitat impacts may be thirty times greater than those predicted in the ES.

From the information currently available Scottish Ministers should reject this application on the basis that:

- It cannot be ascertained that the integrity of the Lewis Peatlands cSAC, the Lewis Peatlands SPA and Ramsar site, and the Ness and Barvas SPA will not be adversely affected;
- It has not been shown that there are no alternative solutions;
- It has not been shown that there are imperative reasons of overriding public interest; and
- The ES does not provide suitable mitigation or compensation proposals.

Should Scottish Ministers not be minded to refuse this application immediately we request that a Public Local Inquiry be held to consider the application in detail.

We would be happy to discuss any of the matters raised in this submission.

Yours sincerely

Martin Scott  
Conservation Officer, Western Isles

Enc.

cc. Jeff Watson and David MacLennan, SNH  
Alisdair Banks, CnES

## **RSPB Scotland Objection Letter, Annex 1, February 2005**

### **Application by Lewis Wind Power under S.36 of the Electricity Act 1989 to construct a wind farm with an installed capacity of 702MW and associated infrastructure**

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#### **1. Intro**

1.1. The RSPB is a registered charity incorporated by Royal Charter and is Europe's largest voluntary conservation organisation, with a membership of more than 73,000 in Scotland.

1.2. The principal objective of the RSPB is the conservation of wild birds and their habitats. RSPB Scotland manages over 64,000 hectares of land in Scotland and strongly supports the provisions of international and domestic agreements and legislation for the conservation of the natural environment.

1.3. RSPB Scotland has been involved in without prejudice discussions with AMEC and British Energy (operating as Lewis Wind Power – LWP) regarding the ornithological survey methodologies and resulting data for several years. Our serious concerns regarding the scale and impact of the proposal on an internationally protected area have been set out from the beginning of the process.

1.4. RSPB Scotland OBJECTS to the Lewis Wind Power application to construct a wind farm of an installed capacity of 702 MW and associated infrastructure under s.36 of the Electricity Act 1989. The ecological and legal basis of our objection is set out below.

1.5. This objection is based on the information currently available and with the understanding that sections of the developer's Environmental Statement (ES) have yet to be submitted. We reserve the right to revise our submissions in light of any new information which may become available.

1.6. On the basis of this objection we recommend that Comhairle nan Eilean Siar (CnES – the Council) advise Scottish Ministers against granting consent and/or that Scottish Ministers refuse consent under s.36 of the Electricity Act 1989.

## 2. The Proposal

According to the ES, the developer is applying to the Scottish Executive for consent to construct a wind farm with an installed capacity of 702 MW and associated infrastructure. This consists of: *inter alia* 234 wind turbines, each with a foundation and crane hard standing; 167km of access roads; nine electrical substations; a control building; nine wind monitoring masts; overhead lines and underground cable; five rock source areas; eight temporary compounds and four concrete batching plants.

## 3. Site Importance To Birds and Biodiversity

3.1. North Lewis is an area rich in wildlife and as such plays host to a range of different nature conservation designations. The wind farm proposal lies primarily within the Lewis Peatlands **Special Protection Area (SPA)**, designated under EC Directive 79/409 on the Conservation of Wild Birds (the *Birds Directive*) as amended by EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the *Habitats Directive*).

3.2. The SPA citation document describes the site as follows: *“The Lewis Peatlands SPA site contains a large proportion of the blanket bog on the Isle of Lewis. Blanket bog is rare in world terms and Britain has a significant proportion of the total world resource. Within Britain, the Lewis Peatlands are second in extent only to the Caithness and Sutherland peatlands and represent the extreme north-west part of the range of variation. Associated with these peatlands and open water is a unique and diverse assemblage of breeding birds that is of international importance.”*

3.3. The SPA qualifies under Article 4.1 of the Birds Directive by supporting nationally important populations of five Annex I Bird species. These are:

Red-throated diver	(80 pairs, 9% of the British breeding population of this species)
Black-throated diver	(13 pairs, 8% of British, etc)
Golden eagle	(5 pairs, 1% of British, etc)
Merlin	(20 pairs, 2% of British, etc)
Golden plover	(1,800 pairs, 8% of British, etc)

The SPA also qualifies under Article 4.2 by supporting two important populations of breeding migratory species:

Dunlin	(3,400 pairs, 37% of GB and 31% of the World population of the
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temperate *schinzii*<sup>1</sup> race)

Greenshank (140 pairs, 10% of British, etc)

3.4. The conservation objectives for the Lewis Peatlands SPA are: to avoid deterioration of the habitats of the qualifying species (red-throated diver, black-throated diver, golden eagle, merlin, golden plover, dunlin, and greenshank); and significant disturbance to these species; to ensure that the site's contribution to the favourable conservation status of these species is maintained.

In order to determine whether conservation objectives will be met it will be important to take account of those attributes known to contribute to the status of the qualifying feature of interest.

For qualifying species, this should include the following elements:

- Population present (including range of genetic types) is capable of maintaining itself as a viable component of the site,
- Distribution within site is maintained,
- Supporting habitat of species is maintained,
- Freedom from significant disturbance is maintained,
- Processes that support the habitat of a species are functional and likely to remain so,
- Host species (where relevant) are viable and likely to remain so,
- Habitat of host species (where relevant) is maintained and likely to remain so.

For qualifying habitats and the habitats of qualifying species, this should include:

- Extent on site maintained,
- Distribution within site maintained,
- Typical species are viable and likely to remain so,
- Structure and function of habitat is viable and likely to remain so,
- Supporting processes are functional (e.g. water quality and quantity, grazing) and likely to remain so,
- Typical species do not suffer significant disturbance.

3.5. North Lewis also plays host to the **Ness and Barvas SPA** which is made up of two separate areas, one in the extreme north of Lewis and one lying on the north west coast. This SPA qualifies under Article 4.1 of the Birds Directive by supporting an important breeding population of corncrake (3% of breeding British population).

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<sup>1</sup> This race of dunlin has recently been added to Annex 1 of the Birds Directive

3.6. The Lewis Peatlands SPA area is also designated as a **Ramsar site** under the Convention on Wetlands of International Importance (Ramsar, 1971), to which the UK is a signatory. The qualifying interests of the site are<sup>2</sup>: *one of the largest and most intact known areas of blanket bog in the world (Criterion 1); supporting a number of rare species of wetland birds including red-throated diver, black-throated diver, golden plover and greenshank (Criterion 2) and species occurring at levels of international importance (dunlin)(Criterion 6).*

3.7. The wind farm proposal is adjacent to the Lewis Peatlands candidate **Special Area of Conservation** (cSAC), which is distributed in a number of separate blocks, each within the Lewis Peatlands SPA boundary. This area has been recommended to the European Commission as a cSAC under the Habitats Directive because it contains habitat types and species which are rare or threatened in a European context. In particular, this is considered to be one of the best areas for blanket bog in the United Kingdom. Blanket bog is a habitat listed on Annex 1 of the Habitats Directive while active blanket bog is considered a priority habitat under the same Directive.

3.8. The conservation objectives for the Lewis Peatlands cSAC are: to avoid deterioration of the qualifying habitats (active blanket bog, depressions on peat substrates of the *Rhynchosporion*, natural dystrophic lakes and ponds, northern Atlantic wet heaths with *Erica tetralix*, oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or the *Isoëto-Nanojuncetea*); and the habitats of the qualifying species (otter); and significant disturbance to that species; so that the site's contribution to the favourable conservation status of these habitats and species is maintained.

3.9. Unlike most SPAs the Lewis Peatlands SPA is not underpinned by a Site of Special Scientific Interest (SSSI) designation, pursuant to the Wildlife and Countryside Act 1981; however the Loch Scarrasdale Valley Bog SSSI lies within the Lewis Peatlands SPA/cSAC area. This SSSI is notified for blanket bog and valley bog interests.

3.10. In addition to the qualifying interests of these designated areas, the survey work undertaken for the wind farm proposal identified additional species of note. These include species listed on Annex 1 of the Birds Directive, namely common tern and arctic tern (breeding) and whooper swan, Greenland white-fronted goose, white-tailed eagle, hen-harrier and short-eared owl (foraging on or flying over the site). It also included species afforded special protection under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), which were recorded as breeding within the survey area: greylag goose and peregrine.

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<sup>2</sup> As set out in the Ramsar Information Sheet completed on 7 December 2000 (<http://www.jncc.gov.uk/pdf/RIS/7UK151.pdf>)

**3.11. This is an internationally important location, recognised and protected by multiple nature conservation designations. As such, the appropriate tests, detailed below (Section 7), must be applied in accordance with EC and UK law.**

#### **4. Ornithological Impacts of the Proposal**

4.1. The ES identifies a wide range of ornithological impacts together with associated uncertainties and information gaps. The application of the necessary legal tests and obligations depends upon an understanding of the extent to which impacts can be evaluated and understood. In order to facilitate this we have considered all of the SPA qualifying species in detail below, together with additional species which are vulnerable to impacts arising from the proposal.

##### **Species for which the Lewis Peatlands SPA is designated:**

#### **4.2. Red-throated diver**

4.2.1. The ES notes that the number of divers recorded in the core survey area and surrounding 3km buffer zone are a significant proportion of the North Lewis population (s.12.3.3.1, para.46). The survey identified 36 pairs of red-throated divers (approximately 2% of GB population) within the extended survey area of which 32 pairs appear to have been within the SPA. From the information available, the primary impact on divers will be from collision risk and, conversely, the possible barrier affects of some groups of turbines.

##### **Collision Risk**

4.2.2. The ES predicts four deaths every five years (for 25 years), amounting to potentially 20 red-throated diver deaths arising from the development. This adverse impact is likely to be an underestimate. The flight line data gathered from various vantage points for the ES was collected between 1000 hours and 1900 hours covering only half the available summer daylight hours. Red-throated diver are known to make foraging flights at all hours of the day with late and early flights obviously more vulnerable to collision due to poor light. The ES recognises that survey work underestimates actual flight activity (s. 12.3.3.1, para 49). The risk assessment band for collision risk was apparently taken as 10-100m for all species despite the fact that the rotor tips reach 140m. **Having reviewed the figures in Appendix 12C of the ES it appears that the figures have been incorrectly calculated (due to a basic spreadsheet error) and that from the data available the actual collision risk for red-throated diver will be three to six birds per year for the lifetime of the development (75 – 150 birds).** Together these factors suggest collision risk mortality will actually be

significantly greater than predicted.

4.2.3. The identification of 'Primary Bird Areas' in the ES are intended to reduce the collision risk, however, the flight cones developed for red-throated divers are based upon the application of fieldwork undertaken at only a sample of breeding lochs. In addition, the ES notes that the need for a 'cohesive' layout means that a significant number of turbines remain within the primary bird areas (s.12.4.3, para 140) undermining their ability to reduce the risk of adverse impacts.

4.2.4. The fact that up to 27% of the divers used different nesting lochs over the two years of survey suggests a high degree of fluidity in distribution and that collision risk could be increased should they relocate to areas where flight lines will be impeded by turbine clusters.

4.2.5. The ES concludes that the predicted collision risk of four divers every five years is likely to have a 'low-moderate' impact on the SPA populations of this species (s.12.5.3.1, para 238). Bearing in mind the limitations of the data and probable inaccuracy of the calculations the conclusion must be further questioned by the fact that it is reached without any reference to the annual mortality rate for divers. Divers are relatively long-lived and reproduce at a low annual rate, consequently adult mortality has a relatively high impact on population dynamics. Without a Population Viability Assessment (PVA) using published mortality/survival rates, the impacts on the red-throated diver population of the SPA are difficult to predict with confidence but there is a significant risk of an adverse effect on the red-throated diver population.

#### **Barrier Effect**

4.2.6. If red-throated divers take action to avoid the turbines and cables, their movement, in particular between their breeding sites and the coast, will be impeded (commonly known as a 'barrier effect'). The data summarised in s.12.5.3.1, para 236, indicates that turbines may still impede 30% of red-throated diver flights. This could result in higher energetic costs due to longer more strenuous flights for breeding adults, reduced efficiency in foraging and nest provisioning and hence reduced productivity.

#### **Direct/Indirect Habitat Loss**

4.2.7. The survey work undertaken in 2002 and 2003 has apparently been used as the basis for design layout with the aim of avoiding direct loss of nesting sites due to construction (s.12.5.1.1, para 152). However, 27% of the pairs of red-throated divers surveyed in 2002 were not recorded at the same lochs in 2003 suggesting that the population is significantly spatially dynamic and that traditional diver nest sites may now be the locations for turbines or roads. Similarly, the 500m buffer determined for the primary constraint areas is based upon precise nest locations rather than 500m from breeding lochs. Some diver pairs will regularly move their nest sites to different locations on the same loch as well as completely different

lochs in different years making it more appropriate for the 500m buffer to be placed around nest 'locations' i.e. lochs rather than specific nest sites.

**4.2.8. Conclusion: The ES identifies a risk of at least 20 diver collision mortalities over the lifetime of this development. This is likely to underestimate the total impact on red-throated divers, particularly given that the calculations contained in the ES appear to suggest that the annual collision rate should be 3 – 6 birds per annum (75 – 150 birds during the lifetime of the development). From the information available, it cannot be ascertained that this development will not have an adverse effect on the population and distribution of red-throated divers within the SPA.**

### **4.3. Black-throated diver**

4.3.1. The ES identified three pairs of black-throated diver within the wind farm planning area and six pairs within the extended survey area, all of which were within the SPA (2% and 4% of GB population respectively). The impacts for black-throated divers are likely to be similar to those identified for red-throated diver and subject to the same shortcomings raised above. From the information available, it is possible to identify collision risk and disturbance as two key potential impacts.

#### **Collision Risk**

4.3.2. No collision risk monitoring was undertaken for black-throated diver and the ES states that the magnitude and significance of this impact is uncertain (s.12.5.3.1, para 239). The absence of any evaluation of collision risk raises significant concerns. The information in the ES suggests that black-throated divers forage mainly on their breeding lochs making them less vulnerable to collision risk (s. 12.5.3.1, para 239). Observations on the Western Isles and elsewhere indicate that this is not the case and that black-throated divers regularly forage at sea. As with red-throated divers, the absence of Vantage Point data from before 1000 hours or after 1900 hours excludes significant proportions of the summer daylight hours when collision risk is likely to be at its greatest (s. 12.5.3.1, para 239). The absence of 'focal loch' studies for black-throated divers (undertaken for red-throated diver at a limited number of lochs in order to provide more detailed information on flight lines) makes assessment of flight activity and direction even more difficult. In the absence of flight movement data, no assessment of the extent to which the turbine layout might present a barrier to preferred flight lines is possible.

### **Direct/Indirect Habitat Loss**

4.3.3. The breeding loch of one pair lies within 500m of turbines, roads and grid connection and so will be vulnerable to disturbance.

**4.3.4. Conclusion: The ES identifies one pair of breeding black-throated divers, which will be vulnerable to disturbance during construction and operation. No collision risk assessment has been carried out and the potential impacts remain unquantified but from the information available, it cannot be ascertained that the development would not have an adverse effect on the population and distribution of black-throated divers within the SPA.**

### **4.4. Golden eagle**

4.4.1. The ES identifies seven pairs of golden eagle (2% of GB population) within the extended survey area. The home ranges of these seven pairs all overlap with the SPA boundary. From the information available, it is likely that the main impacts on golden eagles will arise from indirect habitat loss/disturbance and from collision mortality.

#### **Indirect habitat loss/disturbance**

4.4.2. The ES identifies that the development is likely to lead to the complete loss of Pair D and recognises that this would be of very high significance (s.12.5.1.3, para 174). The loss of this pair from the SPA, for the lifetime of the development would be caused by the location of 26 turbines within 3km, with the nearest turbine lying within 600m. No alternative nest sites appear to be available to this pair and we must assume they will be displaced and therefore lost from the SPA. The ES suggests that because the breeding productivity for Pair D has been poor for the previous two years their displacement by the wind farm can therefore be revised downwards to that of a 'moderate impact'. The ES also suggests that poor productivity may be a direct consequence of the proximity of this pair to a waste disposal facility, which attracts ravens, which, in turn compete for prey with the eagles. This conclusion is tenuous and the productivity arguments irrelevant. Two years' data is not sufficient to assess productivity. Eagles need only breed successfully once every 10 years or less to replace themselves in the population. It is normal for golden eagle populations to have apparently 'good' and 'bad' pairs or territories, but the status of these can change when adult birds are replaced. In any event, impact from ravens is speculative, particularly given that eagles may on occasion predate ravens.

4.4.3. The ES identifies a potential loss of range for Pairs E, C and B. Pair E have 9 turbines within 3km of the nest site, Pair C have 4 turbines within their territory and pair D have 32

turbines within 3-6km. The proposed location for turbine group 4 has been identified as an area regularly used by immature golden eagles. The ES speculates that these birds may replace birds lost from the local population, including the SPA, which could have long-term implications for the golden eagle population on the Western Isles (s.12.5.1.8, para 213).

#### **Collision Mortality**

4.4.4. The ES estimates that between 0.9 and 1.8 golden eagles will be lost each year due to collision mortality (assuming a 99-99.5% avoidance rate) after mitigation.

**4.4.5. Conclusion: The ES estimates that the displacement impact on golden eagle will be 'moderate' with one pair potentially lost from the SPA, based on the assumption that this pair has poor breeding success. This assumption is unproven and the potential impact of displacement should be at least 'high' given the additional impacts on pairs E, C and B. The collision risk assessment is identified as 'very high' with potentially 50 golden eagle mortalities arising from collisions throughout the lifetime of the development. The ES indicates that population modelling will be undertaken in order to predict the likely effect of such losses on the SPA population. However, this may prove complex given the need to differentiate between the potential loss of both adults and non-territorial immature birds (whose loss will have a lower overall impact on the population). From the information currently available, it cannot be ascertained that the development would not have adverse effects on both the population and distribution of golden eagles within the SPA.**

#### **4.5. Merlin**

4.5.1. The ES identifies a large population of merlin (33 pairs – approximately 2% of GB population) within the extended survey area, 27 of these lie within the SPA. From the information available, it is likely that this species will be subject to displacement and collision risk.

#### **Direct/Indirect habitat loss/Disturbance**

4.5.2. The ES identifies that 17 nest sites have been recorded within 2km of a proposed wind turbine site, 12 of these nests are located between 550m and 870m. The ES considers that five pairs of merlin (20% of the qualifying interest of the SPA) could be lost. Although the ES cites three studies, which are intended to show that merlins are potentially tolerant of wind farms, these studies are either 'grey' literature (i.e. literature which is not publicly available and has not been peer reviewed or published) and/or relate to developments of a significantly smaller scale. The ES also suggests that a 'preliminary analysis' of habitat indicates that these birds could relocate to alternative nesting habitat thus rendering the potential overall

magnitude of the impact as 'low'. However, at a density of 6.2 pairs per 100sq km this is one of the largest assemblies of breeding merlins in the UK. Given this density combined with the fact that merlins are strongly site-faithful over long periods of time, it cannot be assumed that merlins are not already breeding at their optimum density in North Lewis. In order to dismiss the potential impact of displacement it would be necessary to ascertain that suitable alternative sites were available, consider why these are not already occupied; and demonstrate that any reasons why suitable sites are unoccupied are likely to be overcome in the event of birds being displaced by the proposed wind farm. In the absence of this, it should be assumed that there is a high probability of at least five pairs of merlin being displaced by the development.

4.5.3. The 'Primary Bird Areas' on two out of three estates (Stornoway Trust and Galson) do not take account of merlin at all and therefore the turbine layout has not been designed to reduce impacts on a species for which the SPA is designated.

#### **Collision Mortality**

4.5.4. The ES was not able to undertake a quantitative assessment of collision risk because flights of merlin were under-recorded during the surveys (s.12.5.3.1, Para 248). By using a 'magnitude' of collision risk the conclusion is that approximately 2 breeding birds will collide with turbines annually, i.e. a total of 50 merlin over the lifetime of the development. The ES also recognises that this is likely to be an underestimate. Merlins are very agile birds and so may be considered to undertake avoidance action where possible, however, their pursuit style of hunting can be conducted at great speed over a rapidly changing range of heights from ground level to several hundred feet. During this pursuit, it is likely that merlins will be more vulnerable to collision. The ES concludes that the impacts on the population from collision are uncertain.

**4.5.5. Conclusion: The ES recognises the potential displacement of five breeding pairs of merlin (20% of SPA population) and cannot quantify the potential impact of an admittedly underestimated collision risk of two breeding merlin per annum on the population (50 over the lifetime of the development). From the information available, it cannot be ascertained that the development would not have an adverse effect on the distribution and population of merlin within the SPA.**

#### **4.6. Golden plover**

4.6.1. The ES identifies 1294 pairs of golden plover (more than 5% of GB and Ireland population) within the core survey area occurring at a density of 5.26 pairs per sq km. From the information available it is likely that this species will be subject to direct habitat loss,

indirect habitat loss/displacement, collision and barrier effects.

### **Breeding Wader Survey Methodology Limitations**

4.6.2. These figures are based upon the Brown and Shepherd Survey method adopted by the surveyors. This is a widely recognised method for surveying upland sites in order to establish population levels and trends in upland breeding birds. Surveyors undertake at least two field visits and mark the 'locations' of pairs of breeding birds on an OS map. Data from these visits are combined to give a reasonable idea of how many pairs are occupying an area and at what density, conventionally mapped with a 'dot' to represent one breeding pair. Unfortunately, this method cannot provide detailed information on territorial areas or use. These counts are likely to be an underestimate of the true population size. Combined with uncertainties over the magnitude and distance of any displacement effects, this means that the displacement figures in the ES are unlikely to be, in fact, a conservative, worst-case scenario.

### **Direct/Indirect Habitat Loss/Displacement**

4.6.3. No 'Primary Bird Areas' have been identified for golden plover and the ES combines the effects of direct and indirect habitat loss. The ES estimates that all birds within 300m of turbines will be lost to the population, which equates to 17% of the SPA population and 1.5% of the entire GB and Ireland population (i.e. the ES estimates that up to 350 pairs of golden plover (300 within the SPA) will be lost throughout the lifetime of the project with an unknown timescale for recovery thereafter). Underpinning this conclusion is the assumption that the 'dots' identified using the Brown and Shepherd survey method equate to 'nests' or territorial centres and that a 300m displacement distance is adequate. These assumptions are unsound and consequently significantly more pairs could be displaced from areas around the roads and turbines. While a 17% loss of a qualifying species is recognised in the ES as a 'high' impact it may, in fact, be an underestimate. This does not include potential extra impacts due to other infrastructure such as roads and the grid connections. The ES also identifies the potential displacement due to disturbance, for an unknown period of time during construction, of an *additional* 290 pairs (244 within SPA – an *additional* 14% of SPA population and an overall impact on almost 3% of the GB and Ireland population).

4.6.4. The selection of a 300m buffer to evaluate displacement impact is at best, based on informed guesswork. As the ES notes (s.12.5.1.4, para191) displacement impacts of 800m have been recorded from forestry. Should similar disturbance distances apply in this instance then it can be calculated that approximately 591 pairs of golden plover (33% of the SPA and Ramsar population) could be subject to disturbance as a result of the development.

4.6.5. The ES refers to a study 'Ovenden Moor' (s.12.5.1.4, para 195) which apparently shows that golden plover may be tolerant of turbines. This one-off study has been widely

quoted in many Environmental Impact Assessments (EIAs) but is neither published nor peer reviewed. The RSPB has been unable to obtain a copy of this confidential report but believe it relates to a significantly smaller site with very few pairs of golden plover in an area which has been enclosed by fencing. It would welcome the opportunity to review this document in order to evaluate the scientific validity of the findings.

4.6.6. Golden plover are distributed across the site and depend upon a mosaic of habitat types. The ES does little to evaluate the potential implications of the hydrological and habitat impacts upon species for which the SPA is designated. Having commissioned an independent review of the habitat impacts (see Section 5 below) it is our opinion that the impacts on the peatland habitat and consequently the species that depend upon it have been significantly under-estimated. This habitat review concludes that it is reasonable to allow for a habitat buffer which extends for 250m from the roads and turbines within which the blanket bog vegetation may be affected (and that this may still be a conservative estimate of potential habitat impacts). This would have an effect on 33% of the SPA golden plover population and extend beyond the boundaries of the SPA into the cSAC.

#### **Collision Mortality/Barrier Effect**

4.6.7. The ES clearly states that the layout of the development was not designed to reduce collision risk to golden plover (s.12.5.3, para 227). Golden plover elsewhere are known to feed both on and off site, during the day and at night. The ES (s.12.5.3.1, para 253-256) states that 48% of the flights recorded during surveys were between 10-100m in altitude but that the magnitude and significance of collision mortality is uncertain (although it is likely that several hundred pairs of golden plover are potentially at risk). It is highly likely that the grid connection will add further to this unquantified collision risk.

4.6.8. For those birds unwilling to fly through the turbines the proposal and associated grid infrastructure is likely to create a barrier for any birds commuting to the inbye land for foraging.

**4.6.9. Conclusion: The ES recognises that golden plover are present in large numbers and significant densities across the entire development site. It also recognises that the turbine layout could not be designed to avoid either disturbance or collision impacts. To the extent that these impacts can be evaluated, a conservative estimate indicates that 17% of the SPA population and 1.5% of the GB and Ireland population of golden plover will be displaced by turbines and therefore effectively permanently lost. If the effects of displacement are felt beyond the notional 300m zone and/or the impacts on habitats extend up to 250m it is estimated that approximately 33% of the golden plover population of the SPA could be adversely affected by the development. An additional 14% of the SPA population will be displaced during construction. The impacts of**

**collision mortality from turbines and the grid connection are unquantified but potentially high and additional to those resulting from habitat loss and displacement. It cannot therefore be ascertained that this development would not have an adverse effect on the golden plover population and distribution within the SPA (or indeed within the UK).**

#### **4.7. Dunlin**

4.7.1. The ES identifies 1140 pairs of dunlin (14% of GB and Ireland population) within the core survey area occurring at a density of 4.63 pairs per sq km. From the information available, it is likely that this species will be subject to direct habitat loss, indirect habitat loss/displacement, collision mortality and barrier effects.

##### **Direct/Indirect Habitat Loss/Displacement**

4.7.2. As with golden plover, no 'Primary Bird Areas' have been identified for dunlin and the ES combines the effects of direct and indirect habitat loss. Using the data available, the ES estimates that all birds within 300m of turbines will be lost to the population, which equates to 314 territories (4% of GB and Ireland population) within the core survey area of which 278 territories are within the SPA (8.2% of the SPA population). As for golden plover, this estimate relies upon a number of assumptions relating to the location of territories and the actual area of displacement. As a result, significantly more pairs could be displaced from areas around the roads and turbines than has been calculated. While an 8.2% loss of a qualifying species is recognised in the ES as a 'high impact', it may, in fact, be an underestimate with an unknown timescale for recovery thereafter. In particular, the loss of 4% of the GB and Ireland population and 3% of the entire temperate population of Annex 1 *schinzii* dunlin indicates an impact of international significance. This does not include potential extra impacts due to other infrastructure such as roads and grid connection. The ES also identifies the potential displacement due to disturbance, for an unknown period, during construction, of an *additional* 289 pairs (231 pairs within SPA – an *additional* 7% of SPA population).

4.7.3. As for golden plover, the selection of a notional 300m buffer may be a significant underestimate. A review of available literature suggests that displacement effects have been recorded up to 800m. For dunlin, this would result in the potential displacement of approximately 545 pairs (16% of the SPA population).

4.7.4. Dunlin are distributed across the site and are dependent upon a mosaic of habitat types. The ES does little to evaluate the potential implications of the hydrological and habitat impacts upon species for which the SPA is designated. Having commissioned an independent review of the habitat impacts (see Section 5 below) it is our opinion that the impacts on the

peatland habitat and consequently, the species that depend upon it, have been significantly under-estimated. This habitat review concludes that it is reasonable to allow for a habitat buffer which extends for 250m from the roads and turbines within which the blanket bog vegetation may be affected (and that this may still be a conservative estimate of potential habitat impacts). This would have an effect on 16% of the SPA dunlin population and extend beyond the boundaries of the SPA into the cSAC.

#### **Collision Mortality/Barrier Effect**

4.7.5. No collision risk was evaluated for dunlin. The ES states that flight activity of dunlin is predicted to be limited (s12.5.3.1, para 258) but without supporting evidence. Aspects of dunlin biology (duration, frequency and height of display flights, location of foraging areas in relation to nesting territories, diurnal activity patterns) combined with the timing of surveys which excludes those periods when dunlin can be particularly active, indicate that dunlin flight activity is likely to be underestimated and could result in potential collision risk. It is highly likely that the grid connection will also contribute to this unquantified collision risk.

4.7.6. Conversely, and as for golden plover, the layout of the turbines combined with the grid connections effectively closing many of the 'gaps' between turbine clusters could create a barrier effect with associated energetic costs for breeding adults taking avoiding flight action.

**4.7.7. Conclusion: The ES recognises that dunlin are present in large numbers and significant densities across the entire development site. It also recognises that the turbine layout could not be designed to avoid disturbance or displacement. To the extent that these impacts can be evaluated, a conservative estimate indicates that 8.2% of the SPA population, 4% of the GB and Ireland population and 3% of the entire temperate population of *schinzii* dunlin will be displaced by turbines and therefore effectively permanently lost to the population. An additional 7% of the SPA population and 3% of the GB and Ireland population will be displaced during construction. If the effects of displacement are felt beyond the notional 300m zone and/or the impacts on habitats extend up to 250m it is estimated that approximately 16% of the dunlin population of the SPA could be adversely affected by the development. Collision risk and barrier effects are not quantified by the ES but could contribute to dunlin mortality; these impacts would be additional to those resulting from direct and indirect habitat loss and displacement. It cannot therefore be ascertained that this development would not have an adverse effect on the dunlin population and distribution within the SPA.**

#### **4.8. Greenshank**

4.8.1. The ES identified 92 greenshank territories (6% of GB and Ireland population) within the survey area occurring at a density of 0.37 pairs per sq km. From the information available it is likely that this species will be subject to displacement, habitat loss or alteration and collision mortality.

##### **Habitat loss/Indirect habitat loss/displacement**

4.8.2. The ES estimates that four greenshank territories (0.3% of GB and Ireland population) will be lost due to the displacement of birds within 300m of all turbines, amounting to 3% of the SPA population for the 25-year lifespan of the development and with an unknown timescale for recovery thereafter. This does not include potential impacts due to other infrastructure such as roads and the grid connection. Unlike other waders the ES does include greenshank in the 'Primary Bird Areas' by identifying areas of 250m around each nest site (assuming these are nests). However, while greenshanks are territorial, aspects of their biology require them to range very widely to meet different requirements at different stages of their breeding cycle. Therefore, 'constraint areas' of this size are unlikely to cater for all the needs of those greenshank identified in the ES as 'potentially affected' and the overall impact may be greater than suggested by simple buffering of either nest sites or territory 'dots'. Evidence indicates that greenshank will use habitats well over 250m from the nest. It is unclear from the ES whether the 'Primary Bird Areas' for greenshank were based on actual nest sites, or simply based on the Brown and Shepherd surveys where territorial 'dots' are identified according to a standard methodology, following a minimum of two field visits. For this reason it is also very difficult to determine whether the 3% population loss is accurate.

4.8.3. The ES estimates that additional impacts due to construction disturbance and displacement (for an unknown period of time) will affect an additional 25 pairs, 2% of GB and Ireland population (22 within the SPA, amounting to an additional 16% of the SPA population).

4.8.4. As for golden plover and dunlin the selection of a notional 300m buffer may be a significant underestimate. A review of available literature suggests that displacement effects have been recorded up to 800m for wading species. For greenshank this would result in the potential displacement of approximately 28 pairs (20% of the SPA population).

4.8.5. The ES does little to evaluate the potential implications of the hydrological and habitat impacts upon species for which the SPA is designated. Having commissioned an independent review of the habitat impacts (see Section 5 below) it is our opinion that the impacts on the peatland habitat and consequently, the species, which depend upon it, have been significantly under-estimated. This habitat review concludes that it is reasonable to allow

for a habitat buffer which extends for 250m from the roads and turbines within which the blanket bog vegetation may be effected (and that this may still be a conservative estimate of potential habitat impacts). This would have an effect on 5% of the SPA greenshank population and extend beyond the boundaries of the SPA into the cSAC.

### **Collision Mortality**

4.8.6. No collision risk assessment was undertaken for greenshank. The ES estimates that the probability of collision is relatively small but recognises that greenshank will fly offsite to forage in coastal habitats. Greenshank are particularly active in the early morning/late evening when no survey work was undertaken suggesting that their activity and flight patterns may be under-recorded. Greenshank will travel over large areas using different areas of habitat, again increasing their vulnerability to collision. The collision mortality to greenshank is likely, therefore, to be underestimated.

4.8.7. No assessment has been made of the additional collision risk or barrier effect of the grid connection. The barrier effect may be a particular problem for greenshank, as they will move broods considerable distances to rearing areas well away from nest sites.

**4.8.8. Conclusion: The ES recognises that at least 3% of the SPA greenshank population and 0.3% of the GB and Ireland population will be permanently lost due to the development proposal and that an additional 16% of the SPA population will be displaced due to construction for an unknown length of time. No collision risk has been undertaken. Due to the biological requirements of this particular species and the inevitable limitations of survey techniques it is highly likely that these impacts are underestimated. It cannot, therefore, be ascertained that this development would not have an adverse effect on the population and distribution of greenshank within the SPA.**

### **Ness & Barvas (Corncrake) SPA**

4.9. The ES has not undertaken an adequate evaluation of the potential impact of the proposal on the qualifying interest (corncrake) of the Ness and Barvas SPA. Corncrakes migrating between trans-Saharan Africa and the Ness and Barvas SPA are highly likely to cross through the proposed turbines and grid connections, at least twice annually. This is likely to include the entire cohort of young birds produced each year. Populations of this relatively short-lived, and internationally rare species are very sensitive to small increases in mortality rates, especially of young. Therefore, even relatively small increases in mortality could have significant adverse impacts on the corncrake population levels of the Ness and Barvas SPA. While conventional assessment of collision mortality using flight line data may

be difficult for corncrakes (given the difficulty of actually recording flights) a Population Viability Analysis (PVA) based approach to identify levels of additional mortality likely to have an adverse impact would present some assessment of the significance of this risk. The ES does not consider this possibility and without additional information it is therefore impossible to conclude that the proposal will not have an adverse effect on the Ness and Barvas SPA corncrake population. As the ES does not acknowledge the potential impact of the project on corncrakes or on the integrity of the Ness & Barvas SPA, no measures which might mitigate or otherwise offset these impacts are suggested.

4.10. The ES has undertaken no assessment of corncrakes in the wider countryside but birds are likely to experience similar risks to those within the SPA.

### **Non-SPA qualifying species**

#### **4.11. Whooper Swan**

4.11.1. The ES concludes that while Lewis is known to be on the migration route of whooper swans (protected under Annex 1 of the Birds Directive) the lack of good feeding habitat means that the expected collision risk is low, although difficult to predict with certainty (s.12.5.3.2, para 260). What is surprising about the ES is the lack of flight line data on whooper swans during the autumn and spring passage periods, particularly given that they were one of the intended 'target species'. Prof. Colin Pennycuik of Bristol University has undertaken satellite tracking of whooper swans and four out of six autumn tracked birds passed at a low height over Lewis and were therefore at risk of collision. This is because Lewis offers the closest landfall to swans migrating from their Icelandic breeding grounds. Whooper swan migration is generally concentrated by weather conditions to a few days within a broader time window and not all of that time window was covered by surveys described in the ES. It is probable that the developers' surveys simply missed the autumn whooper swan passage in 2002, since passage can occur over just a handful of days and nights, thereby leading to the conclusion that impacts will be low.

4.11.2. It is probable, therefore, that large numbers of whooper swans migrating over northern Lewis will have a very high risk of collision with turbines and grid connections on both their autumn and spring migrations between Iceland and the British Isles. This risk could be exacerbated by poor weather conditions and nocturnal flights. Whooper swans are recognised to be at particular risk from collision due to their size and lack of manoeuvrability, particularly upon arrival after the 800km sea-crossing from Iceland.

#### **4.12. White-tailed Eagle**

4.12.1. Observations of white-tailed eagles in the ES indicate that they were present for longer than all other key raptors with the exception of golden eagle and that they spent almost 60% of this time flying at a height of between 10-100m. No constraint areas or mitigation have been identified for this large, Annex 1 species. Both range and population of white-tailed eagles are expanding in Scotland and flight line data presented here strongly suggests pre-settlement activity. SPA coverage will be required in order to fulfil the Birds Directive. However, no SPAs have yet been classified in the UK. If this area were to be colonised within the lifetime of the project collision mortality could potentially be very high.

#### **4.13. Other Species**

4.13.1. Other Annex 1 species (not qualifying for either SPA) identified as occurring within the wind farm study area are Greenland white-fronted goose, Greenland barnacle goose, hen harrier, peregrine falcon, common tern and arctic tern. The ES assesses potential impact on these species as relatively insignificant, though the information presented in the ES for these species does not allow complete confidence to be placed in such a conclusion. In particular, given our reservations regarding the ES's conclusions regarding whooper swans, it is difficult to be confident that there will be no significant impact on white-fronted and barnacle geese migrating between Greenland and the British Isles, given the location of Lewis in relation to likely migration routes.

4.13.2. The ES also identifies nationally important breeding populations of both greylag goose (also listed on Schedule 1 of the Wildlife and Countryside Act 1981) and arctic skua. Concentrations of both species have been included in the 'Primary Bird Areas' but the extent to which they remain vulnerable to collision risk remains unclear, given the information presented in the ES.

#### **4.14. Mitigation/Compensation Measures**

4.14.1. The ES identifies a range of mitigation measures, which it suggests will reduce the impacts upon the species for which the SPA is designated. Some of these relate to the timing and method of construction, which will be the subject of detailed discussion and conditions. We will not comment on these in detail other than to recommend that if Scottish Ministers were minded to grant consent these should avoid the breeding seasons of all Annex 1 species and be discussed and agreed with RSPB Scotland, SNH and Scottish Ministers. However, given the density and distribution of Annex 1 species it is difficult to see how this condition could be met nor would it be likely to significantly reduce the likely adverse effects

on the SPA.

**4.14.2. The use of Primary Bird Constraint Areas in order to avoid those areas of greatest sensitivity is a measure that relies heavily upon the data currently available; cannot anticipate future population trends or movement; and has not been applied at all to golden plover or dunlin.** Over and above these limitations, the ES notes that a number of turbines were included in the 'Primary Bird Areas' in order to provide a 'cohesive layout' (s. 12.4.2, Para 140). This means that 53 turbines are now in the 'Primary Bird Areas' (23% of the total), 58km of road are in the 'Primary Bird Areas' (35% of the total) and 23km of the grid connection is in the 'Primary Bird Areas' (32% of the total). It would appear that the extent to which these areas have, in practice, been used as a 'constraint' is therefore limited.

4.14.3. Beyond these operational matters, the ES also identifies two potential habitat management proposals which it suggests will mitigate impacts on qualifying species, namely forestry removal and peatland restoration. Both proposals apply principally to ground outwith the SPA boundary and in accordance with Article 6 of the Habitats Directive cannot therefore be considered as 'mitigation', but only as 'compensatory measures', and, only following a decision to grant consent on the grounds both of 'no alternative solutions' and of 'imperative overriding public interest' (see Section 7 for further explanation of tests).

4.14.4. This interpretation is endorsed by recent Ministerial decisions in the UK. In 1998, the Secretary of State for Environment, Transport and the Regions determined, in relation to the Harwich Deep Water Channel Dredging on the Stour and Orwell SPA, that the proposal to create new intertidal habitat outwith the site could not be considered as mitigation and was compensation. In this case the Secretary of State took the view that: *'...because the redressing of the immediate damaging effects of the project relies so firmly on the provision of replacement habitat outside the existing site, it is not possible to conclude that the habitat creation element of the package can be considered a mitigatory measure to remove the adverse effects of the project on the integrity of the Stour and Orwell SPA.'*<sup>3 4</sup> Compensation measures cannot be considered as part of the proposal in order to circumvent the tests of the Directive. Before compensatory measures are considered under Reg. 53 of The Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations) the competent authority is first required to consider alternatives, and whether the proposal is deemed to be necessary for imperative reasons of overriding public interest.

4.14.5. The proposal to remove coniferous forestry plantation relates primarily to forestry areas outwith the SPA and as such cannot be considered as 'mitigation', as stated above.

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<sup>3</sup> Letter from DETR of 27<sup>th</sup> October 1998 re Consent to Deposit Dredgings Required under s.34(1) of the Coast Protection Act 1949 and s.13(2) of the Harwich Harbour Act 1974

<sup>4</sup> Recently reiterated in Secretary of State for Transport Decision Letter on Dibden Terminal proposal and associated works, April 2004, paras 17 & 54

Rather it must be considered as a 'compensatory measure' and only once the tests and requirements of Article 6 have been applied in full (see Section 7 below). Beyond this significant legal obstacle lies the further difficulty that the area identified is relatively small, will take a very long time to restore to viable peatland habitat, and is unlikely to offer a like-for-like replacement of the habitat lost either in terms of Ramsar blanket bog or habitat for SPA qualifying species.

4.14.6. The second 'mitigation' proposed in the ES is the proposal for peatland 'restoration'. We are not aware that what is suggested represents either a proven or an accepted method of peatland restoration which may be considered likely to improve habitat conditions, at least for the duration of the proposal. Indeed, we are concerned that the 'restoration' could lead to large-scale areas of bare peat that fails to be recolonised by vegetation. We are also aware that the developer may be anxious to find a disposal method for at least part of the 2.58 million cubic metres of 'excess peat' arising from the construction process. Where this 'restoration' is proposed outwith the SPA it cannot be considered as 'mitigation'. Where peatland 'restoration' is proposed within the SPA, even if it did result in a significant improvement of the capacity of the SPA to hold qualifying species, this management technique should be undertaken as part of the Scottish Executive's obligations under the Habitats Directive to maintain and manage protected areas at favourable conservation status (Article 3 of the Habitats Directive).

4.14.7. When considered as 'compensatory measures' these proposals are inadequate. The scale and extent of impacts on birds and habitats are difficult to quantify, making accurate assessment of the compensatory measures impossible to determine. The proposals put forward are lacking in detail and include unproven techniques for peatland management. The scale of compensation proposed is limited and could not provide a like-for-like replacement of the habitat being lost.

#### **4.15. Conclusions on Ornithological Impacts**

4.15.1. The ES recognises that this proposal is likely to have an impact on all the species for which both the Lewis Peatlands SPA and the Ness and Barvas (corncrake) SPAs are classified. Many of the 'mitigation' proposals suggested are either unproven, inadequate or unlikely to qualify as mitigation under the terms of the Habitats and Birds Directives. The identification of 'Primary Bird Areas' applies only to a limited number of species for which the site is designated. Between a third and a quarter of the proposal continues to be located within these areas in any event.

4.15.2. The ES recognises that the exact nature and extent of impacts cannot be precisely evaluated (e.g. s12.11, para 305). The Scottish Executive must therefore apply the precautionary principle when reaching a decision on this application (paras 80-82, National Planning Policy Guidance 14).

4.15.3. Notwithstanding the legal obligations to consider impacts at a site population level, the ES recognises that the proposed development is likely to have an impact on more than 1% of the **national** populations of a number of Annex 1 species<sup>5</sup> (including golden plover and dunlin). This may also to be the case for species for which the ES does not fully identify the likely impacts (including corncrake and whooper swan).

4.15.4. Impacts on dunlin are also significant for the biogeographical population (temperate *schinzii*) and are therefore of **international** significance. The same may also reasonably be concluded of the potential impact on the Icelandic breeding population of whooper swan.

4.15.5. The ES seeks to rely upon unpublished literature, which cannot be examined or verified. Survey work has not been undertaken in the early morning or late evening when many of the species are particularly active indicating that many impacts will be underestimated.

4.15.6. The correlation between hydrological and habitat impacts and the knock-on effects for qualifying species reliant upon the existing habitat are minimal. Further consideration of potential impacts on the peatland habitat are considered in Section 5.

**4.15.7. From the paragraphs above it is clear that there will be adverse effects upon every species for which both the SPAs (and the Ramsar site) are designated. With reference to the conservation objectives of these sites and with the information available in the ES it is our opinion that the site integrity of the Lewis Peatlands SPA (and Ramsar site) and of the Ness and Barvas SPA will be adversely affected by this proposal. The exact nature and extent of these adverse effects are subject to a level of uncertainty but are likely to be significantly greater than those identified by the ES.**

## **5. Habitat Impacts**

5.1. In order to accurately evaluate the information provided on habitats and hydrology RSPB Scotland commissioned specialist advice from Richard Lindsay, Head of Conservation at the University of East London and former National Peatland Specialist to the Nature

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<sup>5</sup> In other words, the numbers of golden plover and dunlin potentially lost to this project would, elsewhere, meet Stage 1 of the UK SPA Site Selection Guidelines and qualify for classification as SPA(s) in its (their) own right.

Conservancy Council's Chief Scientist Team (and subsequently SNH) and chair of the International Mire Conservation Group for 16 years. The comments in this section are based upon his review of the relevant sections of the ES.

### **Methodology**

5.2. It is recognised that the ES contains a wide-ranging and detailed set of information. However, it is questionable whether it is the appropriate data and whether it has been interpreted and used in the most appropriate way. The ES states that the hydromorphological description of blanket mire systems as adopted by the Joint Nature Conservation Committee (JNCC) has not been used in this instance (s.11.3.3.1, para 33) and that the JNCC guidelines appear to have been developed mainly on the basis of relationships observed in the Flow Country. The latter is not the case. The JNCC guidelines have been developed from work throughout Britain and are sufficiently well-established to have been presented recently as the globally-recommended approach to the functional description of peat bogs for all Contracting Parties (i.e. governments) to the Ramsar Convention. The failure to use the hydro-morphological approach means that there is no mechanism to determine a meaningful impact assessment boundary. A series of hydrological analyses are carried out, but little of real meaning can be drawn from these. The fundamental process of identifying the various levels of hydro-morphological function is not addressed at all. Consequently, much of the underlying basis for risk assessment and impact evaluation is missing.

5.3. The ES identifies peat of more than one metre deep but only notes the precise depth if less than one metre. The engineering and impact issues of a peat layer of one metre thick are potentially orders of magnitude different from those where the peat thickness is five metres deep. Peat depths were recorded for road lines but a map of peat thickness for the whole peatland scoping area is essential if the scale of potential impacts on the various mire units is to be assessed effectively.

### **Classification**

5.4. The process of vegetation recording included decisions that introduced vegetation classes that represented distinctly dry vegetation types. Relatively few quadrat samples were taken to corroborate the National Vegetation Classification (NVC) assignments made in the field and close examination of the sample quadrats suggests that significant proportions of the drier vegetation types should, in fact, have been classified as more typical bog habitat.

5.5. Assessment of human impact on the area fails to recognise the impact of past burning practices. Erosion classes are mapped and the widespread occurrence of erosion is assumed to be a natural process of general drying. Those erosion classes that indicate stability or recovery and which belong in the category of 'active' according to the JNCC guidance, were excluded from the mapping of 'active' bog. Re-calculation of the erosion figures indicate that

67% of erosion is either stable or re-vegetating.

### **Revised classification**

5.6. Addressing these shortcomings and re-calculating the area of 'active blanket bog' within the Habitat Survey Area (HSA) produces a figure of an additional 10,000ha, which, combined with the area defined by the ES gives a total area of 17,960ha, more than double the amount identified in the ES.

5.7. The peatland interest within the SPA is classified in the ES as being of only 'Regional' importance (Table 11.6) yet it is listed by the UK as a 'Wetland of International Importance' under the Ramsar Convention, indicating that the nature conservation importance of the site has been undervalued in terms of both habitat quality and nature conservation designations. Chapter 11 makes no mention of the Ramsar designation at any point. No explanation of this omission is provided.

### **Direct Habitat Loss**

5.8. Using this revised habitat classification approximately 425ha of active blanket bog, a priority habitat under the Habitats Directive, will be directly lost to turbine excavation and road construction. The ES concludes that no more than 189.8 ha of active blanket bog will be directly lost.

### **Indirect Habitat Loss**

5.9. The decision not to use a hydro-morphological approach when describing this blanket mire system creates particular problems when seeking to evaluate indirect habitat impacts. When issues of vegetation quality, drainage and erosion are considered together a 250m buffer (for the entire layout) is more reasonable than the 50m buffer used in the ES. Using this buffer the figure for potentially-affected active blanket bog within the SPA is 6,255ha (7720ha in total), including several hundred hectares within the Lewis Peatlands cSAC.

### **Roads**

5.10. Road construction will cut across the natural surface flow of the bog, thus causing problems for both the bog and the road. In particular, roads will require drains and thus pose as much of a threat of erosion as peat cutting, an activity which is clearly described in the ES as causing erosion (Chapter 10, s.19.3.7.4, para 73). Experience has shown that floating roads do not continue to float but gradually sink into the peat. They will therefore become saturated and require drainage to be useable. Rock-fill roads, intended for use in the least stable areas of peat have the potential to initiate large-scale instability of the peat mass.

### **Implications for SPA qualifying species**

5.11. The ES makes very few links between the potential habitat impacts and the subsequent impacts on SPA qualifying species. Evaluation of precise impacts is limited by a lack of appropriate habitat information, but within the area identified using the revised 250m buffer it is possible to conclude that; 602 pairs of golden plover (33% of SPA population), 537 pairs of dunlin (16% of SPA population), and 7 pairs of greenshank (5% of SPA population) could be effected by habitat loss or modification.

**5.12. Conclusion: The failure to adopt standard JNCC guidelines as the basis for the hydrological assessment of the survey area has resulted in a picture of the peatland system which fails to understand or describe the inter-relationship of the component parts, or the natural boundaries of those component parts. The decision to classify large parts of the peatland system as very 'dry' habitat types results in an inaccurate evaluation of the habitat quality. By applying a revised classification and a more realistic buffer zone the areas of active blanket bog directly and indirectly affected by the proposal are increased to more than thirty times that given in the ES.**

**Consequently, the ES significantly underestimates the potential impacts on the cSAC, the Lewis Peatlands SPA, and the Lewis Peatlands Ramsar site. The precise nature and extent of these impacts are uncertain but it cannot be ascertained that the proposal will not have an adverse effect on the qualifying interest of these designations.**

## **6. Limitations of ES**

6.1. Given the scale and scope of the application and supporting ES it is not our intention to detail each and every inconsistency or unsatisfactory element of the ES. However a number of key issues emerge which should be highlighted, in addition to shortcomings relating to species and habitats identified above.

6.2. Chapters 10 (Hydrology), 11 (Habitats) and 12 (Ornithology) do not link in such a way as to enable full assessment of the potential range of impacts of the proposal on birds and their habitats. The Scottish Executive's Scoping Opinion dated 16<sup>th</sup> September 2002 specifically states in section 3 that the ES must address the significance of the impact on all bird species and the habitats supporting these species for which the SPA is classified. The Scoping Opinion goes on to say that the ES should take account of other bird species using the area which are not in themselves designated. In our opinion the EIA and resulting ES has failed to fully assess the impact on these species.

6.3. A lack of information including that relating to peat depth, precise turbine locations, and the location of 'trial excavations' (s.10.5.5, para 178), results in an unacceptable level of

uncertainty regarding impacts on habitats.

6.4. The methodology of Regini et al (2000), used in the ES to assess bird and habitat impacts, is publicly available only in draft. While the draft methodology may be a useful way of assessing potential impacts of developments in the wider countryside, in our opinion its self-defined significance criteria are set too broadly to enable clear assessment of potential impacts of development proposals on Natura sites, as required by Article 6 of the Habitats Directive and the Habitats Regulations.

6.5. The ES indicates that the transmission system will be the subject of a separate application under s.37 of the Electricity Act 1989. While an indicative route for the transmission line has been shown the cumulative impacts on species have not been adequately evaluated and this must be addressed.

6.6. The reliance on Brown and Shepherd bird survey information to inform turbine layout and primary constraint areas has significant limitations. Brown and Shepherd survey methods have been designed to provide information on bird population levels and trends over relatively large areas and therefore cannot be relied upon to inform detailed design decisions.

6.7. The ES identifies five potential rock source areas. The extraction, blasting, removal and transportation of rock across the development may result in additional levels of disturbance and displacement, which have not been addressed in terms of cumulative impact. No explanation for this omission is provided.

6.8. It is unclear from the ES where the developer intends to dispose of 1.5million cubic metres of peat, assuming that the additional 1million cubic metres is, in fact used for peatland restoration. Further information on disposal or use is necessary and could have implications for both flora and fauna.

6.9. The ES has currently has no otter or fisheries survey information which, it is assumed will be provided in due course. It is also assumed that the developer will be required to re-advertise the ES in light of this additional and any other relevant additional information under Regulation 14 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (The EIA Regulations).

## **7. Statutory Framework**

7.1. As this proposal is likely to have a number of impacts on designated sites or protected species the provisions of the Habitats Regulations and the Habitats and Birds Directives apply. The Habitats Regulations require, as a matter of law, a structured approach to the impact on European sites. This structured approach is not optional but is required as a matter of both EC and UK law.

7.2. This approach requires every competent authority (Scottish Executive Circular 6/1995, as amended 2000), in this instance Scottish Ministers, to undertake the following steps:

- 7.2.1. **Step 1<sup>6</sup>:** Undertake an assessment as to whether the project is likely to have a 'significant effect' on a European site (Reg. 48(1) and Art. 6(3)) whether in combination with other plans or projects or alone. Reg. 10 defines a European site to include SPAs, cSACs and as a matter of government policy, Ramsar sites.
- 7.2.2. **Step 2:** If there is likely to be such a significant effect the competent authority must carry out an appropriate assessment (Reg. 48(1) and Art. 6(3)).
- 7.2.3. **Step 3:** The appropriate assessment must consider the implication for the European site 'in view of' that site's conservation objectives (Reg. 48(1) and Art. 6(3)).
- 7.2.4. **Step 4:** In light of the conclusions of the assessment the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the European Site (Reg. 48(5) and Art 6(3)).
- 7.2.5. **Step 5:** If it cannot be ascertained that the project will not adversely affect the integrity of the European site, the authority must then consider whether there are any alternative solutions (Reg. 49(1) and Art. 6(4)).
- 7.2.6. **Step 6:** If there are no alternative solutions (Art. 6(4) uses the language of 'in the absence of alternative solutions') and "notwithstanding a negative assessment of the implications for the site" consent or authorisation may be granted for the project but only

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<sup>6</sup> Omitting Reg. 48(1)(b) relating to whether the plan or project is directly connected with or necessary to the management of the site.

“for imperative reasons of overriding public interest” (IROPI) (Reg. 49(1) and Art. 6(4)).

7.2.7. **Step 7:** Such “imperative reasons” may be of a social or economic nature (unless the site hosts a priority natural habitat type of a priority species in which case the permissible considerations are significantly restricted) (Reg. 49(1) and Art. 6(4)).

7.2.8. **Step 8:** If the authority is satisfied that there are imperative reasons etc. notwithstanding a negative assessment of the implications for a European site, Scottish Ministers are under a duty to secure that all necessary compensatory measures are taken to ensure the that overall coherence of Natura 2000 is protected (Reg. 53 and Art 6(4)).

### **Applying this Approach**

#### **7.3. Step 1: Is this proposal (either alone or in combination with other plans and projects likely to have a significant effect on a European site?**

7.3.1. European Commission guidance<sup>7</sup> on the tests of the Directive states that: “The procedure of Article 6(3) and (4) is triggered not by a certainty but by a likelihood of significant effects, arising not only from plans or projects located within but also outside a protected site”. The ES clearly recognises that the proposals are likely to have a significant effect on a European site:

“The impact on certain bird species forming part of the SPA’s citation have been assessed as having the potential to be significant” (s.4.7.1, para 146)

7.3.2. We agree with this conclusion as far as it goes. Significant effects may not be limited to the Lewis Peatlands SPA but extend to the Lewis Peatlands cSAC, the Ness and Barvas SPA and the blanket bog interest of the designated Ramsar site.

#### **7.4. Steps 2, 3 & 4: Having ascertained that there is likely to be a significant effect, the competent authority must carry out an Appropriate Assessment in view of the site’s conservation objectives. Having undertaken an Appropriate Assessment the competent authority shall agree to the project only after ascertaining it will not**

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<sup>7</sup> Managing Natura 2000: The provisions of Article 6 of the ‘Habitats’ Directive 92/44/EEC, European Commission, 2000.

**adversely affect the integrity of the European site.**

**7.5.** There is no specific document entitled 'Information for the Appropriate Assessment' and therefore we have used the ES to consider this section.

7.5.1. The ES reaches no conclusions regarding the impact of this development on the overall integrity of the Lewis Peatlands SPA (s.4.7.1, para 146). The ES goes on to state that the Scottish Executive will undertake the Appropriate Assessment. However it is mentioned in the Summary of Key Points (s.5.1, paragraph 47) that LWP believes that with the successful implementation of its proposed mitigation measures the wind farm will not have an adverse effect on the habitat of the SPA. We strongly disagree with this presumption as is explained below.

7.5.2. In a written answer to a parliamentary question on 19 November 2004 the Deputy Minister for Environment and Rural Affairs stated: "The Scottish Executive issued Guidance on the EC Habitats and Birds Directive in June 2000. This Guidance states that it is Scottish Executive policy to apply the same level of protection for Ramsar sites as that afforded to designated Natura sites. This is in line with the statement of the Government's policies for the protection and management of Ramsar sites in England..." Consequently the structured tests applicable to European sites should also, as a matter of policy, be applied to Ramsar sites.

7.5.3. Having considered the information available (see above) it is our submission that the Scottish Executive cannot conclude that the project proposed will not adversely affect the integrity of the Lewis Peatlands cSAC, the Lewis Peatlands SPA, the Ness and Barvas SPA or the Lewis Peatlands Ramsar site

7.5.4. It is our opinion that the test includes a precautionary element and therefore if there is any doubt within the assessment as to the impacts on species and/or their habitats then the competent authority cannot agree to the project at that stage but must continue to the next step. This is in line with the precautionary principle as set out in paras 80-81 of the NPPG note 14 on Natural Heritage.

**7.6. Step 5: If it cannot be ascertained that the project will not adversely affect the integrity of the European site, the authority must then consider whether there are any alternative solutions.**

7.6.1. In this context, the competent authority must consider alternative solutions under the terms of the Habitats Regulations and not under the EIA Regulations.

7.6.2. The definition of what constitutes an alternative solution will depend on an objective assessment of the plan or project, including the purpose and role it will fulfil. For the consideration of whether possible alternative solutions exist, the competent authority and not solely the developer should consider this determination of purpose. The subjective intentions of the developer cannot be decisive since (1) it is for the competent authority to assess the implications of the project, and (2) the functioning and/or effect of the project may extend beyond the purposes and alleged need identified by the promoter. In view of the adverse effects which will or are likely to occur to a site of European importance, alternative solutions should be considered by reference to such functioning and effects and not merely the initial intended target for its operation. It seems unlikely that an 'alternative solution' would necessarily have to duplicate every aspect of the project promoted, whether in form, size, layout, location or otherwise.

7.6.3. This interpretation is supported by European Guidance<sup>8</sup> which notes at Para. 3.3.2:

*"Possible alternative solutions may include variants of:*

- locations or routes;*
- scale or size;*
- means of meeting objectives (e.g. demand management);*
- methods of construction (e.g. 'silent piling');*
- operational methods;*
- decommissioning methods at the end of a project's life; and*
- scheduling and time-scaling proposals (e.g. seasonal working).*

*For each alternative there must be a description, and an indication of how it was assessed. Once all potential alternatives have been identified they need to be assessed against their relative impact upon Natura 2000 sites."*

7.6.4. Alternative solutions are those which satisfy the need, as identified by the competent authority, but which also better respect the integrity of the site in question. This means that a competent authority must consider the comparative ecological impacts on European sites arising from alternatives in order to identify alternative solutions. It follows that ecological, not economic, considerations are the reference parameters for the identification of alternative solutions.

7.6.5. The recent decision by the Secretary of State regarding the application by ABP to develop the Dibden Terminal in the Port of Southampton clearly states, at para. 51 of the Secretary of States Decision letter:

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<sup>8</sup> 'Assessment of Plans and Project Significantly Affecting Natura 2000 Sites' European Commission, DG Environment, November 2001

*“ The Secretary of State notes...that the consideration of alternatives for projects which would have a significant impact upon a site designated in accordance with the Habitats Regulations must range more widely. The Secretary of State agrees with the Inspector’s conclusion that the Applicant’s proposal would have a significant effect upon the integrity of designated sites. It follows that consideration of alternatives must concern alternative ways of avoiding impacts on the designated sites. The Secretary of State considers that such alternatives would not be confined to alternative local sites for the projects. He draws attention to the European Commission’s methodological guidance on the Assessment of Plans and Projects significantly affecting Natura 2000 sites, which interprets article 6(4) of the Habitats Directive. The guidance states that a competent authority should not limit consideration of alternative solutions to those suggested by a project’s proponents and that alternative solutions could be located even in different regions or countries.”*

7.6.6. The objectives of the Lewis Wind Farm Proposal (as determined by the developer) are stated in Volume 1, para 3 of the ES:

- ”-To deliver a commercially viable wind farm;*
- To make a major contribution to the economy of the Western Isles;*
- To provide justification for investment in a large efficient electrical grid inter-connector to the Western Isles with spare capacity for other renewable projects;*
- to make a major contribution to Scottish and UK renewable energy targets.”*

7.6.7. It is for the Scottish Executive to determine which of these objectives it will seek to consider when considering alternative solutions. The ES contains a chapter, which considers alternatives, that might be suitable from the perspective of the developer. These objectives are further qualified by the ‘requirement’, as stated in s.8.2, that the project must be a large-scale renewable energy project on the Western Isles that could be developed in the time-frame of the Lewis Wind Farm proposal.

7.6.8. The ES provides no clear justification for the delivery of the proposal as a single project, or even as a wind farm. Nor is it clear why the development must be delivered within the time-frame of the Lewis Wind Farm proposal given that the time frame is unclear and will depend upon the availability of the grid connection.

7.6.9. When considering existing alternatives the ES estimates the combined generating capacity of all available areas including the Stornoway Trust, Galson and Barvas Estates which is capable supporting wind energy development (lying outside SPAs) at this time to be no more than 450MW (ES, Volume 8, Chapter 3, s.8.6, para 23). In doing so the ES does not include any references to two large-scale wind farm proposals which have either been submitted to the Scottish Executive for s.36 consent or have sought scoping opinions. Without speculating on the likelihood of either of these developments obtaining the relevant consent it

is clear that these two developments alone represent a potential capacity of 674MW, significantly in excess of the capacity identified by the developer. We therefore query the basis of the conclusions reached in the ES (without prejudice to RSPB's submissions on any current or future developments on the Western Isles).

7.6.10. One of these proposals is located in an area of relatively steeply sloping ground suggesting that the slope limitations included in Chapter 8 of the ES are unduly stringent.

7.6.11. The existence of two 'credible' and 'feasible'<sup>9</sup> proposals for potentially large-scale wind farms, capable of justifying the construction of an electrical grid inter-connector while making a significant contribution to both the economy of the Western Isles and renewable energy targets would appear to render the conclusions of Chapter 8 invalid.

7.6.12. We are aware that work commissioned by the Scottish Executive and the Council<sup>10</sup> identifies a range of potential renewable energy resources within the Western Isles and assume that the Executive will be considering this information when undertaking its evaluation of alternative solutions.

7.6.13. We also note, that contributions to renewable energy targets can be met from any suitable location of which there are clearly many across the UK and Scotland.

**7.6.14. In conclusion, we believe that the Scottish Executive cannot conclude that there are no alternative solutions and the application should be refused accordingly.**

**7.7. Step 6 & 7: If there are no alternative solutions (as to which see 7.6 above) consent may be granted for a project but only "for imperative reasons of overriding public interest" (IROPI). Such "imperative reasons" may be of a social or economic nature (unless the site hosts a priority natural habitat type or a priority species in which case the considerations are significantly restricted) (Reg. 49(1) and Art. 6(4)).**

7.7.1. From the conclusions reached in Section 5 regarding potential impacts on peatland habitat it is clear that the areas of active blanket bog (a priority natural habitat) within the cSAC may be affected by the proposal. Consequently, the Scottish Executive may only grant consent if it is convinced that there are human health or safety considerations or benefits of primary importance to the environment. No information on these issues has been presented in the ES. **Should the Scottish Executive conclude that this is not the case consent may only be granted for other imperative reasons of overriding public interest, following**

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<sup>9</sup> Secretary of State decision letter on the Dibden Bay proposal, paras 43-46

<sup>10</sup> Western Isles Renewable Energy Study, Garrad Hassan and Partners, 2002

## **consultation with the European Commission.**

7.7.2. So far, the European Court of Justice has not given clear indications for the interpretation of the concept of 'imperative reasons of overriding public interest'. However EU Commission Guidance<sup>11</sup> states that:

*"The public interest must be overriding; it is therefore clear that not every kind of public interest of a social or economic nature is sufficient, in particular when seen against the particular weight of the interests protected by the Directive. In this context, it also seems reasonable to assume that the public interest can only be overriding if it is a long-term interest; short-term economic interests or other interests which would only yield short-term benefits for society would not appear to be sufficient to outweigh the long-term interests protected by the directive."*(S. 5.3.2)

7.7.3. Against the background of this guidance and the stated objective of LWP to 'make a major contribution to the economy of the Western Isles' we therefore query the conclusions and assumptions contained in Chapter 9 of the ES. This is for the following reasons.

### **Operational Job Impacts**

7.7.4. It is noted that the developer anticipates that 74 Full Time Equivalent (FTE) jobs will be created by this development. We also note that s.9.7.4, para 161 of the ES indicates that 1,080 FTE jobs are supported in the Western Isles through tourism. We appreciate that evaluating impacts on tourism is problematic but figures provided in the ES indicate that between 2-26% of visitors in studies commissioned by the British Wind Energy Association and Visit Scotland (s.9.7.8) have indicated that they are less likely to visit an area with a wind farm development. Taking a conservative average of 10% this would presumably result in a 10% reduction in tourist trade and a subsequent 10% reduction in jobs supported by the tourism, equating to 108 FTEs. The long-term economic benefits arising from jobs associated with the operation of this particular wind farm could be outweighed by the long-term reduction in jobs from the tourism sectors.

### **Construction Jobs**

7.7.5. We note that during the period of construction the developers anticipate the creation of 133 FTE jobs on the Western Isles, based on the assumption that tower and blade manufacture and wind turbine assembly will occur locally. Given that contracts must be competitively let, according to European Union procurement regulations there is no guarantee that construction jobs will be generated on the Western Isles. Should less tower and blade manufacture and turbine assembly be sourced locally, and be manufactured instead, for example, at the Vestas site near Campbeltown, the anticipated employment on the Western

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<sup>11</sup> Managing Natura 2000, European Commission, 2000

Isles during the construction of the wind farm will be only 25 FTE (a reduction of 81%) (Table 9.17).

### **Community and Development Trust Payments**

7.7.6. The ES recognises that the ‘nature and scale of the economic effects which arise from this [the community and development trust payments] injection of income depends very much on the manner in which the income is used’ (s.9.9.5.3, para 78). However, it identifies a strong effect from these: that an annual maximum payment of £0.56m to communities combined with an annual fixed payment of £0.70m (based on a rate of £1,000 per MW of installed capacity) to the Western Isles Development Trust will create 221 FTE jobs within the Western Isles. We query the assumptions underpinning the predicted strength of this effect.

### **Lease Rental Payments**

7.7.7. As with Community and Development Trust Payments the ES acknowledges that ‘it is difficult to reach an informed view of the manner in which the Estates will spend the additional income and what proportion will be retained in the local economy’ (s.9.5.5.3, para 71). The ES then makes the assumption that half of the money paid to Estates will remain on the Western Isles and be reinvested into agriculture, despite the fact that the ES identifies this as a declining sector suffering from low demand. We query the assumptions underpinning the predicted strength of this effect.

7.7.8. There appear to be a significant number of assumptions and unanswered questions which we believe should be addressed before the Scottish Executive could be satisfied that imperative reasons of overriding public interest of a social or economic nature exist.

**7.8. Step 8: If the authority is satisfied that there are imperative reasons etc. notwithstanding a negative assessment of the implications for a European site, Scottish Ministers are under a duty to secure that all necessary compensatory measures are taken to ensure the overall coherence of Natura 2000 is protected (Reg. 53 and Art 6(4)).**

7.8.1. As discussed above the ES considers a number of mitigatory measures, some of which should be properly classified as compensation. For example as stated above a permanent loss or irreversible damage to functional habitat within an SPA cannot be mitigated against and therefore where Table 25.1 (Chapter 25) states that “...*habitat loss* [will be] *offset by equivalent habitat creation elsewhere...*” or “...*alternative nesting habitats appear to exist on the surrounding area* [so no mitigation measure is outlined within the table]...” we would classify all of these impacts as requiring compensation.

7.8.2. Due to the unproven nature of the proposals, the limited scale and lack of detailed information it cannot be concluded from the information available that the necessary compensatory measure can actually be provided. Significantly improved proposals would be required to satisfy this particular test as well as more detailed monitoring requirements to ensure that any further impacts are offset where possible or compensated for as and when they arise during the project's lifetime.

7.8.3. In addition we would expect to see a detailed decommissioning proposal at this stage to ensure that the once the turbines are removed the site is restored where possible. In addition, we do not agree with Table 25.1 conclusion that the decommissioning is a positive impact particularly in light of the proposal to leave the 167km of access roads behind once the turbines are removed.

**7.9. Conclusion of Habitats Regulations Steps: We believe it cannot be ascertained that the development will not adversely affect the integrity of the Lewis Peatlands cSAC, the Lewis Peatlands SPA, the Ness and Barvas SPA or the Lewis Peatland Ramsar site. In our opinion there are alternative solutions available and therefore we request that Scottish Ministers refuse the application on this basis. Notwithstanding this conclusion, should Scottish Ministers be minded to conclude that there are no alternative solutions to this proposal we believe that the ES does not identify imperative reasons of overriding public interest which would enable consent to be granted as well as there being a complete lack of compensation proposals for the impacts on the European sites.**

## **8. Non-SPA Annex 1 Species**

8.1. Article 4 of the Birds Directive requires member states to take 'special conservation measures' for Annex 1 species, including those outside protected areas where member states must strive to avoid 'pollution or deterioration of habitats'. The potential impacts on whooper swans and white tailed eagle amongst others would appear to be contrary to the obligations placed on Member States.

8.2. The ES also clearly identifies potential impacts on golden plover, dunlin and greenshank outwith the SPA boundary. The extent to which these populations can be considered separate to the SPA population has not been explored or clarified in the ES.

## 9. Planning Policy Context

### Overview

9.1. The policy context for this proposal covers a broad range of issues and topics as is clearly highlighted in the ES. However, for the purposes of determining this application the legal obligations and tests established by the relevant European Directives must take precedence.

### National Planning Policy Guideline NPPG 6

9.2. Paras 39-45 of NPPG 6 reiterate the obligations arising to the UK under the Habitats and Birds Directives together with a clear statement that 'The Government has also decided as a matter of policy to accord to both potential SPAs and SACs and sites which qualify for designation only under the Ramsar Convention the same level of protection'. With reference to the sections above this proposal to be contrary to the guidance contained in NPPG 6.

### Western Isles Structure Plan

9.3. Policy RM11 on Habitats and Species states:

"The Comhairle will not normally grant consent for developments on land or water that would have significant adverse impacts upon habitats or species listed under the EC Habitats Directive, the EC Birds Directive or the Wildlife and Countryside Act 1981 (as amended). The Comhairle will encourage the appropriate management and enhancement of features of the landscape which are of major importance for wild flora and fauna.

In the event of a proposed development having an adverse impact on breeding or resting places used by these species, it should only proceed if:

- i) action must be to preserve public health or safety, or for other imperative reasons of overriding public interest including those of a social or economic nature; and
- ii) there is no satisfactory alternative; and
- iii) there will be no adverse impact on the species as a whole.)"

We query whether this policy accurately reflects the requirements of the Habitats Regulations but believe this development proposal is contrary to policy RM11.

**9.4. Conclusion: We believe this proposal to be contrary to both local and national planning policy. On these grounds alone the application can safely be refused.**

## 10. EU Water Framework Directive (2000/60/EC)

10.1. The ES identifies potential for erosion, sediment loading, disturbance to the hydrological characteristics of peat, groundwater and surface water quality and impacts to natural drainage patterns. The Water Framework Directive (WFD) established a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwaters which:

- ”- Prevents further deterioration and protects and enhances the status of aquatic eco-systems and, with regards to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems.
- Promotes sustainable water use based on a long-term protection of available water resources
- Ensures the progressive reduction of pollution of groundwater and prevents its further pollution.” (Article 1 of the Water Framework Directive)

10.2. The ES also recognises that engineering works, water abstraction licences and control of point source pollution will all be subject to licence or consent from SEPA. We understand that currently the chemical water quality in the Lewis Peatland is high but at risk of failing to achieve its environmental objectives due to existing pressures including water abstractions, flow regulation, fisheries and other pressures. Any further development pressure could put the site at risk of failing.

10.3. The Water Framework Directive can be breached assuming a number of conditions are met and assuming sustainable development is to take place and that no other alternative exists:

”The beneficial objectives served by those modifications or alteration of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by any other means, which are a significantly better environmental option.” (Article 4, Section 7(d))

From the information available it is probable that the development will cause major habitat degradation and degradation in ecological status and therefore runs contrary to the principles of the WFD. The WFD is transposed into Scots Law by means of the Water Environment and Water Services (Scotland) Act; this requires all competent authorities (including Scottish Ministers) to undertake their functions so as to secure compliance with the Water Framework Directive.

## 11. EIA Regulations

11.1 The EIA Regulations apply to this proposal as a result of requiring s.36 of the Electricity Act 1989 consent (para1 of Schedule 1 of the EIA Regulations). Therefore the developer must carry out an EIA resulting in an ES. As stated above it is not our intention to detail each and every inconsistency or unsatisfactory element of the ES and the main areas of concern for us are highlighted above focusing (understandably) on the ornithological data and information for an appropriate assessment. However it must be remembered that the ES must contain sufficient information for the impacts of the proposal to be assessed (hence the name EIA) and it is our opinion that the developer has failed to comply with this provision (regulation 4 and Schedule 4 of the EIA Regulations) even after considering whether the assessment of such information is reasonable considering current knowledge and methods of assessment (regulation 4(1)(b)).

## 12. Conclusion

12.1. **For the reasons given in the sections above we believe this proposal should be refused on the basis of the information available, at present, we believe any decision to consent could be unlawful. Should Scottish Ministers not be minded to refuse the proposal immediately we request that a Public Local Inquiry be held to consider the application in detail.**