



RE: (EXT): s36 Application - Cruach Clenamacrie Wind Farm

From Luke MAJOR [REDACTED]
Date Mon 4/13/2026 4:41 PM
To [REDACTED]
Cc Isla Ferguson [REDACTED]; Corey Simpson [REDACTED]; Alexander HAMILTON [REDACTED] >

1 attachment (68 KB)

Advice Note - Wull Muir - Cruach Wind Farm 130426.docx;

CAUTION: This email originated from outside of Green Cat Renewables. Do not click links, open attachments or reply to the message unless you recognise the sender and are sure the content is safe.

Dear Joy,

I refer to your email on 30 March 2026 in respect of the Cruach Clenamacrie Wind Farm asking for further information following the Court judgment in the case Raeshaw Farms v Scottish Ministers and EnergieKontor.

To assist in answering the questions you have asked, we have provided a note on the Raeshaw decision and our submissions as to how this may be relevant to the Cruach Clenamacrie Wind Farm section 36 application. The note is referred to in our responses to the questions, and we would ask that this is considered in the round. Should you have any further queries or require any further clarifications please do let me know.

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

Please see attached note.

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

Please see attached note.

As set out in more detail in the attached note, the question of what constitutes a “project” for EIA purposes is fact and circumstance dependant and a matter of planning judgment for the planning decision maker. The Courts have provided a list of non-exhaustive criteria against which a decision maker can consider this issue. We would note that in this case the application does not include a grid connection as part of the proposal, and of the four criteria identified by the Courts as relevant to the question of what is a project in EIA terms, two of these are not met, and that one of the criteria is met in that the wind farm will be functionally dependant on a grid connection. As the detail of the grid connection (including its functionality) is a matter for SSEN, it is not possible comment on whether it is a single project or not. We would also note that this application is subject to a different regulatory regime than applied in the Raeshaw planning appeal.

We note the request that the applicant provide a justification where a wind farm and grid are not considered to be one project. We do not consider this to be necessary. We would note that there is nothing in the Court decision or otherwise that creates a presumption either that a wind farm and grid connection are one project or separate projects.

- **Where it is considered that that the wind farm and the grid connection are one project, have the significant effects of the project, including the grid connection, been adequately assessed in the EIA report?**

As noted, the question of whether the wind farm and grid connection are one project is a matter for the decision maker.

Notwithstanding, where likely significant effects have been identified, it is considered these have been adequately assessed and reported in the EIAR. The EIA has been undertaken by suitably qualified professionals in accordance with the EIA Regulations. The EIA Report accords with the requirements of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and in accordance with the scoping report and scoping opinion issued by Scottish Ministers. Chapter 3 (methodology) of the EIAR provides further detail on the approach taken to the EIA.

In the event that Ministers conclude that the wind farm and grid are a single project for EIA purposes, and to assist the Reporter and Ministers in their consideration of the application and minimise the risk of delay, it is proposed that further environmental information on the grid connection will be provided in accordance with Regulations 19 and 20 of the EIA Regulations.

Provision of the grid connection is the responsibility of the network operator, SSEN, who will also be responsible for the consenting of the grid connection. SSEN has confirmed that it intends for the grid connection to be to the existing Taynuilt substation, via a 33kV connection. It is understood this will be an underground cable connection. To assist the Reporter and Scottish Ministers, and avoid any unnecessary delay, we propose to provide environmental information sufficient to enable any likely significant effects of the grid route and wind farm to be considered. In undertaking this assessment, regard will be had to the legal requirement to avoid "*conjecture and speculation*" in the EIA process, and to only include environmental information on which a reasoned conclusion can properly be based. In this regard, and recognising that the design, construction and operation of the grid connection will ultimately be a matter for SSEN, we will, when considering environmental effects, have regard to the Horlock Rules and SSEN's duties under Schedule 9 of the Electricity Act 1989. As explained in the attached note, the further environmental information will be provided in accordance with requirements *per* Regulation 4(2) of the EIA Regulations.

- **Where it is considered that the wind farm and grid connection are not one project, has any consideration be given to any likely significant cumulative effects of the proposed development and its grid connection?**

As noted, the question of whether the wind farm and grid connection are one project is a matter for the decision maker. The approach to the assessment of cumulative effects is detailed in chapter 3 of the EIAR and sets out the list of projects assessed on a cumulative basis (see table 3.4 in Chapter 3). The cumulative assessment considers existing, consented and proposed EIA projects for which an application has been submitted. No grid connection met these criteria. We have refreshed our review of projects and can confirm that that remains the position. There is currently no consented grid connection or proposed application for a grid connection.

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

The requirement under the EIA Regulations is that an environmental impact assessment identify, describe and assess "*in an appropriate manner, in light of the circumstances relating to the proposed development*" likely significant effects. In the circumstances as they relate to the proposed development it is considered the likely significant effects are identifiable at this stage. It is recognised there is potential for these circumstances to change, for example, when SSEN bring forward their proposals for a grid connection. This is a matter that can be addressed (if necessary) through conditions.

Kind regards,
Luke Major

Luke Major
Project Manager
Development

[REDACTED]

The Wheelhouse, Bond's Mill Estate, Stonehouse,
Gloucestershire, GL10 3RF

vitalia.com



The Information contained in this email, as well as any attached files, are confidential and intended solely for the use of its recipients and cannot be disclosed to any third party. If you have received the message by mistake, please delete it and notify the sender and do not copy or distribute it or disclose its contents to anyone. Personal data herein are processed according to the General Data Protection Regulation (GDPR) - Regulation (EU) 2016/679 or, when stricter, any applicable national data protection laws, and with the Privacy Policy of Group Vitalia, available at www.vitalia.com

From: [REDACTED]
Sent: 30 March 2026 13:57
To: Luke MAJOR [REDACTED]
Cc: Isla Ferguson [REDACTED]; Corey Simpson
[REDACTED]; Alexander HAMILTON [REDACTED]
Subject: (EXT): s36 Application - Cruach Clenamacrie Wind Farm

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

The Court of Session recently issued its decision in Raeshaw Farms Limited v Scottish Ministers and Energiekontor [2026] ([2026csih10-raeshaw-farms-limited-against-scottish-ministers-and-another.pdf](#)).

As you are aware, the Scottish Minsters recently transferred the above application to the Directorate of Planning and Environmental Appeals (DPEA) however, since this decision may have implications for this application, further clarification is now required prior to the application being allocated to a DPEA case officer. You may have already provided some of this information within your EIA Report however please note we now require you to provide this information in the format below:

I would be grateful if you could therefore confirm the following:

- what are the implications of the Raeshaw Farms judgment with regards to the above application
- whether the wind farm and its grid connection are considered one project for the purposes of EIA – please note that where an applicant considers that they are not one project, justification will be required outlining how this conclusion has been reached
- where it is considered that that the wind farm and the grid connection are one project, have the significant effects of the project, including the grid connection, been adequately assessed in the EIA report?
 - if the significant effects have been adequately assessed, please provide further justification outlining how this conclusion has been reached
 - if the significant effects have not been adequately assessed, please advise what further assessments are required and the likely timescales involved in gathering this information
- where it is considered that the wind farm and grid connection are not one project, has any consideration be given to any likely significant cumulative effects of the proposed development and its grid connection?
- are all likely significant effects of the project identifiable at this stage?

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

I would be grateful if you can respond as soon as possible, but no later than **13 April 2026**. You may have more than one application with us. We are reviewing cases on a staggered basis, and we will be in touch regarding each one individually.

If you have any queries, please do not hesitate to get in contact.

Kind Regards,

Joy

Joy Smyth | Case Manager | Energy Consents Unit

██████████ | ██████████

To view our current casework please visit www.energyconsents.scot

-
Advance notice of leave: 3 April – 10 April 2026



This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please destroy the email, remove any copies from your system and inform the sender immediately by return.

Communications with the Scottish Government may be monitored or recorded in order to secure the effective operation of the system and for other lawful purposes. The views or opinions contained within this e-mail may not necessarily reflect those of the Scottish Government.

Cruach Wind Farm - Note on issues arising from the *Raeshaw Farms* decision

1. Introduction

- 1.1 This advice note has been prepared in response to the DPEA's email of 30 March 2026 asking for submissions in respect of the recent decision of the Court of Session in the case of *Raeshaw Farms Limited v Scottish Ministers and EnergieKontor* [2026] CSIH 10 ("***Raeshaw Farms***").

2. *Raeshaw Farms* decision

- 2.1 The *Raeshaw Farms* case concerned a statutory challenge brought by an incorporated company landowner under the Town and Country Planning (Scotland) Act 1997 in respect of a decision of a Reporter appointed by Scottish Ministers to allow an appeal and grant planning permission for an onshore wind farm located at Wull Muir in the Scottish Borders.
- 2.2 The focus of the challenge was the Reporter's decision making and whether his decision had been lawfully made.
- 2.3 In particular, the issue before the Court was the adequacy of the Reporter's evaluation as to whether the wind farm and its grid connection infrastructure constituted a single "project" for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.
- 2.4 In the context of future applications, including this application, there was no challenge to the adequacy of the environmental information provided with the application or that the environmental impact assessment did not meet the requirements of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The Court made no adverse findings on these matters.
- 2.5 In his decision on the planning appeal, the Court considered the Reporter had given limited consideration to this issue, noting that he had referred to the grid connection infrastructure not forming part of the application subject to appeal.
- 2.6 The Court considered that there had been material errors in the Reporter's approach to this issue, and that he had erred in law because (i) the Reporter had failed to consider if, on the facts of the case, the Wull Muir wind farm and its grid connection infrastructure should be considered a single "project" for EIA purposes, and (ii) the Reporter failed to provide adequate reasons for his decision. The Court also commented upon the rationality of the Reporter's approach to the planning balance, in that he had regard to the benefits of the completed development whilst failing to have proper regard to the potential disbenefits of that development.
- 2.7 On the question of whether the wind farm and its grid connection infrastructure constituted a single "project" for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, the Court found that the Reporter had failed to conduct the necessary fact specific evaluation of the proposal before him. It was incumbent on him to do so before reaching a conclusion on whether the wind farm and grid connection infrastructure constituted a single "project" for EIA purposes.
- 2.8 The Reporter's reference to the grid connection infrastructure not forming part of the proposal before him was a bald statement of fact, and not an evaluation as to whether such an approach was acceptable as a matter of environmental law. By focusing too narrowly on the way in which the application was framed, rather than considering what was the true nature and scope of the "project", the Reporter failed to show that he understood the central issue in contention.
- 2.9 What was required was careful consideration of whether the wind farm and grid connection infrastructure were, on the basis of the available material, so closely connected as to form part of a single "project" for EIA purposes. The Court considered that there was no attempt by the Reporter to consider the type of factors that have previously been identified in case law as relevant to that assessment.

- 2.10 The Reporter's decision notice was also found to lack adequate reasoning on this issue. It failed to correctly identify the live issues and frame the determination in a manner that would leave the reader in no doubt as to what the reasons for the decision were and what considerations were taken into account.
- 2.11 On the final issue, that of the planning balance reached by the Reporter, the Court considered that there was "*force*" in the submission that it was irrational to consider only the merits and not the demerits of the completed development, inclusive of the grid connection infrastructure.
- 2.12 The Court in *Raeshaw Farms* was considering the terms of the Reporter's decision in that case and whether the decision was lawfully made. The Court's decision is closely tied to the facts of that case. In particular, the Court placed emphasis on the fact that the grid connection for the Wull Muir scheme had been established and the developer had a grid connection offer with a confirmed grid connection date.
- 2.13 The Court made no findings of fact on the question of what was or was not a single project for EIA purposes. Nor did the Court make any findings or have any criticism as to the adequacy of the wind farm planning application or the EIA that had been submitted.
- 2.14 As the Court also made clear in its decision, it is not for the courts to undertake an evaluation as to whether a wind farm and grid connection infrastructure constitute a single "project" for EIA purposes. Unlike in some other jurisdictions, where the issue has been approached as a matter of law, in Scotland this remains a matter of evaluative judgment for the decision-maker. The point at issue in *Raeshaw Farms* was that the Reporter had not properly carried out the evaluation.
- 2.15 The Court did not conclude that the wind farm and grid connection would require to be considered a single project. Nor did the Court state that there was any form of presumption that they should be regarded as a single project unless it could be demonstrated otherwise.
- 2.16 The Court also made clear that it endorsed the position that it could not be said that the only permissible way to make an application for a wind farm would be to include the grid connection infrastructure as part of that application, ie there is no requirement that a wind farm application include a grid connection (or indeed any other works that may be needed for the delivery of a scheme such as road improvements or habitat mitigation).
- 2.17 In the context of current and future consent applications, including this application, there was no challenge to the adequacy of the environmental information provided for the Wull Muir application, nor was it argued that the environmental impact assessment report did not meet the statutory requirements of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 to be a valid environmental impacts assessment report.
- 2.18 The Court's direction to the parties as to how the Wull Muir planning appeal should be dealt with was very clear –the planning appeal should be redetermined by a different Reporter. Had the Court considered the EIAR did not meet the requirements of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 then this is a matter they would have required to address in their disposal of the case and direction for redetermination of the planning appeal. The Court made no adverse findings on the terms of the Wull Muir application or the EIAR.
- 2.19 The *Raeshaw Farms* decision was concerned with the lawfulness of the Reporter's decision in that case. The Court directed that the planning appeal be redetermined but made no orders regarding the EIA material required for that decision. The Court made no adverse findings as to the legality or adequacy of the planning application and EIAR. The Court confirmed that what constitutes a "project" for the purposes of EIA was a matter of fact for the decision maker. The Court confirmed that a wind farm application need not include the a grid connection, and that these can be consented separately.

3. Potential implications of the decision

The “Project”

- 3.1 The question of what constitutes the “project” for EIA purposes is a fact-specific enquiry.¹
- 3.2 As earlier case law has made clear, this evaluation will be a matter of planning judgment for the decision maker, having regard to the particular facts and circumstances of the application, and it is an exercise which carries with it a wide range of discretion.² The *Raeshaw Farms* decision is wholly consistent with this approach.
- 3.3 The English High Court has identified a non-exhaustive list of criteria, which may serve as a useful aide-memoir for the decision-maker.³ These factors are:
 - 3.3.1 **Common ownership:** where two sites are owned or promoted by the same person, this may indicate that they constitute a single project;
 - 3.3.2 **Simultaneous determination:** where two applications are considered and determined by the same committee on the same day and subject to reports which cross-refer to one another, this may indicate that they constitute a single project;
 - 3.3.3 **Functional interdependence:** where one part of a development could not function without another, this may indicate that they constitute a single project; and
 - 3.3.4 **Stand-alone projects:** where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme.⁴
- 3.4 These criteria are non-exhaustive (ie other factors may be relevant to the question of what constitutes a “project” for EIA purposes), and no one criteria is necessarily determinative of the issue.
- 3.5 As the Court noted in *Raeshaw Farms*, whilst the question of functional interdependence was clearly relevant to the Reporter’s decision in that case, and may have suggested that the wind farm and grid connection infrastructure formed part of a single “project”, it may be that other factors could have pointed away from such a conclusion. However, the Courts have not suggested that any one criteria should be given more weight than any other.
- 3.6 The scope of the “project” for EIA purposes has to be understood broadly and realistically.⁵ In particular, the fact that two developments may have a degree of interaction and give rise to cumulative effects does not, in itself, make them a single “project” for EIA purposes.⁶
- 3.7 Where infrastructure is required for a development, but also serves other existing and potential developments in the area, the decision-maker is entitled to have regard to this in reaching a conclusion that they are in fact separate projects for EIA purposes.⁷
- 3.8 Where developments are properly regarded as distinct “projects” for EIA purposes, the objective of the EIA Regulations in securing environmental protection is sufficiently secured by consideration of their cumulative effects, so far as that is reasonably practicable, in the EIA scrutiny applicable when consent for the first project is sought, combined with the requirement for subsequent EIA scrutiny in respect of the second project.⁸ It would, however, be competent for the decision-maker to defer consideration of cumulative effects arising from future projects where, for instance, there was not adequate information on which such an assessment could be based.⁹

¹ *R (Ashchurch Rural Parish Council) v Tewksbury Borough Council* [2023] EWCA Civ 101, para 80

² *R (Together Against Sizewell C Ltd v Secretary of State for Energy Security and Net Zero* [2023] EWCA Civ 1517, para 70

³ *Ashchurch*, para 81

⁴ *R (Wingfield) v Canterbury City Council* [2019] EWHC 1975 (Admin), para 64

⁵ *Ashchurch*, para 74

⁶ *R (Larkfleet Ltd) v South Kesteven District Council* [2015] EWCA Civ 887, paras 36-37

⁷ *R (Llandaff North Residents Association) v Cardiff City Council* [2023] EWHC 1731 (Admin), para 34

⁸ *Larkfleet*, para 38

⁹ *R (Substation Action Save East Suffolk Ltd) v Secretary of State for Energy Security and Net Zero* [2024] EWCA Civ 12, para 55

“The Project” - Matters relevant to the Decision Maker

- 3.9 In this particular case, Chapter 5 of the EIA Report notes that the grid connection for the Cruach Wind Farm would be designed, owned and operated by SSEN, who would also be responsible for consenting the grid connection separately from the Application. These are, as the Court noted in *Raeshaw Farms*, factors that the Reporter and Scottish Ministers will need to have regard to in determining whether the Wind Farm and grid connection constitute a single “project” for EIA purposes.
- 3.10 The *Raeshaw Farms* case was concerned with a grant of planning permission, which was not intended to be personal to the applicant.
- 3.11 In this case, this application, if approved, will grant a section 36 consent personal to the applicant, Voltalia UK Limited.
- 3.12 The operator of the grid connection will require to hold a licence under section 6 of the Electricity Act 1989 to transmit or distribute electricity. As a matter of law, therefore, the wind farm (authorised by the section 36 consent) and the grid connection will not be in common ownership and will be operated independently. Any change in that position would be subject to the further approval of Scottish Ministers.
- 3.13 These are factors that did not apply in the *Raeshaw Farms* case as that was an application for consent under a different regulatory regime and are relevant in this case.
- 3.14 At this time it is known that the wind farm and future grid connection do not meet (and cannot meet) at least two of the four criteria identified by the Courts, namely, common ownership and simultaneous determination.
- 3.15 It is recognised that the wind farm would be functionally dependant on the grid connection. However, as the nature and scope of the grid connection is a matter for SSEN it is not known if the grid connection would only serve this development or may also be utilised for other purposes.

Environmental information - Scope

- 3.16 The purpose of the EIA Regulations is to implement and follow the objectives of the EIA Directive, and to give effect in domestic law to the regime set out in the Directive. The Directive provides that environmental effects should be taken into account *“at the earliest possible stage in all the technical planning and decision-making processes”*. That decision-making should be undertaken on the basis of full information,¹⁰ although “full” in this context ought not to be read as exhaustive.¹¹
- 3.17 This is reflected in Regulation 4(2) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017:-

“The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed development, the direct and indirect significant effects of the proposed development (including, where the proposed development will have operational effects, such operational effects) on the factors specified in paragraph (3) and the interaction between those factors”
- 3.18 Consistent with Regulation 4(2) the Applicant would note that the EIA Regulations are not intended to prevent development of projects because, by their very nature, full information is not available at the outset.¹² Indeed, as the Court recognised in *Raeshaw Farms*, the EIA Regulations cater for a multi-stage consent process, including in circumstances where the likely significant effects of a project are not fully identifiable at the point at which any application is determined.
- 3.19 What is necessary is that the decision-maker has the full picture, so far as it can be ascertained.¹³ That does not require a developer to speculate as to possible environmental information or effects within its EIA Report. As the UK Supreme Court has made clear, *“conjecture and speculation have no place in the EIA process”*, and information should only be included in an EIA

¹⁰ *R v North Yorkshire County Council, ex parte Brown* [2000] 1 AC 397 at 404

¹¹ *R (Suffolk Energy Action solutions SPV Limited) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1976 (Admin), para 60

¹² *R v Rochdale Metropolitan Borough Council, ex parte Milne (No. 2)* [2001] Env LR 22, para 94

¹³ *R (Blewett) v Derbyshire County Council* [2004] Env LR 29, para 68

Report and taken into account by a decision-maker where it is information upon which a reasoned conclusion could properly be based.¹⁴

- 3.20 The “*circumstances relating to the proposed development*” relevant to the appropriate manner of assessment per Regulation 4(2) include (but may not be limited to):-
- 3.20.1 The status of any consent application for the grid connection;
 - 3.20.2 Information provided by the grid operator on the proposed grid connection;
 - 3.20.3 Environmental information available pertaining to the grid connection;
 - 3.20.4 The regulatory requirements that govern the provision of any grid connection.
- 3.21 In *Raeshaw* the Court confirmed that there was no requirement for the grid connection and wind farm to be included in the same consent application, nor that they needed to be considered together.
- 3.22 There was no challenge to the competency of the planning application nor to the EIA and the Court made no adverse findings in that respect.
- 3.23 The Applicant intends to provide an assessment of the indicative grid connection as additional information under the EIA Regulations. This will be based on the information provided by SSEN.
- 3.24 This information will be provided having regard to the requirements of Regulation 4 of the EIA Regulations. The assessment will take account of the circumstances of the proposed grid connection, and, in particular, that the grid connection route, technology and matters of detailed design will be a matter for the grid operator and are not confirmed at this stage.
- 3.25 The Applicant will take a “Design Parameters” (Rochdale Envelope) approach consistent with that taken by other renewables developments, including the onshore grid connection developments for offshore renewables, and in line with Scottish Government guidance for section 36 applications:-
- “the nature of the proposed development and evolving technology mean that some aspects of the final project are yet to be settled in precise detail at the time that the application is submitted (such as the precise location of certain types of infrastructure, the foundation type, the size of certain structures or the turbine model). Where that is the case and some details are still to be finalised, the design envelope approach can be employed for such applications to enable a degree of flexibility and address these uncertainties. Through the design envelope approach, the application can set out parameters for the proposal including the maximum extents of the proposal and can assess on that basis what the likely worst case effects of the proposal may be. The detailed design of the project can then vary within this ‘envelope’ to ensure that the project as-constructed has been properly assessed”.*¹⁵
- 3.26 It is intended that this information will be provided as further environmental information and will be advertised and consulted upon in accordance with the EIA Regulations.

Environmental information – supplementary information

- 3.27 When considering the need for additional environmental information, regard must also be had to the provisions in the EIA Regulations setting out Scottish Ministers’ powers and duties in this regard.
- 3.28 Regulation 19(2) of the EIA Regulations states:-
- “In order to ensure the completeness and quality of the EIA report, the Scottish Ministers **must** (having regard in particular to current knowledge and methods of assessment) seek from the developer supplementary information about any matter mentioned in schedule 4 which in the*

¹⁴ *R (Finch) v Surrey County Council* [2024] UKSC 20, para 77

¹⁵ Guidance for applicants on using the design envelope for applications under section 36 of the Electricity Act 1989, Scottish Ministers (2022) para 2.3

opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment". (our emphasis).

- 3.29 Regulation 11 contains a similar provision in instances where no EIA Report is provided.
- 3.30 The EIA Regulations are clear that where Scottish Ministers consider environmental information to an EIA report is required, they must request that information from the applicant. There is no discretion on the point.
- 3.31 It will be noted that the EIA Regulations require Scottish Ministers, when considering whether supplementary environmental information is needed, to have regard to the same considerations as the applicant, ie Scottish Ministers are to have regard *"to current knowledge and methods of assessment"*.

Rationality considerations

- 3.32 On the issue of the Reporter's approach to the planning balance, the Court considered that there was *"force"* in the submission that it was irrational to consider only the merits and not the demerits of the completed development, inclusive of the grid connection infrastructure.
- 3.33 The application and EIAR (including the Indicative Grid Connection Corridor Appraisal) will provide the Reporter and Scottish Ministers with sufficient information to allow the benefits and impacts of the project to be properly considered.
- 3.34 In this context, it is noted that Policy 11 of NPF4 expressly advises decision makers:-
"Grid capacity should not constrain renewable energy development. It is for developers to agree connections to the grid with the relevant network operator."
 The availability or status of a grid connection is not a reason to refuse consent.

4. Conclusions

- 4.1 The Court in *Raeshaw* considered the lawfulness of the Reporter's decision to grant planning permission on appeal for the Wull Muir wind farm. The Court held the Reporter had erred in by failing to consider whether the wind farm and grid connection were a single project. The Court did not make any findings as to whether the grid connection and wind farm were in fact a single project. Indeed, the Court was clear this is a matter of planning judgement for the decision maker.
- 4.2 The Court also confirmed that there was no requirement for the grid connection and wind farm to be included in the same consent application nor that they needed to be considered together.
- 4.3 There was no challenge to the competency of the planning application or to the EIA and the Court made no adverse findings in that respect.
- 4.4 Further environmental information will be submitted that identifies, describes and assesses in an appropriate manner, in light of the circumstances relating to the proposed development, the direct and indirect significant effects of the proposed development (including, where the proposed development will have operational effects, such operational effects) all as required under the EIA Regulations.
- 4.5 However, should Scottish Ministers, having regard to the circumstances of the proposed development, consider supplemental environmental information is required, then this must be requested from the applicant before the application is determined.