

STIRLING BEFORE PYLONS

acting with

FRIENDS OF THE OCHILS

as a Relevant Person Group

for the purposes of the

STIRLING AREA SESSION

**of the Public Inquiry into
Scottish & Southern Energy's proposals for the
Beauly to Denny 400 KV Steel Tower Double Circuit
Overhead Electricity Transmission Line**

PRECOGNITION

**Ian Kelly,
Head of Planning, Graham and Sibbald**

Planning Policy and Related Material Considerations

A. Introduction

A1. I am Ian Kelly, BSc (Hons), Dip TP, MRTPI and I am a chartered town planner and Corporate Member of the Royal Town Planning Institute. I have 30 years experience in statutory land use planning work, in both the public sector and private sector, in Scotland and elsewhere. I have extensive experience of providing expert witness advice in relation to both planning applications and Development Plans.

A2. I have been engaged in preparing for this Session of the Inquiry since November 2005, having been first approached by representatives of the Eilean Aigas Estate, and subsequently by other landowners and local Groups, including Stirling Before Pylons (SBP), to assist them in assessing the proposed Beaulieu to Denny upgrade and in preparing appropriate objections and evidence. I was appointed as Planning Consultant by SBP at the end of November 2006. I had the opportunity, at a very early stage in the project, to review background documents for the project and to undertake a visit to the relevant areas around Stirling and to drive through the adjacent local area so as to inform my decision as to how this case should be approached. Subsequently, I have sought to walk the key areas of the proposed line in the relevant affected area around Stirling. To assist in the effective management of Inquiry time at the Stirling Session my precognition seeks to focus only on the relevant local issues.

A3. I would stress that, in my expert witness advice, my starting point has been to focus on the key determining issues in respect of the local land use planning aspects of the application, which proposes the construction and operation of a significant large scale linear project designed to facilitate the transmission of power from approved and future renewable energy projects in the North of Scotland. My evidence has been prepared on the basis of not attempting to revisit or to “recreate” in detail the extensive work by the applicants, the Stirling Council, consultees and local groups, and presumably by the Consents Unit, since the proposals were first mooted. In this regard it is noted that the Stirling Council has adopted a position of opposition in principle to the proposed project based, it is understood, on the failure of the applicants, in the Council’s opinion, to fully consider alternatives. Given this position there has not been a full planning analysis of the project that has been prepared by Officers for presentation to Committee. However, I have sought to place the evidence and conclusions of the other witnesses for SBP into the Development Plan Assessment prepared by myself for this final Area Session. I remain of the view that it is entirely appropriate for a third party to an Inquiry such as this to seek to present an overview and to rely, initially, on the Statutory Authorities to carry out the full appraisal of proposals and to present those findings and conclusions to the Inquiry. In this regard it is the case that SBP, in addition to leading its own witnesses and evidence, is supporting the case being brought forward by Stirling Council and by SNH.

A4. At the stage of writing this precognition the latest ruling on the nature of the project that is being considered is that it is a proposal (not a project) that “does appear to have its origins, at least in part under that statutory duty” and that it is a project in any event which might not proceed even if approved. No Inquiry procedural guidance has subsequently been issued, for example on which parts/sections/aspects of the proposal are regulated and which are not or, for example, on how the partially regulated and uncertainty (in terms of implementation) issues impact on the Wayleaves and CPOs that are being sought or how the partial regulation/uncertainty has to be accounted for when weighing Policy non compliance with a need case.

A5. I had a general knowledge of the area of the proposed project from previous professional work and leisure visits, and I have sought to familiarise myself with the linear application site. I recently spend a further full day walking the relevant section of the proposed route through key sections of the Stirling area, and a further day simply travelling in the area and trying to visualize the line in place.

A6. Other witnesses, including the applicants’ witnesses, will describe the route in detail. In summary, the route, having deviated from the existing 132kv route at Muthil, swings westwards to cross into Stirling north of Cromlix House, passes east of Kinbuck, crosses the A9(T) at Whiteston (west of the Inns of Balhaldie services), rejoins the existing route on Sheriff Muir, heads south and passes east of Bridge of Allan at Airthrey Castle, passes east of the Wallace Monument, before crossing the Forth and passing west of Fallin, east of Cowie and Plean, and then makes a south-western approach to the

Denny North site. This section of the proposed B2D route has, therefore, a complex series of different settings to be addressed.

A7. In line with my normal approach to the acceptance of this type of professional engagement as an expert witness, my preliminary familiarisation work included a review of the project and its likely assessment by the Planning Authorities. I am aware of my duty to the Inquiry as an expert. In this respect I can confirm that, based on both the strategic and the local land use planning matters, my professional opinion is that this application, as lodged, should not be granted consent under Section 37, nor should deemed planning permission be granted. This is, of course, an interim conclusion which cannot be finalised until all of the evidence has been through the full extent of the four Area Sessions and then considered alongside the Strategic Session evidence and conclusions.

A8 I have been engaged to act as Planning Consultant on behalf of SBP. My evidence for this final Area Session of the Inquiry addresses the local planning and site specific aspects of the submitted application and the normal land use planning considerations of the Development Plan, National Planning Policy and Guidance, and other material considerations. In addition, I have also commented briefly on related matters that are addressed in the submitted Environmental Statement.

B. The Statutory Tests

B1. The terms of the 1989 Electricity Act Section 9(2) requires the holder of a transmission licence:

“to develop and maintain an efficient, co-ordinated and economical system of electricity transmission: and
To facilitate competition in supply and generation of electricity”

Section 38 and Schedule 9 of this 1989 Act require licence holders in Scotland to preserve amenity and fisheries. Paragraph 3 of Schedule 9 of this 1989 Act also requires that Scottish Ministers, in determining Electricity Act applications, should have regard to:

“the desirability of preserving natural beauty, of conserving flora and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeology interest: and
The extent to which the developer has complied with its duty to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites buildings or objects”

These requirements do not give a specific set of criteria or thresholds against which to assess a project, but at their simplest, they do clearly indicate that there is a balance to be struck between the technical and economic justification for any project and its environmental and other impacts. However, it can be argued that, by not giving full and detailed consideration to undergrounding or partial undergrounding options prior to selecting an overhead line only option, and by not at the earlier project stages, undertaking any detailed consultation with local interests on possible options, the applicants have not done what they reasonably can to mitigate effects on the specified aspects. Ultimately it will fall to Ministers, having regard to the defined nature of the project, to consider compliance with these requirements in terms of the whole line and, therefore, the extent to which the applicants have or have not complied the requirements, in respect of the regulated part of the project, is ultimately a matter for submissions based on the evidence led at the strategic and local area sessions.

B2. However, because applications for a Section 37 consent also carry an application for deemed planning permission then it is also clear that a Section 25 Planning Act test should also be carried out in order to consider whether the proposed development complies with the Development Plan and also to consider whether there are any material issues which change the presumption that flows from the Development Plan Assessment. In this precognition I focus on the Development Plan and other material considerations assessment, accepting that this has not been carried out by the relevant Planning Authority given the nature of their objection (Mr Skinner, for the Council, considered some

aspects of Development Plan policy in his precognition for the Strategy Session), although I also draw some conclusions based on the Electricity Act requirements.

C. Consideration of the application by the Stirling Council

C1. The proposed project was considered on a number of occasions by the Stirling Council's Planning Panel and its Environment Committee. The Council's final position was established at the Full Council who unanimously agreed to object to the proposal on the basis of a motion proposed by the Leader of the Council and seconded by the Leader of the Opposition. The Council's witness will speak to the detail of this (to the extent that additional information is needed beyond the Strategy Session evidence).

C2. The Council's detailed position was established by the decision of the Planning Panel, on 4th May 2006, to object on the six grounds set out in the minuted decision. Of these minuted reasons, it is considered that (a) on the detailing of route selection and (d) on the inadequate consideration of alternatives, are the two most relevant reasons for the context of the planning policy evidence at this local Area Session.

C3. Although the focus of this evidence is on the Stirling area, I have noted that the Statement of Objection (November 2006) on behalf of the Clackmannanshire Council, does address a number of Structure Plan Policy issues.

C4. Both Councils were well aware of the range and nature of the local concerns and local objections within their respective areas when reaching their position in respect of the project.

D. The Submitted Statements of Case

D1. The **applicants'** Statement of Case for the Stirling Area Session, in paragraph 1.6, confirms that the focus of evidence at this Session will be the detailed EIA work of the effects associated with the construction and operation of the proposed overhead line and ancillary development. That evidence will include a detailed policy assessment in respect of both national and development plan policy, where that assessment depends on the conclusions brought about from the EIA. To the extent that much of the evidence that is being presented on behalf of SBP is a critique of the EIA, then I have also sought to include that evidence in my own planning policy evidence. The aim is to avoid duplication of evidence between the Strategy and the Local Sessions. However, the position of SBP is that there are particular local aspects and impacts of matters that were first discussed, generally, at the Strategy Session that now do fall to be considered at the Stirling Area Session.

D2. The applicants' Statement of Case addresses routing decisions, including the intention to lead evidence in justification of the choice to route to the east of Stirling. Landscape and visual impact is addressed, as is ecology and nature conservation and cultural heritage and archaeology. The other areas that are covered in the applicants' Statement of Case that are relevant to SBP are tourism and recreation, construction effects, operational effects and planning policy. The applicants' conclusions on planning policy are set out in paragraph 13.10 of the Statement of Case which is referred to for its terms. Planning policy issues are considered in more detail in the applicants' document **APL- STG 42** to which I refer below.

D3. The applicants' document **APL – STG 42**, which is volume 5 of their planning policy assessment, is a very helpful gathering together of a number of planning policy and material considerations aspects of the land use planning elements involved in the assessment of the project, taken on a topic by topic basis. The document does reveal, at a number of locations, a tension between claiming that the Development Plan is not directly relevant to the project but whilst also claiming compliance with that Development Plan. Some of the specific policy issues and conclusions in this document are related to matters that are addressed in my own evidence and in the evidence of my colleagues. Generally, in approaching the balancing assessment exercise envisaged in many of the policies that are referred to, this document generally concludes that either there are no significant adverse impacts or that, where there are adverse impacts, these should be set aside within the overall context of the project.

D4. However, in the use of the words “where possible” in paragraph 2.2.8 of this document it is recognised that there will be unmitigated adverse (environmental) effects from the proposal.

D5. The conclusions of document **APL – STG 42** are set out in Section 5 on page 38 onwards of that document. I would comment as below in respect of these conclusions:

- In terms of the Structure Plan’s four overarching elements of land use strategy, I consider that, based on the evidence to be led on behalf of SBP, there is tension between the project and the Structure Plan strategy in respect of caring for the environment and in respect of improving the quality of life. The regeneration activities in the Eastern Villages flow partly from these overarching elements and the potential adverse effects on regeneration activities are addressed by Mr Pearson in his precognition
- In relation to the Structure Plan Policies ENV 2, 4 and 6, it is noted that the applicants accept that the proposal will not be in accord with aspects of these policies. It then falls to be considered whether there are balancing matters to be set against this policy non compliance. The applicants assert that there are balancing benefits in the form of the wider public interest and by referring to the assessment of the line as a whole within the Stirling Council area. It is not accepted that there are wider public benefits, other than, possibly, the removal of the existing line, that can be precisely defined in a way that enables them to be “captured” by enforceable planning conditions or by a Section 75 Agreement. Essentially, the balancing exercise should be considered on a whole line basis accepting that there will be varying degrees of compliance and non-compliance along the whole length of the line
- In relation to the Development Plan conclusion I would accept that the Development Plan did not contemplate the current project. However, I still take the view that the policies in the Development Plan can be used to come to an initial view on the compliance, or otherwise, of the project with the Development Plan. Clearly this is a situation which arises where there are major unexpected proposals, not envisaged in a Development Plan (for example a major new settlement project as happened in Aberdeenshire) where the Plan still provides a policy basis for assessment. In relation to the applicants’ assessment in paragraph 5.3.3, it is considered that the double use of the term “as a whole” makes this conclusion almost meaningless. Having regard to the line of the project as submitted there are sections where there is non compliance with Development Plan and, therefore, the presumption should be that those sections should be rejected, but this presumption needs to be set against the other material considerations alongside a consideration of the line as a whole
- In relation to the comments on ENV 6, this is a matter for the Council to respond to but it is a policy in an Adopted Local Plan

D6. It remains my view that the error in the approach in this document is the failure to properly consider whether an alternative project route or form, including undergrounding, would actually ensure better compliance with policy. Because undergrounding along a suitable route would address the health, amenity and natural heritage objections from the objectors, then there is clearly the potential to have better policy compliance from such an approach.

D7. I would fully accept that, overall, this document provides a very useful assessment of the planning policy position, but its conclusions need to be recognized as being part of the applicants’ case and should be compared with the view of the local objectors, including my clients, the Stirling Council and SNH.

D8. The Statement of Case for the Stirling Area Session, lodged on behalf of the **Stirling Council**, sets out the proposed scope of evidence. In relation to planning policy a number of policies are identified in section 4 of the Statement of Case. The conclusion on the Council’s position is set out in Section 6 of the Statement which is to the effect that the project is unacceptable in terms of routing and design. This position is updated by an Information Statement prepared by the Council’s Head of Planning, Regulation and Countryside for the meeting of the Council’s Development Management Panel in February 2007. This confirms that the Council’s position remains as per the decision of May 2006 as there has been no negotiation with the developers and that alternative routes and

methods of distribution have not been sufficiently identified and discounted. In relation to alternative routes it confirms that the Council does not propose a route to the west, nor is it Council policy to seek a line to the west. This position is to protect the Council decision making processes should it be formally asked to consider alternative proposals. However, Council Officers have worked with SNH in looking at a route corridor to the west of Stirling and SNH will present evidence on this.

D9. I have read the Statement of Case lodged on behalf **SNH**. It is noted that, as set out in that Statement, SNH intends to present evidence on the Firth of Forth SPA and landscape and visual impacts on identified sections of the proposed line. SNH regard the section from Sherriff Muir to the Carse of Stirling as of high sensitivity and as an area where there would be significant adverse landscape and visual impacts. SNH is to argue that there is no way of adequately mitigating these adverse impacts to an acceptable level. SNH considers that there is no alternative overhead or underground route to the east of Stirling that would have less impact than the proposal. Therefore, SNH is to present evidence on the use of an alternative corridor to the west, including identified undergrounding sections.

D10. I have also considered the updated position of SNH as agreed by the SNH Board in June 2007 (lodged as CNPA documents **SNH NP 8a and 8b**). Document 8a referred, in paragraph 27, to three alternatives including a full undergrounding (of 26km) and a partial undergrounding (of 14km). The Board noted that “The longer underground route was clearly preferable from a natural heritage point of view as it was significantly less intrusive. Whilst the shorter underground route would also bring benefits in landscape and visual terms, and would be significantly cheaper, it was less satisfactory from a natural heritage standpoint.” The Board also considered that SNH should present its case separately.

E. Assessment of the application against the Development Plan

E1. Given that deemed planning permission is being sought it is essential that the application is considered against the Development Plan. That process has already been carried out, in part, in the Strategic Session of the Inquiry. This part of my precognition now considers the local aspects of the Development Plan although it is recognized that some overlap with strategic issues is unavoidable.

As set out in the SBP Statement of Case it is considered that the relevant Development Plan documents and policies are as set out below:

- **The Structure Plan**
 - **The Approved Clackmannanshire and Stirling Structure Plan 2002**
 - Policies SD1, ENV1, ENV2, ENV3, ED4, ENV4, ENV5, ENV6, ENV7, ENV8, ENV10, T1
 - **The Approved First Alteration**
 - Policy ENV14
- **The Local Plan**
 - **The Adopted Stirling Area Local Plan 1999**
 - Policies E1, E3, E7, E10, E15, E17, E37, E45, E47, E48, E49, E50, E51, E52, E54, E55, E57, E60, C2 and T1 (the last policy in general terms only)
 - **The Finalised First Alteration (with post Inquiry Modifications) 2003**
 - Key Policy LD1
 - **Stirling Major Growth Area: Finalised Second Alteration (with post Inquiry Modifications) 2004**
 - Policy POL B29

I accept that it is not a straightforward task to carry out a Development Plan assessment for a large scale project which is not specifically addressed in the actual policies and proposals in the Development Plan. In addition I have taken the opportunity, in this detailed local evidence, to review the relevance of each of the listed policies (which were set out as a “catch all” approach when the Statements of Case were prepared many months ago).

E2. Within the **Structure Plan** the most relevant policies are;

- **Policy SD1**

This policy sets out the key principles against which sites or other development projects will be assessed. In relation to this proposed development I would consider that the submitted ES, and subsequent information, has sought to address the various potential impacts. Therefore, to the extent that this policy only requires matters to be assessed, then this requirement has been complied with by the applicants. It is then for the Planning Authority to consider whether the assessment has been appropriate and whether the conclusions are accepted. It is the evidence of the witnesses for SBP that there are significant adverse effects that flow from the project but this, in itself, does not lead to non compliance with this Policy

- **Policy ENV 1**

Policy ENV 1 addresses Nature Conservation. SBP is not leading any expert witnesses or local witnesses purely on the aspects of Nature Conservation and, therefore, no planning policy conclusion is offered in evidence.

- **Policy ENV 2**

Policy ENV 2 sets out policy in respect of protected landscapes with the second section of the Policy, on AGLVs being relevant. There are two requirements set out – to satisfy the requirements of Policy ENV 3 (see below) and to not adversely affect the overall quality of the designated landscape area, in this case the Ochil Hills AGLV. Having regard to the evidence of Geoffrey Sinclair and Nicki Baker, it is considered that there will be an adverse effect on the overall quality of the AGLV. The applicants argue that the adverse impacts will only be temporary. This is not accepted by Mr Sinclair and Ms Baker. If the evidence on behalf of SBP is accepted then there is a non compliance with this policy. It is understood that SNH will also lead evidence on the non compliance with this Policy.

- **Policy ENV 3**

Policy ENV 3 sets out that development will only be permitted, in defined countryside areas, where there it is dependent on a countryside location, complies with ED 4 (Rural Development) and meets certain design criteria. My view is that the key issue here is compliance (or not) with ED 4 and that is considered later in my precognition.

- **Policy ENV 4**

This Policy addresses the Green Belt and I agree with the general assessment of the policy position contained in paragraph 3.4.12 of **APL- STG 42**. The key issue is the general presumption against development where “only in exceptional circumstances will development be permitted.” It is my position that, because the applicants, through their very limited consideration of alternatives, have not demonstrated that there are exceptional circumstances which lead them to unavoidably promoting this route, then the proposal does not comply with this Policy.

- **Policy ENV 5**

This Policy deals with securing environmental enhancement and I would accept that this can be secured, through conditions and agreements, should the project be approved as submitted.

- **Policy ENV 6**

This Policy deals with the Historic and Built Environment. The Policy is referred to for its terms. The general requirement is to recognise, record, protect and enhance cultural heritage

resources. The two key aspects are criteria 3 and 4. The applicants accept that, in term of setting, the project could be considered as not being in accordance with these criteria in relation to particular cultural heritage features. Having regard to the evidence of Dr King, Dr Watson and Ms Wills it is considered that there will be significant adverse direct and indirect impacts on the setting of the key historical aspects of Stirling and on the site of, as well as the setting of, the Sherriff Muir battlefield. Mr Pearson addresses impacts on Listed Buildings. I would accept that specific criteria 5 can be addressed in conditions if the project is approved.

- **Policy ENV 7**

The Policy addresses the use of prime quality agricultural land and, having further considered matters, I do not view this as being a key determining factor before the Reporters in so far as the Stirling Area Session is concerned. The applicants' Final Report on Consultations advised that a route to the west of Stirling would have fewer adverse impacts on areas of prime agricultural land, but as protection of prime agricultural land per se is no longer a major aim of planning policy, this is not a conclusion that weighs heavily in the final decision on the proposal.

- **Policy ENV 8**

ENV 8 sets out the policy in relation to forestry but addresses the development of new forestry proposals rather than the environmental effects of any loss of forestry. Therefore, no further comments are offered in respect of ENV 8.

- **Policy ENV 10**

This Policy sets out the general principles for the consideration of mineral developments. This proposal is not a minerals related development as such. Having further reviewed matters I am satisfied, as a generality, that any ancillary mineral operations associated with the proposal can be controlled by suitable conditions. However, as discussed at the CNPA/Newtonmore Area Session, it would be helpful if the details of these ancillary developments were known at present and could be incorporated into the assessment process.

- **Policy ED 4**

ED 4 addresses Rural Development and is referred to for its terms. It is my view that the project is not one of "economic development in rural areas to support the social and economic needs of communities" and, in this respect, the Plan must be referring to communities within the Plan area. The project, as an infrastructure upgrade, then falls to be considered on whether (in terms of 1.b in the Policy) it requires a rural location and whether (in terms of 1.c in the Policy) it is of a scale, quality and function which will complement the built and natural heritage of the area. Having regard to the evidence led on behalf of SBP, at both the Strategic and Local Sessions, I consider that the proposal fails both of these criteria.

- **Policy T1**

This Policy sets out the basis on which the Councils will support quality tourism development. It is not a policy which seeks to address the assessment of the impact that other projects might have on the tourism and recreation resource of the Plan area. The project has sought to minimise adverse impacts on tourism but, as set out in the evidence of Mr Fraser on behalf of SBT, the conclusions of the ES and of Mr Keddie's work are disputed and it is SBP's position that there will be an adverse impact on the tourist resource and on tourism in the area. Mr Fraser concludes that the applicants underestimate the scale of visual and economic impacts and also understate the importance of some sites and facilities and their environmental setting to the overall appeal of Stirling as a major tourist

destination. He has pointed to the likely additional tourism traffic flows on the A91, close to the proposed pylon route. He concludes that on tourism grounds alone there is a compelling case for rejecting the current overhead transmission line proposals and pursuing an undergrounding option to the west of Stirling. This evidence indicates that the development has not, in the end, been sensitive to tourism interests.

- **First Alteration Policy ENV 14**

The First Alteration deals with Renewable Energy. Policy ENV 14 deals with “Renewable energy and energy-efficient development”. The policy does not directly address grid upgrades but it does set out the principle of seeking compliance with other relevant Structure Plan and Local Plan policies. ENV 16 deals with Wind Energy. This was not listed as a relevant policy in the original SBP Statement of Case but it is referred to in **APL – STG 42** and the applicants clearly wish to associate their proposed development with energy policy and the consequent wind energy developments. (Although there is some tension here in that paragraph 3.2.6 of **APL – STG 42** states that “the project is not a renewable energy project in itself and, as such, this policy is only of indirect benefit” whilst paragraph 3.3.14 states “rural regeneration could be furthered as a result of the renewable energy projects that will be facilitated by the project”). The policy sets out certain principles against which the strategic location and design of wind energy developments will be assessed. One of the criteria is that, for overriding landscape character, built heritage and natural heritage conservation reasons, the siting of wind turbines will not normally be permitted in areas, inter alia, including the key Diagram exclusion areas, which include the Ochil Hills escarpment and the setting of the Wallace Monument, Stirling Castle, Bannockburn and Sherriff Muir battlefield. It would be reasonable to assume that this policy should also apply to associated development such as a grid upgrade.

E3. In terms of the **Adopted Local Plan** the initially relevant policies are:

- **Key 1 and Key 2**

These Policies were not mentioned in the original Statement of Case but are referred to in **APL- STG 42**. These are guiding policies to which all other policies in the Local Plan should conform. They seek to protect and enhance the environmental wealth of the district and to introduce what could be described as a sustainability test. I consider that the issues raised are addressed in the assessment of the individual Policies below.

- **Policy E1**

This deals with developments affecting agricultural land and units and, as set out in the consideration of the Structure Plan policies, I do not consider this to be a key determining issue in relation to the proposal before the Inquiry.

- **Policy E3**

Policy E3 deals with woodlands including forest design and felling licence consultations. The Policy, as expressed, is not directly relevant to the proposal before the Inquiry. However, it is clear that the Policy is seeking to retain and enhance the environmental and amenity elements of forestry in the Council’s area and, therefore, it would be expected that the Council would seek to resist the loss of valuable forestry resources. In this case, and having regard to the evidence of Mr Sinclair and Ms Baker, it is the position of SBP that the loss of forestry, particularly at the Ochil’s scarp face, will result in adverse visual impact.

- **Policy E7**

This Policy provides that the Council will only give favourable consideration to essential uses in the countryside or to other uses which can be shown to have an overriding need for a countryside location. Such developments will still be subject to assessment in relation to

specified matters. It is the position of SBP, as set out in the evidence of Mr Pearson, that alternatives have not been fully assessed and, therefore, the precise nature of any overriding need for a countryside location has not yet been established. It is recognised that, if there has to be an overhead or underground route through Stirling then this would be a rural/countryside route but there would still be potential issues in relation to traffic, pollution and conflict with established neighbouring uses.

- **Policy E10**

This Policy (along with Policy E12) sets out the Council's position in relation to renewable energy developments. The presumption against such developments in the Green Belts can be taken from this Policy. **Policy E12**, again with a presumption against developments in the Green Belt, sets out criteria which all have to be met for wind farms to be considered favourably. Clearly this Policy is not one that directly applies to the current Proposal, but if it did, then, based on the evidence for SBP, the project would be contrary to criteria (a), (b), (d) and (e).

- **Policy E15**

The applicants assert that the project has a locational requirement to be in the AGLV. This can only be the case if all other options have been assessed and discounted (including lesser impacts from an alternative route, such as to the west of Stirling, which also goes through an AGLV) and this is the only option available. The objectors are of the view that the available range of options has not been fully explored prior to discounting. The applicants also assert that the significant adverse impacts in the AGLV are temporary and limited to the construction period. This is not the opinion of the objectors as set out in the evidence of Mr Sinclair, Mr Pearson and Ms Baker. The applicants accept that it can be argued that the project is not in full compliance with this Policy.

- **Policy E16**

This Policy deals with Green Belt. There is nothing substantive to add to the position as addressed in the relevant Structure Plan Policy above. It is for the applicant to establish that the development requires to be in the Green Belt. The position of SBP is that, as all options have not been fully evaluated, then it is not possible, at this stage, to conclude that the Green Belt location is essential although a clear preference for a rural corridor rather than a corridor near settlements is accepted.

- **E17**

This Policy addresses the requirements for developments within or affecting areas of designed landscapes. Development should be situated or designed to avoid an unacceptably adverse impact on the landscape. The proposed line is adjacent to the Airthrey Castle HGDL and the ES identifies that with careful siting the effect would be reduced to minor. It is my view that this is a matter on which Historic Scotland should be giving evidence to the Inquiry so that we can hear and understand their assessment of the application of the Policy tests.

- **Policy E37**

This Policy sets out the requirements for development within or adjacent to Conservation Areas. Having further considered the matter I accept the conclusions set out in paragraph 3.4.22 of the applicants' document **APL – STG 42**.

- **Policy E45**

This Policy seeks to protect the character or setting of Listed Buildings. The submitted ES identifies 10 significant effects on the setting of B Listed Buildings. The applicants, in **APL –**

STG 42, point to the balancing consideration in this Policy and argue that the combination of the need case for the project and the proposed mitigation measures provide strong justification in support of the application. Ministers have already ruled that the project only appears to arise in part from Regulatory requirements and that it is a project that might not proceed even if approved (the response to submissions from Eilean Aigas Estate) and this ruling, in itself, must weaken the need case. The mitigation still leaves significant impacts and, therefore, the balancing consideration is further weakened. Mr Pearson gives evidence on this matter, but it would be of considerable help to the Inquiry, in my view, if Historic Scotland were present to give evidence on their assessments.

It is my considered view that the proposal does not accord with this Policy unless it is demonstrated that there is a strong justification for the project sufficient to accept the residual adverse impacts.

- **Policy E47**

This Policy sets out a presumption against proposals which would have an adverse impact on Scheduled Ancient Monuments (SAMs) or unscheduled remains and their settings. The principal concern of SBP is with the impacts on the setting of the Castle, which is a SAM, and on the site of the Battle of Sherriff Muir. These battle sites are not currently subject to SAM protection, but the position of SBP is fully set out in the evidence of Ms Wills. Based on that well researched evidence, it is clear, in my view, that if the battle field was a protect SAM, then the proposal would be in breach of this Policy in terms of the adverse impacts. Again it would be helpful if Historic Scotland were present at the Inquiry to advise on these matters.

- **Policy E48, Policy E49, Policy E50**

Policies E48, E49 and E50 all relate to archaeology and, in the applicants' document **APL – STG 42**, the compliance with policy is assessed in the light of chapter 26 of the ES. No conflict is identified in terms of the assessed effects and the proposed mitigation. Primarily it is for the Council's Archaeologist to respond on these points, but it remains the position of SBP that they are concerned that there will be significant adverse impact on both the known and the unrecorded remains at the Sherriff Muir site.

- **Policy E51, Policy E52**

These Policies deal with TPO's and the retention and replacement of trees. There is always the potential for adverse effects when trees are lost as a result of development. However, I am not aware of any direct impacts on TPO's and the provisions of Policy 52 can be covered by conditions.

- **Policy E55**

This Policy sets out the Council's position in relation to development that has an adverse effect on SPAs, SACs, RAMSAR sites, SSSIs or NNRs. The preceding policy, **Policy E54**, deals with Local Nature Reserves, Wild Life Sites related landscape features. The SBP Group is not presenting separate expert evidence on ecology and, therefore, these matters will fall primarily to SNH and the Stirling Council to address.

- **Policy E57**

This Policy protects wildlife/green corridors from developments which will destroy or have a significant adverse effect upon the integrity of these resources. Again, the SBP Group is not presenting separate expert evidence on ecology or the relationship with these specified environmental resources, although Ms Baker does touch on these matters in relation to

Yellowcraig Wood and a document has been lodged as produced by Mike Stewart. Principally these matters will fall to SNH and the Stirling Council to address.

- **Policy E60**

This Policy, dealing with effluent discharges, emissions or landfills, requires an EA and this has been complied with even although SBP might not agree with some of the conclusions.

- **Policy C2**

This Policy addresses the protection of rights of way. I accept and agree that the proper approach to this matter is as set out in paragraph 3.7.12 of **APL – STG 42**.

- **Policy T1**

This Policy deals with adverse effects on traffic flows. I accept that the formal position is as set out in paragraphs 3.8.4 to 3.8.6 of **APL – STG 42** in relation to matters as they stand. However, the formal, staged process of assessing the transportation impacts of this type of proposal is one that can end up excluding local interest. In respect of the case being put forward by SBP one of the key transportation concerns is the landscape and archaeological impact that will arise from the detailed design, alignment and construction of the temporary (and in some cases permanent) access tracks particularly at the Ochils scarp face and at Sherriff Muir. These are matters that can be more fully pointed out during the accompanied site visit. However, if the application were to be approved then it should be a condition that there should be no site traffic on the minor roads up the Ochils scarp face and across Sherriff Muir.

E4. In terms of the Finalised First Alteration, I have considered Key Policy LD 1:

- **Policy LD 1**

This Policy sets out a whole series of sustainable development principles and criteria to be applied by the Council in determining planning applications. The Council, in assessing the application, did not carry out a full appraisal against these criteria. However, having regard to the applicants evidence and to the evidence lodged on behalf of SBP it is reasonable, in my view, to conclude that, on balance the proposal does not accord with Key Principle A (criteria 4) and Key Principle B (Criteria 2 and 4).

E5. In terms of the Stirling Major Growth Area, a policy provision of Policy B29 was mentioned in the submitted Statement of Case. This must have been an error in transcription. The relevant provision of the 2nd Alteration is to introduce an extension to the Green Belt area to land to the east of Stirling and to the south of the River Forth. I have considered the Green Belt policy issues earlier in this report. The 2nd Alteration to the Local Plan is currently subject to a legal challenge in the Court of Session and, therefore, I would not offer any further evidence on the 2nd Alteration at this stage.

E6. Having regard to the above policies and to the evidence of the other witnesses from SBP, as referred to in my precognition, I conclude that the proposal is contrary to the Development Plan in terms of Structure Plan Policy ENV 2, ENV 4, ENV 6 (criteria 3 and 4), ED 4, T1 and First Alteration Policy ENV 14 (if applied to the current proposals) and in terms of Local Plan Policy E3, Policy E7, Policy E10 (if applied to the current proposals), Policy E15, Policy E16 (but as addressed at Structure Plan level), Policy E45 (unless it can be demonstrated that there is a strong justification for the project), and Policies E48/E49/E50. For reasons which I have set out elsewhere, I accept that this is an interim and partial conclusion having regard to the requirement for the Reporters to consider both Strategic and Local issues for the whole of the line as proposed.

E7. In considering the Development Plan position I have sought to take a balanced approach to the assessment taking into account the fact that the local objectors are not seeking to lodge detailed technical evidence but are speaking on the basis of local knowledge and local concerns. However, a

key aspect which is not picked up in any particular individual Development Plan policy as such, is the general development control/development management approach of properly looking at the development site and the adjacent areas and trying to visualize the overall change “on the ground” that would arise from the project proposal. In this case a detailed walk over of the section of the proposed development within the Stirling area does serve to confirm that the proposed overhead line will have a significant adverse effects in this area through the removal of woodland, through the introduction of development into sensitive locations, through visual impact and through the construction of the new line on land which currently is not part of the existing route. This position is reflected in the concerns of both the Council and local objectors.

F. Other Material Considerations

F1. A considerable range of other material considerations, including National Policy and Guidance and Planning Advice Notes, have been considered for the whole length of the proposed line at the Strategy Session. For this reason I do not propose to repeat or review that earlier evidence. The applicant’s document **APL – STG 42** contains a section on material considerations. The matters that are of direct relevance to the local objections have been addressed in my evidence and in the evidence of the local witnesses.

F2. However, SPP6 was not available to be taken into account in either the Local Plan or Structure Plan and, therefore, I give consideration to the relevant sections for this local Area Session. In addressing the natural and historic environment the SPP makes it clear that supporting renewable energy developments and the need to protect and enhance Scotland’s natural and historic environment must be regarded as compatible goals. In this regard the planning system is seen as having a significant role to play in resolving conflicts. In the case of the current transmission system upgrade project that role could well encompass asking the applicants to underground the line in sensitive areas. Paragraph 14, on the National Planning Framework, mentions key improvements to the transmission system and this is a matter that has been addressed in the Strategy Session of the Inquiry. Strategic Environmental Assessment is considered at paragraph 44 in the SPP. In the context of SEA for Development Plans, the SPP confirms that the likely environmental effects of any new grid infrastructure required to accommodate renewable energy developments should be taken into account as far as possible as part of the SEA process. Grid information is covered in paragraph 53 but this does not give any guidance on the criteria for acceptability of any particular upgrade. Grid issues are also considered in Annex A of the SPP but again there is no guidance on how to approach the consideration of grid upgrade projects themselves. Therefore, I conclude that the new SPP takes forward the framework for the consideration of renewable energy projects, but it provides little direct guidance on the assessment of transmission upgrades and therefore it can only provide indirect, if any, support for any particular upgrade project.

F3. The applicants’ document **APL – STG 42** in section 4.0 addresses other material considerations including the emerging Structure Plan 3rd Alteration. I agree that no significant weight can be given to this Alteration at this stage.

F4. I conclude that, beyond the matters considered in this and the other SBP precognitions, the other material considerations in respect of planning policy related matters have been addressed at the Strategic Session.

G. Undergrounding

G1. It remains my professional opinion that it is for the applicants to fully assess undergrounding route options and to bring these forward and, if required, to then detail these at an Inquiry. The Stirling Council has clearly recognised that any proposed route would need to be subject to its own consultation and assessment process before the Council took any view on such a proposed underground solution. However, as the applicants have clearly stated in their Case and their evidence, they are proposing an entirely overground solution. In my view this means that if the Reporters take the view that the case for such an approach, including the consideration of alternatives by the applicant, and for consequently setting aside the objections, has not been made, then the project should be rejected in respect of the relevant sections of the line.

G2. The SBP Group has consistently stated that the applicants should be examining a possible underground route option to the west of Stirling within a general route corridor that was supplied to the applicants in January 2007.

G3. SNH, with the support of a range of parties, has suggested two alternative undergrounding options. In terms of my evidence I would simply say that these are examples of possible routes/approaches that could fall to be considered. At this stage there are clearly technical, cultural heritage, landscape and construction issues that would require further detailed investigation and evaluation. I do not consider that this Inquiry is an appropriate forum to debate the precise merits of one suggested undergrounding route/approach compared with another with the intention of approving one or another. It is sufficient, in my judgment, to review the submitted documentation, to have regard to conditions on the ground, and conclude that the range of options available is such that an underground or partial underground solution should be capable of being delivered having regard to land use planning and constructability issues. Having regard to the matter of costs, it is well accepted, in respect of a range of planning projects, that it is often necessary to incur higher initial and/or operating costs in order to either mitigate environmental damage or to secure environmental benefit. It is the evidence of SBP that the impact on consumers bills would be marginal and that, at least local consumers, are willing to pay such additional costs.

H. Other Issues

H1. In the case of the evidence on behalf of the SBP Group, and as clearly set out in the evidence of Ms Baker and others, I regard it as being of paramount importance to take into account the detailed conditions on the ground. It is only by making the effort to walk as much of the proposed overhead line route as is reasonably possible that the observer realizes the “on the ground” extent to which this extremely interesting and varied scale of environment will be severely affected by the both the pylon line and its associated deviation corridor. It is difficult to imagine that any part of the open landscape of Sherriff Muir, or the detailed landscapes east of Bridge of Allan or the varied landscape of Forth valley will not suffer a significant adverse effect. Ideally, in forming these views through walking the line, the effect of the proposed route corridor should be mentally compared with the likely effects of an underground solution elsewhere combined with the removal of the existing line.

I. Conclusions

I1. In relation to the requirements of the 1989 Electricity Act, and addressing the particular section of the line that is of interest to my clients, I would conclude, based on the evidence of the local objectors, that amenity is not preserved. The developer has addressed the desirability of preserving natural beauty and conserving flora but, again based on the evidence of the local objectors, the extent to which the developer has reasonably mitigated the effects of the scheme is insufficient. Therefore, I would conclude that the requirements of the Act are not met in respect of this section of the line. I accept that Ministers will require to reach a view on these matters having regard to the whole line as well as the individual sections of the line.

I2. A range of local and other witnesses, appearing on behalf of SBP, have sought to place their concerns before the Reporters.

- Geoffrey Sinclair has addressed landscape character and visual impact aspects of the proposal. He concludes that there will be an unacceptable adverse impact on landscape character and in terms of visual impact
- Nicki Baker, as a founder member of Stirling Before Pylons and as Chair of the Friends of the Ochils has addressed the context and the processes issues. In terms of these matters she concludes that the evidence points in one direction only and that is that people really dislike overhead power lines and that there is consequently strong support for putting them underground. She also expresses deep concern about the excluding nature of the process involved in the consideration of this proposal
- Nicki Baker, acting in the same capacity, has addressed the aspects of landscape, visual impact and recreation and amenity as they affect the Ochil Hills. In terms of the Ochil Hills

landscape, visual impact and recreation/amenity aspects she expresses disappointment that relevant information appears to have been ignored, she sets out her concerns over the individualistic value judgements of the applicants' consultants, she compares the similarities in the position in Stirling with that at the North Yorkshire case, and concludes that undergrounding to the west of Stirling is justified

- Nicki Baker has briefly addressed evidence in relation to hydrology and concludes that further study and carefully worded conditions are required
- Prof Michael Thomas has addressed Stirling's landscape and geomorphology. This evidence effectively provides context for other evidence to be given on behalf of SBP
- Prof Nick Hanley has given evidence on his estimate of people's willingness to pay to avoid the landscape impacts of the Beauly to Denny project. The conclusion of his team's work and of his evidence is that the clear majority of respondents are opposed to the scheme and would be prepared to pay quite substantial sums for the undergrounding of the line through Stirling
- James Fraser has given evidence on tourism and economic impact including further comments on the work undertaken by Mr Keddie on behalf of the applicants. He concludes that, on tourism impacts alone, there is a compelling case for rejecting the current overhead transmission line proposals and pursuing an underground option to the west of Stirling
- Dr Fiona Watson has given evidence in respect of Stirling's historical environmental importance, to complement the evidence of Dr King and Ms Wills, and she concludes that the Stirling area maintains a significance of unique importance in the national psyche and that it has a profound impact on both residents and visitors
- Dr Elspeth King has given evidence on Stirling's Artistic and Literary landscape and she concludes that the landscape of Stirling is embedded in the literary and artistic heritage. She considers that the proposal would constitute an act of wanton destruction. She supports undergrounding
- Ms Virginia Wills has provided evidence in respect of the significance of the Battle of Sherriff Muir as well as evidence on the location of the battlefield itself. She concludes that the site should be restored and protected and that the applicants should think again about the route that they have proposed for the Beauly to Denny line
- Simon Allen has addressed certain undergrounding issues in relation to the Stirling Area drawing on generic and area specific documents and evidence. He has concluded that it is technically feasible to lay cables and that the incremental costs will be marginal in terms of the impact on consumers bills
- Peter Pearson, as Secretary of Stirling Before Pylons, has addressed the interests of the Eastern Villages and he has concluded that there are genuine concerns about the impacts of the proposed project on the regeneration process which is at a finely balanced stage
- Peter Pearson has also given evidence on the aspect of route choice and concludes that the applicants, by virtue of the very early decision to go for an OHL project, did not properly consider local alternatives in the Stirling area
- He has also addressed the matter of the impacts on Historic Buildings and commented on the position of Historic Scotland
- Archie Bone, Chairman of the Polmaise Community Council, has given evidence on the likely effects on the regeneration activities in the village of Fallin
- Mr Tommy Brookes, previously a Councillor, Committee Chairman and Provost of the Stirling Council, has given evidence as Chairman of Pleun Community Council and calls on the Reporters to reject the proposals
- Mr Ian Patterson has given evidence on the local aspects of the concerns over adverse health impacts arising from the proposed line

13. I have taken the above evidence and conclusions into account in reaching my own conclusions on the assessment of the project in terms of planning policy. Taking that evidence into account, having regard to my own evidence as set out above, and making certain assumptions about the evidence that will be presented by the Stirling Council and by SNH in line with their Statements of Case, my conclusion, at this point in time, is that the proposal, in respect of the length being considered at this Inquiry Session, is contrary to the Development Plan in respect of the Structure Plan Policy ENV 2, ENV 4, ENV 6 (criteria 3 and 4), ED 4, T1 and First Alteration Policy ENV 14 (if applied to the current proposals) and in terms of Local Plan Policy E3, Policy E7, Policy E10 (if applied to the

current proposals), Policy E15, Policy E16 (but as addressed at Structure Plan level), Policy E45 (unless it can be demonstrated that there is a strong justification for the project), and Policies E48/E49/E50 on account of its potential adverse impact on amenity, and on the form of the landscape and cultural and archaeological heritage within the area of the Stirling Council affected by the proposed line, its adverse impacts on tourism and the economy, and given the absence of acceptable and, ideally agreed, mitigation in respect of the line as proposed. The application should, therefore, be refused deemed planning permission in respect of this section of the line. This conclusion is, of course, only a partial conclusion as the eventual planning judgment on the project will be a whole line judgment having regard to all of the evidence heard at all of the Inquiry Sessions. In this case the conclusion is also being put forward in advance of sight of the detailed technical evidence to be presented by the Stirling Council and SNH, whilst the evidence on behalf of SBP Group has not incorporated extensive new technical assessments that would amount to a replacement EIA, and therefore, to these extents, my conclusion is partial.

14. I do not consider that there are any other material issues, in respect of this now partly regulated project that might be built if approved but which might not be built, that would set aside the presumption of refusal of deemed planning permission that flows from the Development Plan assessment.

15. Setting aside any of the generic project justification issues that were raised in the Strategy Session of the Inquiry, I would also conclude, based on the case advanced by SNH and on my reading of that case, that it appears that it is possible to develop a wholly or partly underground solution for all or part of the line's section through the Stirling area and to the west of Stirling that would, in a practical sense, address the objections of my clients. I accept that any particular proposals would require to be preceded by proper assessments.