

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 3RD OCTOBER, 2016

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS TD6 0SA on MONDAY, 3RD OCTOBER, 2016 at 10.00 AM

J. J. WILKINSON,  
Clerk to the Council,

26 September 2016

<b>BUSINESS</b>	
1.	<b>Apologies for Absence.</b>
2.	<b>Order of Business.</b>
3.	<b>Declarations of Interest.</b>
4.	<b>Minute.</b> (Pages 1 - 8)  Minute of Meeting of 5 September 2016 to be approved and signed by the Chairman. (Copy attached.)
5.	<b>Applications.</b>  Consider the following application for planning permission:-
	(a) <b>16/00141/S36 &amp; 16/00145/S36 - Fallago Rig 2, Longformacus</b> (Pages 9 - 64) 1. Erection of 12 additional turbines and associated infrastructure (ref: 16/00145/S36) 2. Variation of Condition 2 of the Fallago Rig Wind Farm to extend the operational life of the wind farm by a further 5 years (16/00141/S36) at Fallago Rig Wind Farm, Longformacus. (Copy attached.)
	(b) <b>16/00043/FUL &amp; 16/00058/LBC - Orrock Hall, Orrock Place, Hawick</b> (Pages 65 - 78)  Change of use from function hall and internal and external alterations to form 2 residential flats at Orrock Hall, Orrock Place, Hawick. (Copy attached.)
6.	<b>Appeals and Reviews.</b> (Pages 79 - 82)  Consider report by Service Director Regulatory Services. (Copy attached.)
7.	<b>Any Other Items Previously Circulated.</b>
8.	<b>Any Other Items which the Chairman Decides are Urgent.</b>

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**NOTE**

Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

Members are reminded that any decisions taken by the Planning and Building Standards Committee are quasi judicial in nature. Legislation , case law and the Councillors Code of Conduct require that Members :

- Need to ensure a fair proper hearing
- Must avoid any impression of bias in relation to the statutory decision making process
- Must take no account of irrelevant matters
- Must not prejudge an application,
- Must not formulate a final view on an application until all available information is to hand and has been duly considered at the relevant meeting
- Must avoid any occasion for suspicion and any appearance of improper conduct
- Must not come with a pre prepared statement which already has a conclusion

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**Membership of Committee:-** Councillors R. Smith (Chairman), J. Brown (Vice-Chairman), M. Ballantyne, D. Moffat, I. Gillespie, J. Campbell, J. A. Fullarton, S. Mountford and B White

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Please direct any enquiries to Fiona Henderson 01835 826502  
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**SCOTTISH BORDERS COUNCIL**  
**PLANNING AND BUILDING STANDARDS COMMITTEE**

MINUTE of MEETING of the PLANNING  
AND BUILDING STANDARDS COMMITTEE  
held in the Council Headquarters, Newtown  
St. Boswells on 5 September 2016 at 11.00  
a.m.

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Present: - Councillors R. Smith (Chairman), M. Ballantyne, J. Campbell, J. Brown, J. Fullarton, I. Gillespie, D. Moffat, S. Mountford, B. White.

Apologies:- Councillor B. White.

In Attendance:- Development Standards Manager, Principal Roads Planning Officer, Planning Policy and Access Manager, Chief Legal Officer, Democratic Services Team Leader, Democratic Services Officer (F Henderson).

1. **MINUTES**

There had been circulated copies of the Minutes of the Meetings held on 27 June and 18 July 2016.

**DECISION**

**APPROVED for signature by the Chairman.**

2. **DRAFT SUPPLEMENTARY GUIDANCE & DRAFT SIMPLIFIED PLANNING ZONE SCHEME – CENTRAL BORDERS BUSINESS PARK, TWEEDBANK**

There had been circulated copies of a report by the Service Director Regulatory Services seeking approval of the Draft Supplementary Guidance (SG) and a Draft Simplified Planning Zone (SPZ) Scheme relating to the Central Borders Business Park at Tweedbank (Appendix A) to be used as a basis for public consultation. Mr Wanless, Planning Policy and Access Manager was present and explained that the purpose of the Supplementary Guidance was to provide a framework vision for the future development of the sites which were allocated within the Scottish Borders Local Development Plan 2016. The purpose of the Simplified Planning Zone was to enable development to take place without the need for planning consent, provided the development complied with development parameters and conditions. It would create an employment led redevelopment, providing choice and quick delivery for businesses considering locating in this part of Scotland. In response to Members questions Mr Wanless advised that Renfrewshire Council had taken forward a similar scheme and there had been liaison between the two Local Authorities. A number of Members expressed discomfort regarding the report being considered prior to a final decision on the location of the Tapestry building. Concern was also raised in respect of the existing businesses located in Tweedbank which did not meet the proposed use classes. However, assurances were given that existing Businesses would not be affected. It was also noted that full planning applications for other use classes could still be submitted. In view of the various concerns raised it was agreed that consideration of the report be continued until the decision of Council on the final location of the Tapestry building was known.

**DECISION**

**AGREED that the matter be continued to a future meeting of the Planning and Building Standards Committee.**

3. **APPLICATIONS**

There had been circulated copies of reports by the Service Director Regulatory Services on applications for planning permission requiring consideration by the Committee. It was noted that Planning Applications 16/00681/FUL, 16/00747/FUL and 16/00317/FUL had been withdrawn to allow Officers the opportunity to consider further flooding information received.

**DECISION**

**DEALT with the application as detailed in Appendix I to this Minute.**

4. **APPEALS AND REVIEWS**

There had been circulated copies of a report by the Service Director Regulatory Services on Appeals to the Scottish Ministers and Local Reviews.

**DECISION**

**NOTED that:-**

- (a) **Appeals had been received in respect of the following:-**
  - (i) **Erection of 19 holiday lodges with proposed access and land treatment on Land North West of Whitmuir Hall, Selkirk - 14/00848/PPP;**
  - (ii) **Replacement windows and door at 62 Castle Street, Duns – 16/00125/LBC;**
- (b) **Enforcement action had been taken in respect of the provision of illuminated sign, 22 Bridge Street, Kelso – 15/00141/ADVERT;**
- (c) **the Scottish Ministers had dismissed the appeal in respect of the construction of wind farm consisting of 8 No turbines up to 100m high to tip with associated external transformers, tracking, new site entrance off A701, borrow pit, underground cabling, substation and compound and temporary construction compound on Land South East of Halmyre Mains Farmhouse (Hag Law), Romanno Bridge – 14/00738/FUL**
- (d) **there remained one appeal outstanding in respect of Land North of Upper Stewarton, (Kilrubie Wind Farm Development), Eddleston, Peebles;**
- (e) **review requests had been received in respect of the following:-**
  - (i) **Replacement windows and door at 62 Castle Street, Duns – 16/00126/FUL;**
  - (ii) **Erection of dwellinghouse and garage on garden Ground of Lindisfarne, The Loan, Gattonside – 16/00162/PPP**
  - (iii) **Erection of timber processing building incorporating biomass plant room and staff welfare provision, Field No 0328 Kirkburn, Cardrona - 16/00205/FUL;**
  - (iv) **External re-decoration (retrospective) at Shop, 1 Leithen Road, Innerleithen – 16/00233/FUL;**

- (v) **Change of use of land to commercial storage and siting of 42 No storage containers (retrospective) on land East of Langlee Mains Farmhouse, Galashiels – 16/00397/FUL;**
  - (vi) **Erection of poultry building and erection of alter sacred well and stance for statue, Field No. 328, Kirkburn, Cardrona – 16/00494/FUL;**
  - (vii) **Extension to form animal flotation unit, Field No328 Kirkburn, Cardrona – 16/00495/FUL;**
  - (viii) **Erection of two dwellinghouses, Land South of Primary School, West End, Denholm – 15/01552/FUL**
- (f) **the Local Review Body had upheld the Appointed Officers decision to refuse the following:-**
- (i) **the erection of three dwellinghouses on Land North of Bonjedward Garage, Jedburgh – 15/01521/PPP;**
  - (ii) **Erection of cattle court incorporating storage areas and staff facilities and erection of animal feed silo, Field No. 0328 Kirkburn, Cardrona – 16/00114/FUL;**
  - (iii) **Change of use from storage barn, alterations and extension to form dwellinghouse on Land and Storage Barn East of Flemington Farmhouse, West Flemington, Eyemouth – 16/00136/FUL;**
  - (iv) **Erection of timber processing building incorporating biomass plant room and staff welfare provision – Field No. 328 Kirkburn, Cardrona – 16/00205/FUL**
  - (v) **External re-decoration ( retrospective) at Shop, 1 Leithen Road, Innerleithen - 16/00233/FUL;**
- (g) **the Local Review Body had overturned the Appointed Officers decision to refuse the following:-**
- (i) **Siting of caravan for permanent residence (retrospective) on Land South of Camphouse Farmhouse, Camptown, Jedburgh - ;**
  - (ii) **Erection of two dwellinghouses on Land South of Primary School, West End, Denholm – 15/01552/FUL;**
- (h) **there remained one review outstanding for 5 East High Street, Lauder.**
- (i) **the Section 36 Public Local Inquiry had been sustained in respect of the Wind Farm development comprising 18 wind turbines of up to 132m high to tip and**

associated access at Cloich Forest Wind Farm, Land West of Whitelaw Burn, Eddleston.

(j) there remained two Section 36 appeals outstanding in respect of:

- Land North of Nether Monymut Cottage (Aikengall (IIa)), Cockburnspath
- (Whitelaw Brae Wind farm), Land South East of Glenbreck House, Tweedsmuir.

5. **PRIVATE BUSINESS  
DECISION**

**AGREED** under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix II to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 8 of Part 1 of Schedule 7A to the aforementioned Act.

**SUMMARY OF PRIVATE BUSINESS**

1. **MINUTES**

The Committee considered the private sections of the Minutes of 27 June 2016 and 18 July 2016.

*The meeting concluded at 1.10 p.m.*

## APPENDIX I

### APPLICATIONS FOR PLANNING PERMISSION

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
16/00681/FUL	Change of Use from Class 4 to Class 10	Office, 6A Roxburgh Street, Galashiels

Decision : APPROVED, subject to the following conditions and informatives.

- This consent permits the use of the building within the application site for education, religious and community activities, including office administration, undertaken by the Borders Islamic Society or other religious body, falling within Class 10 (b) and (g) of the Use Classes (Scotland) Order 1997. It does not permit any other activities from being undertaken as part of the approved use, and no subsequent change to any other use within Class 10, notwithstanding the Order or any future revision or other statutory Order, without a planning application having first been submitted to and approved by the Planning Authority. In the event that the approved Class 10 activities cease, the lawful use of the property may revert to a use falling within Class 4 of the Order.

Reason: The proposed use has been assessed on the basis of the submitted specification generally describing the activities associated with it. Other uses would require individual assessment to ensure compliance with planning policies, particularly (but not exclusively) in the interests of ensuring implications for road safety are accounted for. Reversion to the current use (Class 4) does not require assessment by means of a further planning application.
- The use shall not come into operation until a Noise Management Plan has been submitted to and approved by the Planning Authority. The use shall only operate in accordance with the approved plan

Reason: To minimise risk of conflict between the proposed use and neighbouring uses

#### Informatives

- Condition 2 requires a Noise Management Plan (NMP). This is required to identify, assess and propose mitigation (where necessary) for potentially noisy activities (such as amplified and non-amplified speech, singing and playing of musical instruments) associated with the proposed use that may disturb neighbouring amenity. It should also account (wherever practicable) for activities undertaken within the existing band hall to limit the potential for disturbance affecting either occupier. The reason is to minimise risk of conflict between this use and neighbouring uses. Where amplified sound is proposed, this must be supported by a technical noise assessment as part of the NMP.
- This consent grants a conversion of the property to the approved use only. It does not include external alterations which will require Planning Permission in their own right where these would materially affect the external appearance of the building. In addition, signage may require Advertisement Consent unless of a size, specification and in a location which exempts it under the Control of Advertisement (Scotland) Regulations 1984
- The property is potentially at risk of flooding. The applicant should consider water resilient and resistant materials and methods within the building, and sign up to SEPA's flood warning service 'Floodline'.
- This property has no dedicated parking provision. Parking availability on surrounding streets can be very limited at certain times of the day. The applicant is advised to note

(and to make users of the facility aware of) public car parks in the surrounding area which include the High Street (over 100 spaces - pay and display); Ladhope Vale (34 spaces - pay and display) and Low Buckholmside (38 spaces - free).

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
16/00083/FUL	Change of use on Land to form playing field and erection of boundary fence	Land North West of Village Hall, Westruther

Decision: APPROVED subject to the following conditions and informatives:

1. Other than fence-posts and goal-posts, no development shall take place on the site (or any part thereof) to any depth greater than 0.4m (40cm) below the level of the existing ground surface, unless otherwise agreed in writing by the Planning Authority. (Please see Informative Note 1 for further information with respect to the archaeological interest at the site and the operation of this same planning condition).  
Reason: Any ground works at the site below the level of the top soil, are at risk of damaging or destroying significant archaeological remains unless appropriate arrangements are first put in place for the investigation and recording of the site by professional archaeologists ahead of any such ground works occurring.
2. No development shall take place until precise details of the perimeter fence surrounding the playing surface (to include overall height, colour and use of materials) have been submitted to and approved in writing by the Planning Authority. Thereafter, no development shall take place except in strict accordance with those details.  
Reason: To ensure a satisfactory form of development appropriate to its location, both in terms of visual appearance and impact on neighbouring amenity.
3. The development hereby approved shall not take place except in strict accordance with a scheme of landscaping works describing the planting and maintenance of the beech hedge which is described by the Approved Site Plan Drawing, which shall first have been submitted to, and approved in writing by, the Planning Authority before the commencement of development. The details of the scheme shall take full account of the advice and guidance of Informative Note 2, and shall include a planting schedule and programme for subsequent maintenance.  
Reason: To ensure that appropriate landscaping arrangements are in place to deliver a satisfactory form, layout and assimilation of the development in association with the operation of Planning Condition No 4 attached to this planning permission.
4. Unless otherwise agreed in writing and in advance by the Planning Authority, all planting comprised in the approved details of the new beech hedge shall have been carried out by no later than the end of the first full planting season following the completion and/or first use of the playing field facility hereby approved (whichever occurs soonest). This same planting shall thereafter be maintained in accordance with the details approved under requirements of Planning Condition No 3, and any and all failures of individual plants shall be replaced by a new plant of the same species for a period of five years from the date of completion of the initial planting.  
Reason: To ensure that the proposed landscaped boundary treatment is carried out as approved, and is thereafter given sufficient opportunity to become established through maintenance, including if necessary, the replacement of any plants that fail during this same period.



## **Informatives**

### **INFORMATIVE NOTE 1:**

The Council's Archaeology Officer has advised that aerial photography suggests potential at the site for the survival of archaeological remains of prehistoric date, and highlights the potential for this buried archaeology to be damaged or destroyed by ground works carried out in relation to the creation of a playing field.

With respect to the operation of Planning Condition No 1 attached to this planning permission, and in response to any subsequent request by the Applicant or Operators to carry out excavations at the site to any depth greater than 40cm below the level of the existing ground surface, please note that the Planning Authority may request a full archaeological evaluation of the site in line with that sought by the Council's Archaeology Officer within his consultation response provided at the time of the public consultation on this planning application (16/00083/FUL). It would only be once appropriate provision had been made for the conservation (by record if necessary) of any significant archaeological remains present, that the Planning Authority would be agreeable to the carrying out of any ground works at the site to any depth greater than 40cm below the level of the existing ground surface.

### **INFORMATIVE NOTE 2:**

Please refer to "Landscape Guidance Note 3 – Hedge Detail" when preparing the information required by Planning Condition No 3. The details required by Planning Condition No 3 must provide sufficient information to be enforceable by including a Planting Plan which addresses the following:

- i.) Plan is to an identified true scale (e.g. 1:200);
  - ii.) Boundary of the application site is clearly marked;
  - iii.) Site orientation is indicated by a North point or OS grid lines;
  - iv.) All existing trees, shrubs and hedges to be retained are clearly marked;
  - v.) Take account of site factors such as slope, aspect, soil conditions, proximity of buildings and minimum distances from pipe and cable runs, when choosing planting positions. Where necessary, seek professional landscape advice;
  - vi.) Planting positions are clearly marked showing individual trees and shrubs and / or planting area boundaries using dimensions as necessary;
  - vii.) All species of plants identified using their full botanical name (e.g. oak - *Quercus robur*);
  - viii.) All plant numbers to be identified individually or by group or area as appropriate. Species mixes can be identified by percentages and an overall number or a specified area and a planting density (e.g. *Betula pendula* 30%, *Quercus robur* 70%, 120 square metres @ 1 plant per 4 square metres = 9 *B. pendula* & 21 *Q. robur*);
  - ix.) A planting schedule identifies all the proposed planting by species and specification indicating size and nature of plants to be used (e.g.: Extra heavy standard tree 14-16cms girth or shrub 60-75cms high in 2 litre pot.);
  - x.) Notes on the plan describe how the planting is to be carried out and maintained to ensure successful establishment; and
  - xi.) The plan indicates when the work will be completed and ready for inspection taking account of planting seasons (e.g. November to end March each year for bare rooted plants.).
- N.B. Planting conditions are only discharged following an inspection of the completed work.

### **INFORMATIVE NOTE 3:**

Core Path 74 (Right of Way BB118) runs to the east and south of the site.

Please note that it is a statutory requirement that this Core Path/Right of Way must be maintained open and free from obstruction at all times, including during the course of development. This is to protect general rights of responsible access.

**INFORMATIVE NOTE 4:**

The Council's Planning and Building Standards Committee expressed the view that the perimeter fence around the playing surface should be constructed of a material that should minimise the potential for noise being generated as a result of objects hitting against it, which was a particular concern of nearby residents. Accordingly, the applicant is advised that this should be considered in the choice of fencing material, required to be agreed under the terms of condition 2 above.

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**3<sup>rd</sup> OCTOBER 2016**

**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 16/00141/S36 & 16/00145/S36

**OFFICER:** Scott Shearer  
**WARD:** Mid Berwickshire  
**PROPOSALS:** 1. Erection of 12 additional turbines and associated infrastructure (ref: 16/00145/S36)  
2. Variation of Condition 2 of the Fallago Rig Wind Farm to extend the operational life of the wind farm by a further 5 years (16/00141/S36)

**SITE:** Fallago Rig 2  
Longformacus  
**APPLICANT:** EDF ER Energy Renewables Limited  
**AGENT:** Amec Foster Wheeler Environment & Infrastructure UK Ltd

**1.0 PURPOSE OF REPORT**

1.1 To advise the Scottish Government of the response from Scottish Borders Council on the two related applications by EDF ER Energy Renewables Limited. The first application seeks permission to construct 12 additional turbines and associated infrastructure at Fallago Rig Wind Farm. The proposed development is hereafter referred as Fallago Rig 2. The second application seeks permission to vary Condition 2 of the original Fallago Rig Wind Farm consent to permit the original windfarm (hereafter referred to as Fallago Rig 1) to operate for an additional 5 years or to coincide with a 25 year operational life from commissioning the 12 turbine extension (if consented).

**2.0 PROCEDURE**

2.1 Scottish Borders Council (SBC) is a consultee as a 'relevant planning authority'.

2.2 The views of SBC will be provided to the Energy Consents Unit at Scottish Government (ECU), the body responsible for processing onshore Section 36 planning applications. In this instance, the Fallago Rig 2 proposal is required to be determined via Section 36 of the Electricity Act 1989 because the extended total capacity of the windfarm would be in excess of 50MW. The second application to extend the operational life of the existing wind farm is required to be determined under section 36C of the Electricity Act. The ECU advertises the applications and carries out consultation with other interested bodies. There is, therefore, no need for Scottish Borders Council to undertake a tandem process although consultation has taken place with relevant specialists within the Council.

- 2.3 It should be noted that if permission is granted, the local authority (rather than the ECU) would become the relevant enforcement authority responsible for monitoring compliance with the terms of an approval and any conditions imposed thereon.
- 2.4 The northern boundary of the site is close to the Scottish Borders/East Lothian political boundary. The whole site is however within the Scottish Borders Council administrative area. The ECU has sought the views of East Lothian Council as part of their process of consideration.

### 3.0 **SITE DESCRIPTION**

- 3.1 The application site is located within an upland area of gently undulating moorland within the Lammermuir Hills and near its northern edge. The northern edge of the site is the boundary between the Scottish Borders and East Lothian. The site extends towards North Hart Law to the west, Wedder Lairs to the south and across Meike Law to the East. The site includes the existing Fallago Rig Windfarm which consists of 48 turbines (41 of which are 125m to tip and 7 towards the northern fringes are 110m to tip) with associated tracks and substation. A 440kv overhead power line crosses through the site. The Dye Water and its associated tributaries run across the site.
- 3.2 The steading at Byrescleugh lies 3.8km to the south east of the site. The nearest settlements area as follows:
- Gifford, 7.7 km to the north west
  - Cranshaws, 8km to the north east
  - Lonformacus, 9km to the east
  - Westruther, 9km to the south east
  - Oxtun, 7.5km to the south west

#### Public Access and Paths:

- 3.4 Access within and around the site is for recreational use, mainly by walkers. The site itself contains two rights of way, the first being the Herring Road which connects Lauder to Dunbar and the second being a access from Byrescleugh. A customary path known as the Pylon Road is the main recreational access from Faseney Water (to the north east of the site).
- 3.5 The Southern Upland Way which is one of Scotland's Great Trails as a Coast to Coast route between Cockburnspath and Portpatrick is located to the south of the site and in places is approximately 3km away from the proposed development.

#### Landscape Designations:

- 3.6 The site is located within the Lammermuir Hills Special Landscape Area (SLA), as designated by policy EP5 of the Local Development Plan 2016 and shown within the 2012 Supplementary Planning Guidance Note on Local Landscape Designations.

#### Landscape Character:

- 3.7 The development site is situated within the core of Dissected Plateau Moorland Landscape Character Type (LCT) as indicated in the Borders Landscape Assessment (1998). The site borders the Central Lammernuir Plateau in East Lothian.
- 3.8 The landscape forms an expansive upland plateau with a generally simple landform of sweeping ridges with more defined hills and landmark features. The landscape is sparsely settled but it does form the backdrop to more settled valleys and lowlands within the Scottish Borders and East Lothian. Landcover is dominated by grass and heather moorland.
- 3.9 The existing windfarm is sited within a shallow bowl within the LCT. Other wind farms such as phases of Cystal Rig and Aitkengall are located within the same LCT with Dun Law occupying ground on a neighbouring upland LCT.

#### Designated Nature Conservation Sites:

- 3.10 The River Tweed Special Area of Conservation (SAC) lies approximately 1.5km to the east of the site. The SAC is designated for its Atlantic salmon, three species of lamprey and as a water course typically supporting water crowfoot species.

#### **4.0 PROPOSED DEVELOPMENT**

- 4.1 Application 16/00141/S36 seeks permission to vary condition 2 of the extant Fallago Rig 1 consent. This would allow the existing wind farm to operate for a further five years or coincide with a 25 year operational life from commissioning the 12 turbine extension to achieve a consistent operational period and decommissioning date for both developments.
- 4.2 Application 16/00145/S36 comprises of the following main development components;
- 12 new turbines producing around 3.45MW each and with each turbine having a maximum tip height of 126.5m
  - New access tracks and crane pads;
  - Two water course crossings;
  - Two borrow pits for sourcing rock suitable for tracks and hardstandings;
  - A temporary construction compound housing welfare facilities and a small car park;
  - A temporary compound housing batching plant, general storage facilities and fuelling facilities; and
  - An extension to the existing substation and control building, including cables and transformers which will utilise existing grid connection infrastructure.
- 4.3 10 of the 12 new turbines will be positioned around the southern edge of the existing wind farm with the other 2 being located towards the east on the upper part of Meikle Law.
- 4.4 The exact hub height and rotor dimensions may vary within the overall maximum blade tip height of 126.5m. The application has used the following parameters;

- Tip height of up to 126.5 comprising 74m hub, and 105 blade diameter; or
  - Tip height of up to 126.5 comprising 81.5m hub, and 90m blade diameter.
- 4.5 The developer has sought a micro-siting allowance of 50m for each turbine, their associated infrastructure and access tracks.
- 4.6 The proposed Fallago Rig 2 Wind Farm would make use of the existing access track onto the Development Site where available. Approximately 6.2km of new access tracks would be constructed within the site to the new turbine locations.
- 4.7 Fallago Rig 2 is intended to have an initial lifespan (covered by this planning application) of 25 years. At the end of this period, unless 're-powered' or unless a new planning permission is achieved that would extend the wind farm's life, it would be decommissioned and the site restored in agreement with a decommissioning method statement.

5.0 **NEIGHBOURING SITES/SCHEMES RELEVANT TO CONSIDERATION OF CURRANT PROPOSAL:**

Operational:

- 5.1 **Dun Law Phases 1 and 2** is situated 7km to the west of the site and, in total, consists of 61 turbines up to 75m in height.

**Crystal Rig Phases 1 and 2** constitute the existing Crystal Rig wind farm, which is situated 7.5km to the north east of this site. It consists of 85 turbines up to 125m in height.

**Aikengall** is an operational phase of wind farm development of 15 turbines of 125m tip height, adjoining yet separate from Crystal Rig both in terms of its operation and its position entirely within East Lothian. It is situated 12km to the north east.

**Toddleburn Wind Farm** is located 12km to the south west and consists of 12 turbines between 110 and 125m high.

**Penmanshiel** is a recently constructed wind farm, consisting of 15 turbines which are 100m in height and is located 21km to the east of this site, next to Drone Hill Wind Farm.

**Drone Hill** is an operational wind farm consisting of 22 turbines, 76m height to tip, on Coldingham Moor approximately 24km east of the proposal.

**Black Hill** is an operational wind farm consisting of 22 turbines with a tip height of 78m, around 13km south east of the proposal.

**Longpark Wind Farm** is located 18.5km to the south west of the site and consists of 19 turbines at heights of 100 and 110m.

Consented:

- 5.2 **Crystal Rig 3** obtained consent for an additional 7 turbines of varying heights of 100 to 110m all of which are in East Lothian to be added to the existing Crystal Rig Wind Farm.

**Quixwood** is a consented wind farm intended to be built approximately 17.5km north-east of the proposal, which would consist of 13 turbines of dual tip height (10 @ 115m, 3 @ 100m). The developer is presently seeking to discharge conditions.

**Aikengall II** (sometimes referred to as **Wester Dod**) project with which Aikengall 2a (and the original Aikengall) would be combined. Planning permission was granted on appeal further to a public inquiry for 19 turbines of up to 145m tip height. This cluster would be built mainly to the north-west of the turbines proposed for Aikengall 2A, but would also be flanked by Aikengall 2a turbines on the south-west and north-east. This wind farm is presently under construction.

In the Planning System:

- 5.3 **Aikengall 2A** is a scheme seeking permission under Section 36 for 19 turbines of 125 and 145m high. The Council objected to the proposal and determination from the ECU is awaited.

**Inch Moor** seeks permission for 16 turbines of 126.5m high and located 11km to the south east of this site. This application remains under consideration. The ECU has granted an extension of response time to SBC until the 15<sup>th</sup> of December 2016.

An application to extend **Longpark** with a further 7 turbines of 100 to 110m is under consideration of SBC.

An application was recently received to erect 8 turbines of 100m high at **Howpark** which is located alongside Penmanshiel and Drone Hill wind farms.

6.0 **PLANNING HISTORY**

- 6.1 The existing Fallago Rig Wind Farm was consented by the Scottish Government on the 9<sup>th</sup> November 2010 under Section 36 of The Electricity Act 1989 and Deemed Planning Permission under S57(2) of The Town and Country Planning (Scotland) Act 1997.

- 6.2 The proposals which obtained permission were a revised scheme which reduced the number of turbines from 62 to 48. SBC Officers recommended approval, on balance, to the revised scheme. This recommendation was overturned at the Development and Building Control Committee principally on grounds of cumulative landscape and visual impact of the proposed windfarm. The Ministry of Defence (MoD) also objected to the proposal on grounds that the development would have an adverse impact on the Brizlee Wood Radar Station. A Public Inquiry took place in February 2008 and a report was submitted to Ministers recommending refusal because of the detrimental impact on national security. On-going discussions between the MoD and the then applicants resulted in the withdrawal of the MoD's objection. Ministers

decided to re-open the inquiry and ultimately granted consent under S36 of The Electricity Act 1989 and deemed planning permission.

- 6.3 In 2014 planning permission was received to vary conditions 33, 34 and 35 of the deemed planning approval for the Fallago Rig Wind Farm under application 13/01268/FUL. The application was uncontentious and enabled conditions to be varied to allow for decommissioning, restoration and aftercare of the site to take place according to an approved scheme within a period of 12 months following the expiring of the original planning consent instead of within the 25 year operational period.

## 7.0 APPLICANTS SUPPORTING INFORMATION

- 7.1 The Section 36 planning application is supported by a full ES, which comprises the following documents, all dated February 2016:

- Volume 1 - Non Technical Summary
- Volume 2 - Environmental Statement
- Volume 3 - Figures
- Volume 4 - Appendices
- Volume 5 - Planning Statements
- Volume 6 - Design and Access Statement
- Volume 7 - PAC Report
- Volume 8 – Borrow Pit Report

- 7.2 In accordance with regulations of Section 36C against which the variation of condition proposal is being considered, the original Environmental Statement for the extant Fallago Rig Wind Farm was required to be submitted. This information was provided on the 4<sup>th</sup> of July 2016 as an addendum to application 16/00141/S36. Re-advertisement and consultation exercises were carried out on receipt of this additional information.

## 8.0 REPRESENTATION SUMMARY

- 8.1 Third party representation are submitted to the ECU and it is for that authority to take these in to consideration when assessing the proposed developments on behalf of the Scottish Ministers.

- 8.2 At the time of writing this report, objections from two third parties are noted to have been received by the ECU. This does not include submission by Community Councils.

## 9.0 DEVELOPMENT PLAN POLICIES

- 9.1 **Local Development Plan 2016 (LDP):**

<b>Policy Reference</b>	<b>Policy Name</b>
PMD1	Sustainability
PMD2	Quality Standards
ED9	Renewable Energy Development
HD3	Protection of Residential Amenity
EP1	International Nature Conservation Sites



	and Protected Species
EP3	Local Biodiversity
EP5	Special Landscape Areas
EP7	Listed Buildings
EP8	Archaeology
EP9	Conservation Areas
EP10	Gardens and Designed Landscapes
EP15	Development Affecting the Water Environment
IS2	Developer Contributions
IS5	Protection of Access Routes
IS8	Flooding
IS9	Waste Water Treatment Standards and Sustainable Urban Drainage

## 9.2 **SESplan Strategic Development Plan June 2013:**

Policy 1B      The Spatial Strategy: Development Principles  
Policy 10      Sustainable Energy Technologies

## 10.0 **OTHER PLANNING CONSIDERATIONS:**

### 10.1 **Adopted SBC Supplementary Planning Guidance (SPG) and other documents:**

- Renewable Energy (2007)
- Wind Energy (2011)
- Visibility Mapping for Windfarm Development (2003)
- Biodiversity (2005)
- Local Landscape Designations (2012)
- Developer Contributions (2010)
  
- Ironside Farrar Study (2013) on Wind Energy Consultancy Landscape Capacity and Cumulative Impact

### 10.2 **Scottish Government Policy and Guidance:**

- Scottish Planning Policy (SPP) (June 2014)
- National Planning Framework for Scotland (3) (June 2014)

### 10.3 **Scottish Government On-line Renewables Advice:**

- Circular 3/2011 Environmental Impact Assessment (S) Regulations 2011
- PAN 60 Planning for Natural Heritage 2008
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 1/2011 Planning and Noise
- PAN 2/2011 Planning and Archaeology
- PAN 1/2013 Environmental Impact Assessment

### 10.4 **Historic Scotland Publications:**

- Scottish Historic Environment Policy (2011)

## 10.5 **SNH Publications:**

- Siting and designing windfarms in the landscape (2014)
- Visual Representation of Wind Farms (2014)
- Assessing the cumulative impact of onshore wind energy developments (2012)

## 10.6 **Other Publications:**

ETSU-R-97 - The Assessment and Rating of Noise from Wind Farms

## 11.0 **CONSULTATION RESPONSES**

11.1 The following consultation responses have been received in by specialist officers at Scottish Borders Council. A summary of the consultation responses received to each application (16/00145/S36 & 16/00141/S36) is provided within each section.

11.2 **Landscape Architect** - 16/00145/S36: The Landscape Architect has made a detailed assessment of the proposed scheme in relation to Policy ED9 of the LDP. The consultee does not object to the proposal, observing that;

- The existing landform screen views to the north and north west
- Less containment is afforded to the east, south and west where there will be distant views beyond 10km of the development
- The Southern Upland Way is considered to be the main affected receptor where the additional turbines increase the impact of the wind farm from Twin Law Cairns. However, the overall effect is not sufficient to affect the recommendation.
- Landscape changes as a result of the development are generally contained to areas close to the site within the LCT and with few impacts on skylines.
- The presence of the existing wind farm and the 440kv overhead powerline means the site is characterised by large structures so the level of change as a result of these proposals is diminished. Similarly effected on 'wild land' is minimal because of this context.
- Cumulatively, the proposal has been designed to fit with the existing array and the overall change is minimal.
- Separation distance to other scheme is sufficient.
- The effects by the associated works are localised and can be mitigated by conditions.

16/00141/S36: No objection.

11.3 **Archaeologist** - 16/00145/S36: Content with the findings of the ES and no objection is raised, recommending that;

- Design accounts for the historic environment and mitigates impact on Scheduled monuments, particularly the Munity Stones. Effects remain for the Scheduled Byrescleugh settlement, the undesignated Twin Law Cairns and Tilting Cairn however the proposals are not recommended to alter the setting of these assets.
- The majority of heritage assets exist at lower elevation however there is still potential to discover buried archaeology, possibly of regional

significance. Mitigation of direct impacts can be handled via a condition seeking agreement of a Written Scheme of Investigation.

16/00141/S36: No archaeological implications for this proposal. Extending the life of the existing wind farm will have no direct or indirect impacts on the historic environment beyond what is consented.

- 11.4 **Forward Planning** - 16/00145/S36: This consultee identifies the range of relevant policy, guidance and material considerations. In summary whilst acknowledging the extension of existing wind farms and consequent cumulative impact issues are contentious, the Ironside Farrar Study, commissioned to guide policy development and which is therefore a material consideration, does recognise there is an opportunity to extend Fallgo Rig.

16/00141/S36: No objection has been raised.

- 11.5 **Environmental Health** - 16/00145/S36: Commented in relation to noise and risk to private water supply. A Construction and Operational noise assessment was agreed with SBC in accordance with current best practice with Cumulative noise addressed within the ES. Conditions to control noise limits of the development, investigation of complaints and cease of operation until resolution the event of noise exceeding the specified limits are recommended. No concerns have been raised regarding the risk to private water supplies.

16/00141/S36: No comment.

- 11.6 **Ecology Officer** – 16/00145/S36: No objection has been raised. A summary of the most pertinent matters are as follows:

- It is unlikely that the development will have a significant adverse effect on the integrity of the Dye Water which forms part of the River Tweed SAC.
- The borrow pits are adjacent to the watercourse so detailed mitigation will be required.
- Recommend that floating tracks are used in area of active blanket bog with a peat depth of  $\geq 0.5\text{m}$ .
- A variety of protected species have been identified and a condition is recommended for pre-construction checking surveys where the findings should inform further mitigation through a Species Mitigation and Management Plan.
- Identifies requirement to provide a Habitat Management and Enhancement Plan to deal with a variety of habitats within and out with the site which includes measures for blanket bog, other wetland habitats, grassland, heathland habitats and breeding waders.
- The appointment of an Ecological Clerk of Works is recommended to ensure compliance with pre-construction obligations, habitat management and decommissioning ecological requirements.
- A post construction species monitoring programme is required.

16/00141/S36: Recommend that the relevant discharged ecological conditions for the original consent should be amended to account for the extension of the operational life of the wind farm. This should include a revised monitoring protocol under Condition 23, a revised Operational Protocol under Condition 24 and a revised Land Management Plan under

Condition 25. The terms of the ECoW regarding any operational ECoW obligations and decommissioning may also need to be amended.

- 11.7 **Roads Planning Service** - 16/00145/S36: The proposed delivery route catered for the construction of the original wind farm. A Traffic Management Plan will be required to ensure the construction is carried out in a controlled manner which mitigates impacts upon the public road and provides mitigation for abnormal loads. A pre and post construction survey will establish if any damage to the road network is required to be remedied. A detailed drawing of the junction from the public road into the site is also required for approval. Suggest that a Section 96 agreement will be required between the Council and the developer with regards to extraordinary expense in road maintenance as a result of construction traffic associated with the proposal.

16/00141/S36: No objection to the proposed extension of time.

- 11.8 **Access Officer** – 16/00145/S36: Continue to object because the Southern Upland Way incurs significant cumulative impacts where the wind farm will be theoretically visible for over 10km along the route at distances of less than 3km in some locations. Turbine 60 is close to the Herring Road so it is likely that the construction of this turbine would interfere with the route.

At a meeting with the developers, attended by the Access Officer it was agreed that a draft condition requiring the temporary diversion of this path and its reinstatement along its historic route, along with the provision of signage and interpretation boards across the site would overcome concerns raised about the impact of the development on paths within the site.

12.0 **OTHER IMPORTANT CONSULTATION RESPONSES (SUBMITTED TO SCOTTISH GOVERNMENT):**

- 12.1 As members are aware, the Council is a consultee in the Section 36 application process and does not undertake any outside consultation itself. Nevertheless, some of the responses received by the ECU have been made known to the Department and Members may be interested in the more significant responses which are detailed below.

- 12.2 **Scottish Natural Heritage (SNH)** – 16/00145/FUL: The development is likely to have a significant effect on the Atlantic salmon qualifying interest of the River Tweed Special Area of Conservation (SAC). Recommend objection unless a condition is attached to require mitigation in the form of a Construction Environment Management Plan (CEMP).

- 12.3 No objection has been raised on landscape and visual grounds, but the following comments are made:

- Strategic design objectives of the extension are broadly acceptable.
- Siting of additional turbines towards the upper limits of the topographical bowl means that the extension presents some adverse visual impacts, primarily from the west and south where the appearance of the array will be intensified and from the east where turbines appear to 'sit up' as more prominent features.
- No modification is sought however the adverse effect could be addressed by constructing turbines of a lower height to integrate more harmoniously with the existing array and smooth simple profile of the Lammermuir Hills.

- From the north, the new turbines may slightly extend and/or intensify the appearance of the array but there is also a good sense of design integration with the existing turbines.
- Recommend use of a micro-siting condition to avoid turbines moving further up the hill slope.

12.4 An updated response of 22<sup>nd</sup> Aug 2016 advised that;

- In areas of deep peat there may be valid reasons for micro siting, a planning condition should test the validity of such reasoning.
- Turbine lighting should be of an infrared rather than visible type to reduce landscape visual effects.
- Recommend the full range of ecological mitigation and enhancement measures identified in the ES are implemented, additionally it is advised that; breeding population of curlew should be included within the Outline Management Plan, mitigation will be require to protect black grouse lek if any are discovered before construction and an outline decommissioning and restoration plan in accordance with SNH guidance should be agreed.

16/00141/S36: No objection is raised to the extended lifespan of the existing windfarm. A limited number of turbines along the northern edge of the existing development are viewed to have a detrimental impact on landscape character and amenity. Retention of these turbines for a short period is pragmatic; however these locations may not be suitable for future repowering. The consent process should provide safeguards to ensure that future re-development secures an improved siting and design.

12.5 **Scottish Environmental Protection Agency (SEPA)** – 16/00145/FUL: An email from SEPA to the ECU on 15<sup>th</sup> June 2016, clarified a Peat Management Plan can address the agreement of peat depth used in the reinstatement of borrow pits. Otherwise comments from their original response remain relevant and advise that conditions are used to address the following matters;

- A CEMP to protect the water environment
- Invertebrate surveys are carried out pre, during and post construction
- Protection Ground Water Dependent Terrestrial Ecosystems (GWDTs) from construction operations.
- Decommissioning and Restoration measures.

16/00141/S36: No construction work is associated with development so there will be minimal risk of pollution of the water environment or from waste management. Decommissioning of the extant windfarm was required to be agreed 5 year prior to cease of operation and it is noted that the application intends to decommission both sites simultaneously.

12.6 **East Lothian Council** - 16/00145/FUL: Object on grounds that Turbines 49, 50 and 60 are judged to have an adverse landscape and visual impact. Omission of Turbines 45 and 50 and reduction of 60 to bring the hub and blades below the skyline are recommended to address these concerns. If approved, conditions covering decommissioning and noise are recommended.

16/00141/S36: Turbines 22, 26, 34, 37, 36 and 48 of the existing array are viewed to have an adverse landscape and visual impact. On granting consent it should be stipulated that paragraph 170 of SPP does not apply whereby these locations are not deemed to be suitable for wide turbine development in

perpetuity. An additional noise condition is recommended to cover cumulative impact of Fallago Rig 1 & 2.

12.7 **Historic Environment Scotland (HES)** – 16/00145/S36: Proposal will impact on a number of heritage assets, while not significant enough to warrant objection it is recorded that the tips of turbines 52 - 56 will affect the experience and appreciation of the Munity Stones (Scheduled Ancient Monument). The applicants provided HES with a technical note explaining why the locations of the turbines are not being reviewed.

12.8 Other notable consultee responses to the ECU on application 16/00145/S36 have included:

- Ministry of Defence – No objection, although agreement to the use of Infrared Aviation Lighting and a condition to mitigate against impacts on the air defence radar at Brizlee Wood is recommended.
- NATS – objected on grounds that the proposal would have an unacceptable impact on aviation safety. The applicants have advised that a contract was being signed by NATS and EDF ER to resolve this objection.
- RSPB – No objection, recommend that a habitat management plan, a breeding bird protection plan, employment of an Ecological Clerk of Works and post construction monitoring to mitigation ornithology impacts.
- Transport Scotland – Conditions are required to agree route of abnormal loads on the trunk road and additional signage or temporary traffic control measures.
- Marine Science Scotland – Inclusion of a condition for post construction water quality monitoring overcomes original objection.
- Scottish Water – Recommend use of floating roads where peat is 0.5m thick.
- Scotways – A conditional access management plan addresses concerns expressed on Muir Road (Right of Way BB107) and pylon road however remain to object on grounds that the proposal has; an adverse effect on the recreational amenity of the Southern Upland Way, micro-siting may lead to the turbines being positioned at a greater height and the cumulative impact on the Lammermuir Hills.

12.9 Other than those previously referred to above, all other consultation responses to the EDC on application 16/00141/S36 ultimately raised no concerns in response to this development.

12.10 The **Lauderdale Community Council** oppose application 16/00145/S36 on the basis that is not required to meet Scottish or UK renewable targets.

### 13.0 **KEY PLANNING ISSUES:**

13.1 Bearing in mind that SBC is a consultee rather than the determining authority, the following are the key issues to be reported in the following Assessment:

- land use planning policy principle
- economic benefits attributable to the scheme
- benefits arising in terms of renewable energy provision
- landscape and visual impacts including residential amenity visual impacts, arising from turbines and infrastructure

- cumulative landscape and visual impacts with other wind energy developments
- physical and setting impacts on cultural heritage assets
- noise impacts
- ecological, ornithological and habitat effects
- impact on road safety and the road network
- impacts on the public path network and public access on accessible land
- Fallago Rig 1 suggested variation condition

#### 14.0 **ASSESSMENT OF APPLICATION:**

##### Planning Policy Principle:

- 14.1 Scottish Government Policy, regional strategic policy and local planning policy/guidance are supportive of the principle of constructing wind energy projects unless, with regard to the specific circumstances, the environmental harm caused outweighs the benefits of energy provision.
- 14.2 Assessed against Table 1 of SPP 2014, the site falls outside of Group 1 designations (National Parks and National Scenic Areas), meaning that it is located within an area where further wind farm development *may* be acceptable. It is therefore the detail of the proposal which is key in this case. The primary topics requiring consideration by the Council are as follows:

##### Economic Benefit:

- 14.3 Wind Energy development is important in terms of the contribution it makes to the economy in the UK and internationally, alongside other forms of alternative energy production. Associated with implementation, planning and operation are employment opportunities for a wide range of contributors both directly and indirectly across supply chains.
- 14.4 Fallago Rig 1 is operational and successful in making its contribution to the energy industry. Adding 12 turbines to the existing wind farm conceives a sizable cluster of 60 turbines which can consolidate the Central Lammern operations as a sizeable economic entity.
- 14.5 Scottish Government identifies this type of contribution as important and valuable to the Scottish Energy Industry. However, the potential for such benefits and thereby economic growth to be supported in consideration of energy proposals must be balanced with the likelihood that wind energy developments in particular can bring high levels of environmental impact which are potentially of greater significance than the economic benefits

##### Renewable Energy Benefits:

- 14.6 Fallago Rig 1 has an installed capacity of 144MW. The proposed development would add up to 41.4MW and it is therefore acknowledged that Fallago Rig 2 would make a reasonable contribution to the provision of sustainable renewable energy.
- 14.7 Extending existing wind farms provides a degree of logic because it provides opportunities to take advantage of existing infrastructure. Furthermore, the

presence of an existing development can to some extent offset environmental and visual impacts and concerns. Fallago Rig 2 broadly follows this principle.

- 14.8 Additionally, it should be borne in mind that extending the operational life of Fallago Rig 1 would allow the existing wind farm to continue to contribute to the renewable energy production for a further five years.

Design Methodology:

- 14.9 The siting and design of the development has evolved since its initial 20 turbine layout which is illustrated in Figure 7.6a in Volume 3 of the ES. The following changes have been made;

- Removal of turbines from northern edge of the Lammermuir Hills, away from the skyline of East Lothian.
- A reduced number of turbines to the south with the turbines being located on lower elevations of Wedder Lairs and Hunt Law to attempt to keep the additional turbines within the topographical bowl of the existing windfarm which is defined by the summits of these hills.
- Attempts to replicate the pattern of the siting of existing turbines and the spacing between one another within the layout of Fallago Rig 2 so that the additional turbines appear alongside Fallago Rig 1 as “one wind farm”.

**Landscape and Visual Impacts:**

**Landscape Capacity**

- 14.10 Policy ED9 gives significant weight to The Landscape Capacity and Cumulative Impact Study 2013 being an initial reference point for landscape and visual assessments for wind energy developments. Table 6 (iii) considers the potential for further windfarm development within the LCT where it is recommended that despite the area nearing capacity there is;

*“still capacity for limited development within small areas around Fallago Rig taking advantage of areas with lower intervisibility and topographical containment for further windfarm developments of large or very large sized turbines.”*

- 14.11 Figure 6.1c within the study which provides a spatial study for the potential for turbines of over 100m within the Scottish Borders, and the assessment has identified that the location of the application site for Fallago Rig 2 is one of the few areas to have a ‘Medium Low Capacity’ for additional turbines.

- 14.12 In light of the findings of The Landscape Capacity and Cumulative Impact Study 2013, it is considered that the development of Fallago Rig 2 is being located within an area where there may be landscape and visual capacity to accommodate the proposals.

**Wild Land**

- 14.13 The site is not one of the nationally designated areas of Wild Land. Landscape qualities of the landscape have already been affected by the presence of the existing windfarm and largescale overhead power line. The addition of 12 extra turbines would not have a significant impact on the landscape, due to the presence of the existing development.



## **Theoretical Visibility**

- 14.14 According to the submitted Zone of Theoretical Visibility (ZTV) mapping showing potential visibility (refer to Figure 7.4 and 7.5 Volume 3 of the ES), the ZTV illustrates that Fallago Rig 2 is well contained by landform which provides screening of the development to the north and north-west. The ZTV does show that across the study area that 10-12 wind of turbines may be visible in association with Fallago Rig 1. Apart from the immediate surroundings there is very little visual impact on receptors within 10km range, with the exception of the Southern Upland Way.
- 14.15 Because the proposal relates to the extension of an existing wind farm, the theoretical visibility of Fallago Rig 2 compared to Fallago Rig 1 is extremely important as part of the consideration of the landscape and visual impact of this development. A comparative ZTV has been submitted, see Figure 7.11c. This analysis shows that there are very few locations where there will be new visibility as a result of Fallago Rig 2 with the ES indicating that visibility of only Fallago Rig 2 accounts for only 1.42% of the total study area. While there will be visibility of Fallago Rig 2, this is almost always in association with the existing wind farm. Areas subjected to the additional visibility are generally areas of little population. The settlement of Leitholm to the south east appears to be the nearest new settlement affected by Fallago Rig 2 but due to Leitholm being over 15km from the development, actual visibility of Fallago Rig 2 will be minimal.
- 14.15 The proposed development will unquestionably result in an increase in the scale of the combined windfarm at Fallago Rig from certain locations and this will be discussed further below. Nevertheless the theoretical visibility of the new development is considered to closely match the theoretical visibility of the existing windfarm. This concludes that the theoretical visual impact of the new development is considered to be minimal based on its association with the existing windfarm.

## **Landscape Impact**

- 14.16 The Landscape Capacity and Cumulative Impact Study 2013 undertaken by Ironside Farrar acknowledges that the presence of the existing Fallago Rig 1 as well the Crystal Rig/Aikengall cluster has led to the northern part of the Lammermuir Plateau LCA to practically become a Wind Turbine Landscape. The site and the majority of its surroundings fall within the Lammermuir Hills SLA. The description of the SLA within the Local Landscape Designations SPG does not mention Fallago Rig 1; its presence along with the 440kv overhead powerline is significant within the landscape.
- 14.17 The acceptability of landscape impacts depends on the level of change of the existing character 'pre-development' weighed against the 'post-development' impact of the proposals. The context of existing large structures at the site means that the effect of the development has to be considered against the established baseline. The ZTV illustrates that the effects of the development are largely restricted to the immediate surroundings with the cumulative ZTV showing there to be few new affected areas. Because the effects of the development are confined to areas close to the existing wind farm, the Council's Landscape Architect has observed that there is relatively few impacts on important skylines and that the character changing effects are

confined to the receiving LCT. This also means that the impact on the SLA is limited.

- 14.18 The siting of the additional turbines has attempted to contain them within the topographical bowl where Fallago Rig 1 is located. SNH have identified viewpoint (VP) 7 from the east and VP15 in the west as areas where the additional turbines have a poorer design relationship. ELC have also identified an adverse impact from VP7. From these VPs the new turbines appear more evidently “up and down” in the landscape than the existing windfarm. Additionally from VP15, SNH advise that the proposal fails to integrate as successfully as Fallago Rig 1 with the smooth profile of the skyline of the Lammermuir Hills. It is conceded that as a result of these impacts the development is not fully compliant with SNH guidance on Siting and Designing Wind Farms in the Landscape 2014.
- 14.19 Despite these concerns, SNH advise that they are not seeking any modifications. It is considered that because the turbines are being added to an existing wind farm array these less favourable landscape changes are somewhat diluted. Additionally, from VP7 it is worth noting that there are views across to the Crystal Rig and Aikengall cluster so the viewer does understand that you are within a Wind Turbine Landscape therefore visibility of turbines from VP7 is expected.
- 14.20 Policy ED9, recommends that wind development should be supported unless there are “unacceptable significant adverse effects”. Because of the developments relationship to the existing wind farm it is the view of SBC Officers that prominence of certain new turbines from a small number of viewpoints is not significantly adverse to warrant refusal and the wider landscape impacts are tolerable.

### **Visual Impact**

- 14.21 The ZTV analysis confirms that the extent of theoretical visibility would be very similar to that of existing Fallago Rig 1 with the containing landform around the site, generally screening views to the north and north-west outside of the 5km range. A selection of key viewpoints (VPs) has been selected to illustrate the visual effects of the development from important public locations. As previously stated, because this is an extension to an existing wind farm it is critical to determine if the visual impact of the additional turbines is supportable.

### **Visual Impacts – Roads and Paths**

- 14.22 SNH have identified VP3 in the east and VP11 in the south as public roads where the previously identified landscape concerns will be noticeable. In the case of VP3, the extent of effect on this route is clear where the two eastern turbines 49 and 50 appear prominent. The VP is close to the development so some impact is not unexpected. This road is however a minor route where there is already high visibility of the existing array. By virtue of the prominence of turbines presently in the north eastern corner of the array the impact of the proposed Fallago Rig 2 turbines is tolerable.
- 14.23 Turning to VP11, this is a junction of two well used A and B class roads. As a result of the proposed development the wind farm does extend across the skyline with its prominence increased with turbines 59 and 60 giving rise to an

element of stacking. If the turbines were to be reduced in height, the tips of the southern grouping would align with those behind. From this location, the impact of the Fallago Rig 2 turbines still allows the extended array to be read as one wind farm. While the increase in impact is not ideal from this VP, the distance to the development provides some mitigation.

- 14.24 VP10, which is just on the 10km cusp to the east of the windfarm from Kirtonhill. From this location Fallago Rig 2 brings the overall development closer to the VP and extends the extent of the array. The extended wind farm does, however, remain within the containing bowl from this VP.
- 14.25 The ZTV identifies that there will be significant visibility from the Southern Upland Way (SUW) towards the proposed Fallago Rig 2. VPs 9 and 4 show the impact of the development from these locations and Figure 7.9b-7.9f provide a sequential assessment of various visual impacts along the route using wirelines.
- 14.26 Section 7.9.21 & 22 of the ES concedes that this is a significant receptor but that the effect overlaps with significant effects from Fallago Rig 1. The SUW is unquestionably already affected by the existing wind farm and while the additional turbines may not significantly affect any new parts of the route, VP4 illustrates that Fallago Rig 2 will increase the magnitude of the wind farm.
- 14.27 The impact of the development upon the SUW is arguably the greatest single impact on receptors in the Scottish Borders. Some of the new turbines are more prominent than the existing turbines from points along the SUW, as shown by VP4. This part of the SUW falls within the receiving LCT which has been described within The Landscape Capacity and Cumulative Impact Study 2013 as a landscape which is becoming a wind turbine landscape. As a result of this existing context it will probably not be surprising for users of the route to have views of prominent turbines.
- 14.28 The increased impact of the development on the SUW cannot be disputed. Nonetheless, given the existing context for receptors along the SUW where wind turbines are already directly visible and in the absence of any objection from the Landscape Architect on the visual impact of the proposal, it is considered that the impact on the SUW alone is not significant enough to warrant objection against Policy EP9.

### **Visual Impacts – Residential Receptors**

- 14.29 Scottish Planning Policy (SPP) advocates the identification in Local Development Plans of an area not exceeding 2km around settlements as a community separation for consideration of visual impacts. No settlements are located within this distance of the site. The lack of viewpoints from settlements illustrates that the development of Fallago Rig 2 will have little impact on more densely populated areas. There are two settlements (Gifford and Westruther) towards the outer edge of the 10km area. VP8 from outside of Gifford shows that there is no impact the area surrounding the settlement. In terms of Westruther the ZTV does indicate that 1-3 turbines may be visible from around the Cemetery however this impact is not considered to be significant.
- 14.30 Within 5km of the site there are 5 residential properties, 4 of which are identified as being involved with the development within the ES. The

unrelated property of Trottingshaw is the furthest of the five from the proposed development. Each of these 5 properties are already impacted visually by the existing windfarm. Fallago Rig 2 will contribute towards additional impacts for these houses and this is to be expected. Given the existing baseline of visual impact which these properties are subjected to, the description in the ES of Fallago Rig 2 having a 'slight' effect on these dwelling is not disputed.

- 14.31 Section 14 of the ES has considered Shadow Flicker. The applicants have applied a test under National guidance on Shadow Flicker provided by the Scottish Government and report that the result find shadow flicker is scoped out of the ES. Given that the closest property is some 2.8km from the site then these findings are expected.
- 14.32 Overall, it is considered that the proposed wind farm extension will not have unacceptable adverse impacts upon residential receptors in local communities or nearby dwellinghouses.

### **Visual Impact from East Lothian**

- 14.33 SNH have provided commentary on the impact of the development from viewpoints to the north, particularly from settled areas of East Lothian where is observed that;

“while there is an appreciable but slight extension to the overall extent of the array, there is also a favourable sense of design integration of the proposed turbines.”

- 14.34 East Lothian Council (ELC) has raised concerns about the development of Fallago Rig 2. The comparative ZTV information suggests that from East Lothian there are practically no new receptors as a result of this development. From selected viewpoints various parts of Fallago Rig 2 will be visible however this is practically always alongside the existing windfarm with SNH viewing the integration of the proposal to be reasonable. Various VPs from East Lothian show the development to extend the existing wind farm across the skyline which is not ideal but visibility of this change from settled areas is often from distances of over 15km from the development. On balance, it is not considered that the visual impacts of the development from East Lothian are significant enough to warrant object from SBC. The concerns raised by ELC remain a matter for the determination of the ECU.

### **Turbine Micro-siting**

- 14.35 The issue of micro-siting is important to consider. Should the turbines have to be moved to a higher altitude then they may start to come out of the confining topographical bowl and will become more visually prominent in the landscape. If there is a clear habitat or technical reason to micro-site a turbine then a degree of flexibility is needed but this has to be balanced against the visual impact of the change.
- 14.36 To avoid an adverse visual impact, Members are asked to consider recommendation of a micro-siting planning condition which will require the applicants to undertake wireframe analysis of any micro-siting requirements to illustrate if the turbine new position can be tolerated in the landscape with

the preference being that there is no discernible change. The applicants have suggested that they would be content with such a request.

**Visual Impacts of Associated infrastructure:**

- 14.37 The presence of the existing windfarm means that the associated development is generally adding to existing infrastructure which is already present on site. The works are predominantly all localised around the existing windfarm and due to its isolated location, works relating to; new tracks and bridges, borrow pits and an extension to the existing substation themselves do not have any detrimental impact on the landscape and visual amenity of the surrounding area.
- 14.38 It is the intention that the majority of the associated infrastructure is to be removed at the end of the operational life of the wind farm. To avoid unnecessarily lasting impacts suitably worded planning conditions can agree the eventual removal of these components.

**Cumulative Landscape and Visual Impacts:**

- 14.39 In Paragraph 125 of the SESplan Strategic Plan, the cumulative issue in the Borders is given coverage:

*“Consideration of location, landscape, environmental quality and community impacts will be required for onshore developments. For example, wind farms in East Lothian, the Scottish Borders and West Lothian currently contribute to the SESplan area; however, concerns have been expressed about cumulative impacts and LDPs should undertake an assessment of the impact of development.”*

- 14.40 Berwickshire has been the subject of a high level of pressure in recent times, for further developments to be added to the current baseline. This is reflected in the summary of other relevant schemes earlier in this report.
- 14.41 Figure 7.10b of the ES shows the pattern of existing development around the site with the principal cumulative effect being the current proposal’s association with Fallago Rig 1. As considered previously, the cumulative impact of Fallago Rig 2 with Fallago Rig illustrated by the comparative ZTV illustrates that the proposed development will have a very limited additional visual impact with few new receptors. As discussed previously some existing receptors will experience an intensification of magnitude but because the proposal has been designed to fit with the existing array, Fallago Rig 2 forms part of the existing cluster of turbines and generally avoids the provision of isolated or incongruous turbines within the landscape. The Council’s Landscape Architect has advised that the cumulative change is “generally minimal”.
- 14.42 SNH observe that from some viewpoints the existing separation of Fallago Rig to the Crystal Rig/Aikengall cluster is marginally narrowed. Nevertheless, both SNH and SBC’s Landscape Architect share the view that the sense of separation between these clusters is not diminished. The development of Fallago Rig 2 is therefore judged to accord with the cluster and space strategy which is often promoted with large wind energy development.

- 14.43 There is no other consented wind energy development which is viewed to materially affect the cumulative impact of this proposal.
- 14.44 The application is considered to comply with cumulative impact requirement listed within Policy ED9.

**Landscape and Visual Impact of Extending the Operational Life of Fallago Rig 1:**

- 14.45 Fallago Rig 1 presently has consent to operate until 2038. In landscape and visual terms, the containment provided by the topographical bowl where the development is located and the limited impact of the development from settled areas means Fallago Rig 1 is generally perceived to be a good site for wind energy development.
- 14.46 There is a logic to the simultaneous operation and end point of the combined schemes. Fallago Rig 2 has been designed as an extension to the existing windfarm and not as a separate entity. If Fallago Rig 1 were to be removed when Fallago Rig 2 was still operational then there would be a sporadic form of development within the landscape. Extending the operational life of Fallago Rig 1 will enable Fallago Rig 2 to be seen alongside the existing development as a single wind farm for its whole operational life. At the shared end of their operational lives, both developments will be able to be decommissioned simultaneously which is cost effective and minimises local disruption which would be caused by two separate decommissioning periods. Despite benefiting from separate consents, the decommissioning of Fallago Rig 1 alongside Fallago Rig 2 can be governed by both consents having suitable decommissioning requirements which can be governed through planning conditions.
- 16.47 The Landscape Architect has not voiced any concerns regarding this particular application. Despite SNH and ELC raising concerns of the prominence of some of the turbines along the northern edge of the existing array, retention for a short time is not opposed. Caution has been expressed that granting an extension to Fallago Rig 1 should not be read as an acknowledgement that the whole site is suitable for wind development in perpetuity, under paragraph 170 of SPP. Provided that the further consent of operational time of Fallago Rig 1 remains time-limited, as advised in paragraph 170 of SPP then any proposals for further retention or future repowering outwith the specified period which can be controlled by condition and would fundamentally require determination of such proposals through relevant planning or Section 36 processes.
- 14.48 Overall, should Fallago Rig 2 be consented, extending the operational life of Fallago Rig 1 for a short time period to dove-tail with the operational life of Fallago Rig 2 is an obvious decision in landscape and visual terms and complies with relevant requirements of Policy ED9.

**Cultural Heritage Impacts:**

- 14.49 The Council's Archaeologist has not objected to the addition of 12 turbines and associated works. The development site is located at an elevation above known heritage assets but it is recorded that during the development of Fallago Rig 1 an Anglo-Saxon farm steading and several fit pits from approximately 10,000 years ago were discovered. This evidence suggests

that the development of Fallago Rig 2 may also encounter buried archaeology, therefore mitigation in the form of a Written Scheme of Investigation is recommended and has been accepted by the developers.

- 14.50 Turning to indirect impacts, the Council's Archaeologist has suggested that application 16/00145/S36 (the extension) will not adversely affect the setting of surrounding heritage assets. HES have raised concerns about the impact of the development on the setting of the Munity Stones which is a cairn approximately 2km to the east of the site. The setting of the cairn is characterised by its location on a gentle southwest facing slope of Byreclough Ridge. Figure 8.4 of the ES does suggest that the upper part of the blades of turbines 52, 53, 54, 55 and 56 will creep over the hillslope which is unfortunate. In response to HES comments the applicants provided a Technical Note on Fallago Rig 2: Effect on the Setting of Munity Stones which illustrates that a previous design of the wind farm had a worse effect on the setting of the cairn. While turbines 52-56 do continue to break the skyline, this is by a much shorter part of the turbine with the intervening landform continuing to rise to the north which helps provide some containment.
- 14.51 HES have conceded that the proposal will not affect the understanding of the cairn but it will disrupt its sense of place. While it is not suggested that the development will not impact on the setting of the Munity Stones, in light of HES not raising a formal objection coupled with the advice provided by the Council's own Archaeologist, on balance, it is considered that the proposal will not have a significant enough impact on the affected cairn or any other heritage assets to warrant objection against LDP Policy ED9 or EP8. Fundamentally, it will be the role of the ECU to determine if the concerns raised by HES require further mitigation.
- 14.52 The extension of the operational life of Fallago Rig 1 poses no detrimental implications upon any cultural heritage assets.

**Ecology and Habitat Impacts:**

- 14.53 SNH have advised that the development is located close to the River Tweed Special Area of Conservation (SAC) where the development has potential, particularly during the construction process to have an effect on the Atlantic salmon qualifying interest of the SAC. The impact of the development on the SAC has attracted an objection to the development from SNH. However, this objection can be mitigated by the imposition of a planning condition to require the agreement of a Construction Environment Management Plan (CEMP) which in particular should protect the water environment and would address SNH's objection.
- 14.54 In addition to the impact of the development on the SAC and the need for a CEMP, the Council's Ecologist has identified that the development has the potential to impact on a range of species, including protected species and habitats. In order to comply with LDP policy provision covering biodiversity various forms of mitigation will be required to be undertaken. Mitigation measures will include; pre-commencement species surveys where the findings of these investigations should inform Species Mitigation and Management Plans, Habitat Management and Enhancement Plans and post construction species monitoring. In addition an Ecological Clerk of Works is recommended to be appointed to ensure that ecological and habitat

requirements are upheld during construction and also decommissioning requirements of the development are upheld.

- 14.55 The ES identifies that areas of deep peat lie along much of the new access route and turbine locations. The Council's Ecologist has recommended that use of floating roads should be used in areas with a peat depth of  $\geq 0.5\text{m}$  instead of areas with a peat depth of  $> 1\text{m}$ . There has been some dubiety about which would be the right depth in which to use floating roads to ensure that peat is not unnecessarily disturbed or destroyed. A view was sought from SNH however at the time of writing, no view has been received, therefore an appropriately worded planning condition is recommended to agree when floating roads are required to be used.
- 14.56 Taking into account the consultations responses of the specialist in these matters, the proposals do not give to any biodiversity impacts, including impacts on the SAC that cannot be resolved by a suite of planning conditions covering the aforementioned matters.
- 14.57 No consultee concerned with biodiversity has raised any significant concerns that the extension of the operational of Fallago Rig 1 will have a detrimental impact on ecology and from an ecological perspective decommissioning both sites simultaneously would be logical. The Council's Ecologist has noted that relevant post development conditions which are still pertinent for Fallago Rig 1. It is recommended that the relevant conditions of the original Fallago Rig consent for on-going compliance and management of ecological interest and suitable decommissioning should be re-imposed. Fundamentally, these requirements are similar to the protective measures sought as mitigation to Fallago Rig 2 and it would be at the discretion of the developers to formally seek to change any of the original conditions.

**Residential Amenity (Noise):**

- 14.58 Environmental Health officers have fully assessed noise issues. A noise assessment for the proposed development has been carried out and extended to include the cumulative noise effects from Fallago Rig 1 and Fallago Rig 2. Environmental Health Officers are satisfied with the findings of the noise assessments which have been carried out. Noise generated by the development of Fallago Rig 2 has not been found to detrimentally affect the amenity of affected residential properties subject to the imposition of planning conditions to set appropriate noise levels and proper investigation and resolution of noise complaints.
- 14.59 The noise limits set for Fallago Rig 1 under its original permission would remain unchanged and conditions covering these matters should be re-imposed as part of its consent to extend its operational life.

**Traffic Management and Road Safety:**

- 14.60 The site will be accessed via the route which successfully served the development of Fallago Rig 1. There are no reasons why the development would not comply with LDP Policy ED9 in relation to trunk road and traffic impacts with no overriding concerns raised by Transport Scotland or the Council's Roads Planning Officer (RPO). Planning Conditions can seek the agreement for a Construction Traffic Management Plan which will also require the provision of mitigation measures to cater for abnormal loads using the



route and a separate condition will ensure that the junction from the public road into the site can appropriately cater for vehicles accessing the development.

- 14.61 The Roads Planning Officer has advised about possibly entering into a Section 96 agreement. This is a formal agreement to ensure that damage to the public road caused by the development will be repaired by the developers. This obligation would have to be undertaken using a legal agreement. This type of obligation was not used during the construction of Fallago Rig 1; therefore it is not appropriate to pursue such an agreement for Fallago Rig 2. Appropriately worded planning conditions can be used to ensure that the developer is liable for damage caused to the public road network as a result of works from this development.

#### **Public Access/Path Network:**

- 14.62 The development would have the potential to have significant effects on the public path network. There are, as explained in the consultation response of the SBC Access Officer and also Scotways, paths within and crossing the site that may be physically affected and indirectly affected by the development and its infrastructure. In addition, paths outwith the site which will be indirectly affected by the development of Fallago Rig 2 have been identified.

#### **Public Paths and General Access within the Site**

- 14.63 During a meeting with the applicants, the impacts of the development upon the identified access routes within the site. Of particular concern was the siting of Turbine 60 which is less than 80m from the historic core path known as the Herring Road. The route of the core path along the affected area is not understood to be its original route. It was agreed with the developers that the impact on this route can be mitigated by diverting this path during construction phases and then realigning with its original route which should follow its route depicted in a plan from the 1960 which is held by the Council's Access Officer. This mitigation can be covered by a suitably worded planning condition which forms part of an Access Management Plan. Additionally, the access management plan can agree appropriate signage and interpretation boards across other routes within the site to provided mitigation of the effects of Fallago Rig 2 on these routes.

#### **Paths outwith the Site**

- 14.64 The cumulative impact of the development upon the SUW remains to receive objections from the Council's Access Ranger and Scotways.
- 14.65 The overriding concern of access specialists is that the development gives rises to an increased visibility of turbines which detrimentally affects the experience of users using this route. The landscape and visual impact from this receptor was thoroughly considered in detail earlier in this report.
- 14.66 While it is regrettable that the development will detract from the outlook and experience from this nationally important route, it is perceived that this effect will be for a short distance in comparison to the total length of this route. Bearing in mind that the route is already affected by the existing wind farm and the characterisation of the wider landscape, the detrimental impact of the development from the SUW in wider land use planning terms it not judged to

be significantly adverse in its own right to recommend refusal of this proposed development against Policy ED9.

- 14.67 No access concerns have been raised by consultees in response to application 16/00141/S36.

**Fallago Rig 1 Suggested Variation Condition**

- 14.67 Within application 16/00141/S36, it is suggested that Condition 2 of the original permission which stated;

*“The consent is for a period from the date of this consent until the date occurring 25 years after the date of the Commissioning of Development. Written confirmation of the date of Commissioning of Development shall be provided by the Company to Scottish Ministers, the Planning Authority, and to National Air Traffic Services no later than one calendar month after that event.”*

Is replaced with the following condition;

*“The consent is for a period to 24 January 2043. Written confirmation of the date of decommissioning shall be provided to Scottish Minister, the Planning Authority and to national Air Traffic Services within six months of the date of consent, **UNLESS** the Company provides written confirmation to the same parties of the Commissioning of Fallago Rig 2. In the event that the Company provides written confirmation of the Commissioning of Fallago Rig 2, this consent is for a period from the date of this consent until the date occurring 25 years after the date of the Commissioning of Fallago Rig 2”*

- 14.68 Fallago Rig 1 was commissioned on the 24<sup>th</sup> of January 2013. The suggested condition, provides a further 5 years of consent from the original 25 year period which would expire on the 24<sup>th</sup> of January 2038 or to a period to coincide with Fallago Rig 2, subject to obtaining agreement with the directly affected regulatory authorities which includes SBC. The condition provides the developers with flexibility to match the period of consent for both wind farms to provide the economic, visual and decommissioning benefits considered above. Ultimately, the precise wording of the condition which is an amended to the original Section 36 consent and not the deemed planning permission is a matter for the ECU, however the suggested condition appears to adequately achieve the aims of the proposed development and there is logic in this approach.

**15.0 CONCLUSION FOR APPLICATION 16/00145/S36**

- 15.1 Scottish Borders Council remains positive towards the principle of wind energy development, as reflected in its policies and guidance. As required by policy considerations, the benefits of energy production, and the disbenefits of environmental impact must be weighed carefully against one another. This is made clear in the 2014 SPP and reflected within the primary LDP Policy consideration for this development, Policy EP9.
- 15.2 Several key issues stand out in this report. There are clear benefits from the potential production of 41.4MW of electricity which will be added to the installed capacity of 144MW at this site. This would make a large contribution to delivery of sustainable renewable energy development and align with the

broad objective of Scottish Government to become 100% self-sufficient in producing energy. However, these benefits have to be finely balanced against the environmental impacts of the development which mainly relate to landscape and visual effects.

- 15.3 In landscape and visual terms the existing Fallago Rig Wind Farm is still considered to be generally a good site for wind energy development owing to its containment within a topographical bowl with little impact on settled locations. The location of the additional development proposed by Fallago Rig 2 are found to be located within an area which is recognised within our Landscape Capacity and Cumulative Impact study as being an area where there may be opportunity to extend the existing Fallago Rig Wind Farm.
- 15.4 Cumulative theoretical visibility analysis finds that the development is well associated with the existing windfarm, only giving rise to very minimal areas of new visibility with the development seen to generally fit into the design of the existing array. The proposal does result in an increase in magnitude of the combined windfarm from affected locations. Close analysis of the key viewpoints establishes that the presence of the existing windfarm and acknowledgement that the area is viewed as being part of a wind turbine landscape. Importantly, the perceived landscape and visual change as a result of this development is found to be limited.
- 15.5 The impact of the development upon the Southern Upland Way does represent a negative effect which arises from the development of Fallago Rig 2. The basis of the concern is centred on the developments visual effects on the route. Owing to the visibility of the existing windfarm from this route, the impact of the proposed development on the Southern Upland Way alone is not considered to be a unacceptable significant adverse impact to outweigh the benefits of the proposed development.

**RECOMMENDATION BY CHIEF PLANNING OFFICER FOR APPLICATION 16/00145/S36:**

That the Council indicate to the Scottish Government that it does not object to application 16/00145/S36 for the construction 12 additional turbines and associated infrastructure at Fallago Rig Wind Farm, subject to the imposition of the recommended schedule of conditions.

**Reason for Recommendation for application 16/00145/S36:**

On balance, by virtue of the siting and design of the turbines and infrastructure and its integration with the existing wind farm, the mitigation proposed and the acceptable visual relationship of the development with landscape character, private residences and other sensitive receptors, the proposals would accord with planning policies (listed above) relating to:

- development quality
- renewable energy
- protection of cultural heritage
- protection of biodiversity and habitat
- protection of recreational access
- protection of residential amenity

## 16.0 CONCLUSION FOR APPLICATION 16/00141/S36

- 16.1 The consented wind farm is already operational and produces electricity yields which contribute to the renewable targets set by the Scottish Government. The proposed development of Fallago Rig 2 has been designed as an extension to Fallago Rig 1 and not as a separate windfarm. Aligning the operational time of the existing windfarm means it can continue to generate electricity for the period of consent of Fallago Rig 2 and importantly consolidate the development as one wind farm for the duration of their combined operational lives.
- 16.2 The additional operational time for Fallago Rig 1 will be proportionately relatively short, approximately 5 additional years from commencement of its original consent period. In landscape and visual terms allowing the retention of Fallago Rig 1 avoids each of these wind energy developments being removed separately which means that Fallago Rig 2 will not be left standing alone in the landscape which would undermine the integrity of its design and appear visually disruptive. Aligning the period of consent for both developments enables both wind farms to be decommissioned simultaneously which is efficient and minimises the impact of these works in the local area which two separate decommissioning processes would cause.
- 16.3 On recommending no objection to the related application which seeks permission to extend Fallago Rig, it is considered that agreeing to extend the operational life of the existing wind farm is pragmatic and does not conflict with Council LDP Policies on Renewable Energy or any relevant material considerations. No grounds of objection to the extension of the operational life of Fallago Rig 1 have been raised by any specialist Council Officers consulted as part of this application.

### **RECOMMENDATION BY SERVICE DIRECTOR (REGULATORY SERVICES) FOR APPLICATION 16/00145/S36:**

That the Council indicate to the Scottish Government that it does not object to application 16/00141/S36 to vary of Condition 2 of the Fallago Rig Wind Farm to extend the operational life of the wind farm by a further 5 years.

### **Reason for Recommendation for application 16/00145/S36:**

The variation proposed under Section 36C of the Electricity Act 1989 (as amended) is suggested to be agreeable, subject to the imposition of the relevant planning conditions of the original consent which remain necessary to ensure on-going compliance with the original permission

### **List of Proposed Conditions and Informative Notes for Application's 16/00145/S36 & 16/00141/S36**

Separate Schedules of Conditions and appendixes to this report are attached, providing the list of items referred to ECU for further consideration.

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Chief Planning Officer and the signed copy has been retained by the Council.

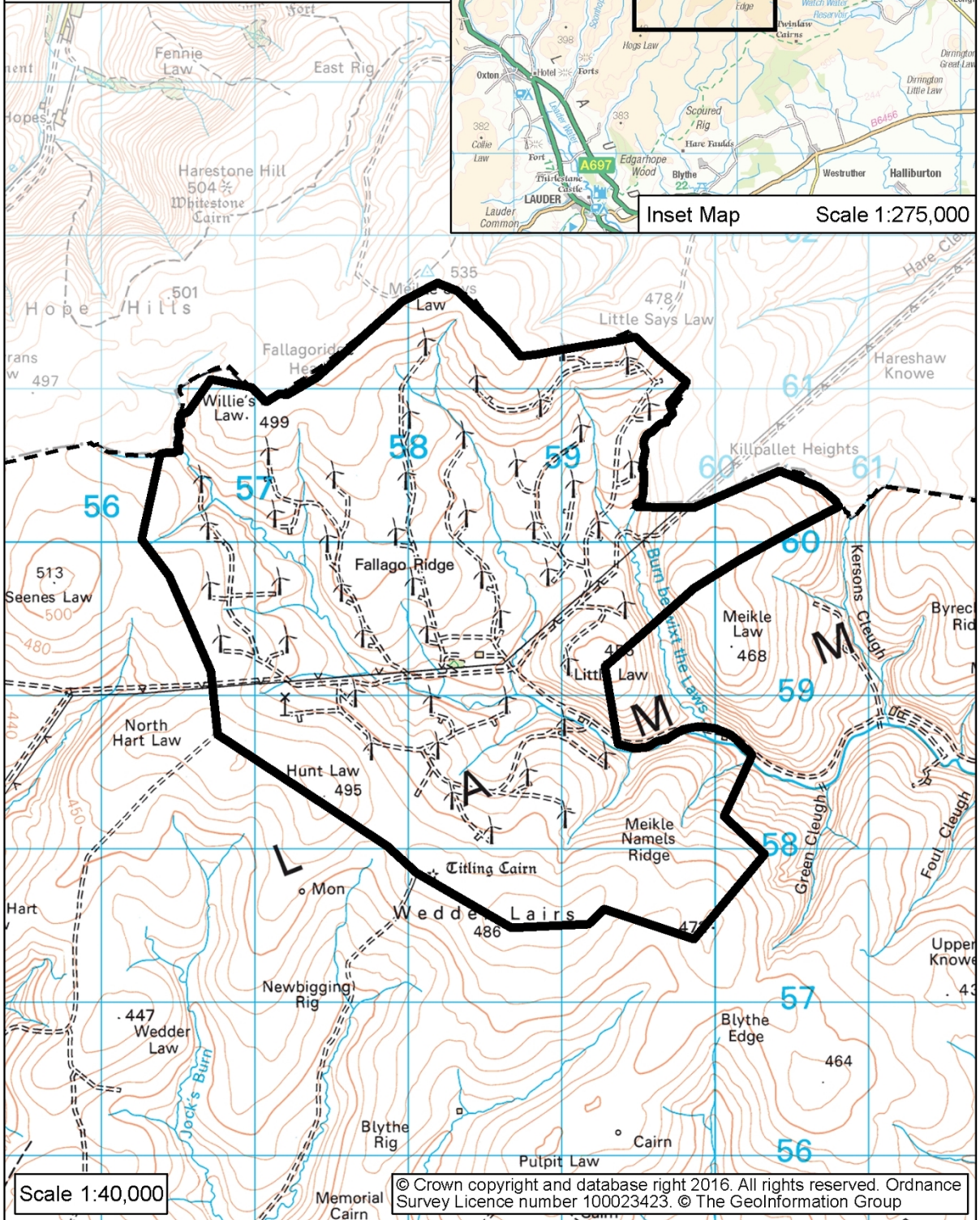
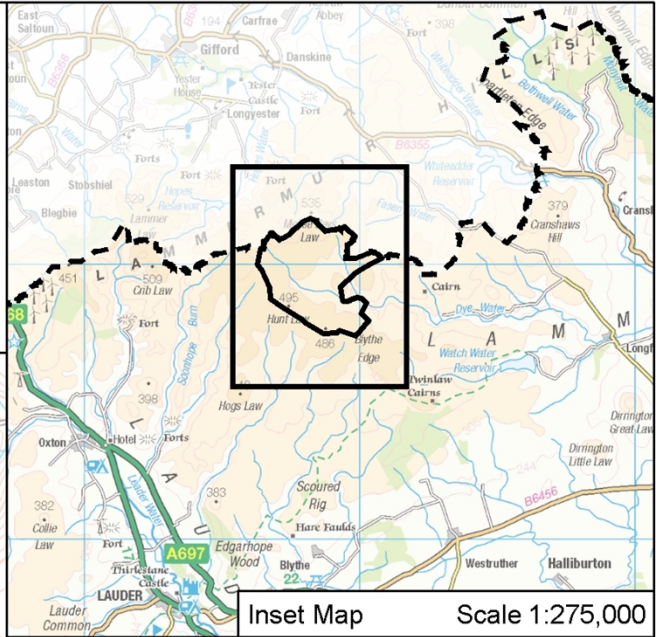
**Author(s)**

Name	Designation
Scott Shearer	Assistant Planning Officer



16/00141/S36 & 16/00145/S36

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## **16/00141/S36 – Variation of Condition 2 of the Fallago Rig Wind Farm to extend the operational life of the wind farm by a further 5 years**

### **PART 1 - Conditions applying only to section 36 consent**

For information the conditions imposed by Scottish Ministers on the Section consent are as follows:

#### **General**

1. The consent is for a period to 24 January 2043. Written confirmation of the date of decommissioning shall be provided to Scottish Ministers, the Planning Authority and to national Air Traffic Services within six months of the date of consent, UNLESS the Company provides written confirmation to the same parties of the Commissioning of Fallago Rig 2. In the event that the Company provides written confirmation of the Commissioning of Fallago Rig 2, this consent is for a period from the date of this consent until the date occurring 25 years after the date of the Commissioning of Fallago Rig 2

*Reason: In accordance with s58 of the Town and Country Planning (Scotland) Act 1997. To avoid uncertainty and ensure that the consent is implemented within a reasonable period.*

2. In the event of the Development not generating electricity on a commercial basis to the grid network for a continuous period of 12 months from 50% or more turbines installed and commissioned from time to time, the Company must immediately notify the Scottish Ministers in writing of that situation and shall, if the Scottish Ministers direct, decommission the Development and reinstate the site in accordance with the restoration and aftercare scheme referred to in condition 34 or otherwise approved by the Scottish Ministers. The Scottish Ministers shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on decommissioning following discussions with the Company, the Planning Authority and other such parties as the Scottish Ministers consider appropriate.

#### **Assignment of Consent**

3. The Company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers shall consult with the Ministry of Defence before issuing such authorisation and may grant consent (with or without conditions) or refuse such authorisation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

### **PART 2 - Conditions applying to only the deemed planning permission**

#### **Construction**

4. All turbine blades shall rotate in the same direction.
5. No symbols, signs or logos or other lettering, other than those required for health and safety and for traffic management, shall be displayed on any part of the turbines nor any other building or structures without the written consent of the Planning Authority.

## **Roads/Transportation**

6. Prior to the Commencement of Development, apart from the enabling works as provided for in condition 16, a programme of monitoring the condition of the public roads serving the site before, during and after the construction and decommissioning phases of the Development shall be agreed in writing with the Planning Authority. Thereafter, any remedial works, as approved by the Planning Authority, or payment of extraordinary maintenance costs incurred by Scottish Borders Council as a result of the site traffic, are to be carried out or paid within three months of completion of the construction or decommissioning of the wind farm.

## **Rights of Way**

7. Prior to the Commencement of Development, a plan shall be submitted to the Planning Authority showing the existing paths and rights of way within the site. Access along such paths and rights of way shall not be disturbed or disrupted during construction and Decommissioning, unless a detailed plan with respect thereto has been submitted for the approval of the Planning Authority and thereafter implemented in accordance with the terms and timescales set therein. Such plan shall include:
  - (a) the identification of any area proposed to be excluded from statutory access rights and the reasons for such exclusion;
  - (b) details of the closure or temporary diversion of any identified rights of way at the site and any associated signage;
  - (c) details of the measures to ensure safe public access along the identified or diverted paths, tracks and rights of way during the construction and decommissioning phases of the Development; and
  - (d) details for the reinstatement and upgrading of the affected routes, including details of way-marking and route interpretation.

This condition is without prejudice to the need to obtain any other consent, permission or order in connection with the disturbance or disruption of use of a path or right of way.

## **Noise**

8. Noise monitoring arrangements for the proposed turbines shall be undertaken in accordance with a programme of work to be agreed with the Planning Authority. The programme shall be submitted to and approved by the Planning Authority prior to the installation of the turbines.
9. When assessed in accordance with the attached guidance notes, noise limits at the agreed sensitive receptors identified within section 8 of the Environmental Statement will be met inclusive of any tonal penalty.
10. Noise levels at any Noise Sensitive Premises from the combined effect of the wind turbines where the proprietor or the occupier of the property has no financial interest in the Development shall not exceed an external free-field LA90, 10 min level of the greater of 40dB(A) or 5dB at any 10 metre height wind speed up to 12m/s above the prevailing background noise level from 07:00-23:00, and the greater of 43dB(A) or 5 dB at any 10 metre wind speed height up to 12 m/s above the prevailing background noise level from 23:00-0:700. The data provided in the noise assessment presented in the Environmental Statement provides the prevailing background noise level at various wind speeds and the methodology used within that document should be the basis for assessment of future investigations for consistency's sake. Any

assessment of compliance with this condition shall be made in accordance with the guidance notes attached to this consent.

11. Wind speed data must be maintained for a period of no less than 12 months from the Commissioning of the Development, and for each 12 month period of operation of the Development and be made available to the Planning Authority on request.

### **Ecological issues**

12. (a) Prior to the Commencement of Development (including the enabling works), the Company shall appoint an independent full-time Ecological Clerk of Works (ECoW) acceptable to the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. The terms of the appointment shall be submitted for the approval of the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency, and shall include that the appointment shall be for the period of wind farm construction, including micro-siting and the finalisation of the wind farm layout, as well as subsequent post-construction restoration.  
  
(b) The ECoW's in terms of appointment are to impose a duty to monitor compliance with all the ecological and hydrological aspects of the Construction Method Statement, including post-construction restoration, which have been approved under the terms of condition 16 above. The ECoW's terms of appointment are to require the ECoW to report promptly to the Company's nominated Construction Project Manager any non-compliance with the hydrological or ecological aspects of the Construction Method Statement. The Company shall confer on (and comply instructions given in the exercise of) the ECoW shall have the power to stop any construction or restoration activity on-site which in his or her view (acting reasonably) could lead to significant effects on the River Tweed SAC, and shall without delay, report the stoppage, with reasons, to the applicant's nominated Construction Project Manager and to the Planning Authority, Scottish Natural Heritage and the Scottish Environmental Protection Agency.
13. Prior to the Final Commissioning of the Development, plans for the method, frequency and duration of ecological monitoring over the operational life-span of the proposed Development are to be submitted to, and approved in writing by, the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. The monitoring shall be carried out in strict accordance with the terms set out in the agreed monitoring plan.
14. Prior to the Final Commissioning of the Development, the Company shall submit an operational protocol for approval in writing by the Planning Authority, in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. This will set out details for working practice and wind farm maintenance over the operational life-span of the wind farm. The wind farm shall be operated in strict accordance with the terms of the operational protocol.
15. Prior to the Commencement of Development save in respect of any enabling works as provided for in condition 16, the applicant will submit a detailed Land Management Plan for approval in writing by the Planning Authority in consultation with Scottish Natural Heritage. The Land Management Plan will set out proposed long-term management of the wind farm site and should provide for the maintenance of dwarf shrub heath habitat on site. The Land Management Plan, as approved shall be implemented to the satisfaction of the Planning Authority in consultation with Scottish Natural Heritage.

## **Decommissioning and restoration**

16. Within 12 months after the end of the period of the consent granted under section 36 of the Electricity Act 1989 as provided for in condition 2, those parts of the Development requiring decommissioning and restoration in accordance with the conditions of this consent shall be removed and the land restored, in accordance with the decommissioning restoration and aftercare scheme required by the planning condition 34.
17. Within 5 years prior to the expiry of the consent granted under section 36 of the Electricity Act 1989, a decommissioning restoration and aftercare scheme shall be submitted for the approval of the Planning Authority outlining the programme of decommissioning of the Development and the restoration and aftercare of the site. The decommissioning restoration and aftercare scheme will include details of all site decommissioning including the removal of all wind turbines together with their foundations to a depth of 1.2m, ancillary equipment and buildings to be dismantled and work to remove other infrastructure from the site and details of site restoration and aftercare to restore the land to its former condition or other such condition as may be agreed with the Planning Authority. It will include provision for the appointment of an Ecological Clerk of Works acceptable to the Planning Authority (in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency), whose role will be to oversee implementation of the plans so approved. The decommissioning restoration and aftercare scheme will include the method, frequency and duration of ecological monitoring, particularly of watercourses, over the decommissioning period of the Development. Six months prior to the expiry of the section 36 consent, the decommissioning restoration and aftercare scheme shall be reviewed by the Company and the Planning Authority, and any alterations deemed appropriate and mutually acceptable shall be made. Within twelve months, or any alternative timescale agreed by the Planning Authority, of the wind farm ceasing to be used for the generation of electricity, the decommissioning restoration and aftercare scheme as referred to above shall be submitted to the Planning Authority. Within this submission a timescale for completion of the restoration of the site shall be agreed with the Planning Authority, thereafter the works shall be completed in accordance with the agreed timescales.
18. The site shall be restored to such condition as set out in the agreed decommissioning restoration and aftercare scheme
19. Following the decommissioning and restoration of the site in accordance with planning condition 33 and aftercare requirements contained in the decommissioning restoration and aftercare scheme required by condition 34 shall be implemented in accordance with the programme approved therein.

## **Financial Bond**

20. (a) Prior to the Commencement of Development, the Company shall provide to the Planning Authority details of the bond or other financial provision which it proposes to put in place to cover all decommissioning and site restoration costs on the expiry of this consent.  
  
(b) No development shall commence on the site until the Company has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory.

(c) The Company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent.

(d) The bond or other financial provision will be subject to a five yearly review, paid for by the Company, from the Commencement of Development, to be conducted by a competent independent professional who has relevant experience within the wind energy sector and provided to the Company, the landowners, and the Planning Authority.

## **Appendix 1 – Drawing Numbers**

Figure 1.1 Site Context  
Figure 1.2 Site Boundary

## **Appendix 2**

### **GUIDANCE NOTES RELATING TO CONDITIONS 9 and 10**

The Guidance Notes 1 – 4 appended to the original Fallago Rig Deemed Planning Permission and the updated consent, ref 13/01268/FUL should be referred to for noise monitoring obligations listed within Condition 9 and 10 of this permission.

## **16/00145/S36 – Fallago Rig 2 Wind Farm**

### **Conditions and Informative Notes**

#### **Conditions Attached to Section 36 Consent**

##### **1. Duration of the Consent**

The consent is for a period of 25 years from the date of Final Commissioning.

Written confirmation of the date of First Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

*Reason: To define the duration of the consent.*

##### **2. Commencement of Development**

The Commencement of the Development shall be no later than three years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date.

*Reason: In accordance with s58 of the Town and Country Planning (Scotland) Act 1997. To avoid uncertainty and ensure that the consent is implemented within a reasonable period.*

##### **3. Non-assignment**

The Company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may assign the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company shall notify the local planning authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignment having been granted.

*Reason: To safeguard the obligations of the consent if transferred to another company.*

##### **4. Serious Incident Reporting**

In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of the incident occurring.

*Reason: To keep the Scottish Ministers informed of any such incidents which may be in the public interest.*

##### **5. Aviation**

There shall be no commencement of development unless an Air Defence Radar Mitigation Scheme (“the ADRM scheme”) has been submitted to and approved in writing by the Planning Authority to mitigate the adverse impacts of the Development on the air defence radar at Remote Radar Head (RRH) Brizlee Wood and the air surveillance and control operations of the MOD. No turbines shall become operational until:

- i. the mitigation measures which the approved ADRM Scheme requires to be implemented prior to the operation of the turbines have been implemented; and
- ii. any performance criteria specified in the approved ADRM Scheme and which the approved ADRM Scheme requires to have been satisfied prior to the operation of the turbines have been satisfied.

*Reason: Unless mitigation is undertaken, the wind farm would have an unacceptable impact on the Primary Surveillance Radar and the Remote Radar Head, Brizlee Wood, Northumberland, with consequent implications for national security.*

## **Conditions Attached to Deemed Planning Permission**

### **6. Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the application including the approved drawings listed at Appendix 1 to this decision statement (as supplemented or amended by any further or additional environmental information) and other documentation lodged in support of the application.

*Reason: to ensure that the Development is carried out in accordance with the approved details.*

### **7. Design and operation of turbines**

There shall be no Commencement of Development unless details of the external finish and colour of the wind turbines and any external transformer units have been submitted to and approved in writing by the Planning Authority. The tip height of the turbines shall not exceed 126.5 metres above ground level. The Development shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the Development is decommissioned.

All wind turbine blades shall rotate in the same direction.

None of the wind turbines, switching stations or transformer buildings/enclosures, substation building or above ground fixed plant shall display any name, logo, sign or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the Planning Authority.

All turbines and components shall be installed to meet the safety standards set by British Standard BS EN 61400-1: 2005 'Wind turbine generator systems: Safety requirements' or International Electro-technical Commission IEC 16400.

*Reason: In the interests of public safety to ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbine assessed in the environmental statement and in the interests of the visual amenity of the area.*

### **8. Design of sub-station and ancillary development**

There shall be no Commencement of Development unless final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, any construction compound boundary fencing, external lighting and parking areas have been submitted to and approved in writing by the Planning Authority. The substation building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

*Reason: To ensure that the environmental impacts of the sub-station and ancillary development forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.*

### **9. Design of water course crossings**

There shall be no Commencement of Development unless final details of all the water course crossings over the Dye Water and the Black Burn have been submitted to and approved in writing by the Planning Authority.



The crossings shall be clear span and not impede flow in the water courses. The water course crossings shall be constructed in accordance with the approved details.

*Reason: Further information is required to ensure a satisfactory form of development which protects the water environment.*

## **10. Micro-siting**

All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location shown on plan reference Figure 4.1. Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the site. However, unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and SNH) micro-siting is subject to the following restrictions:

- i. No wind turbine foundation shall be positioned higher, when measured in metres Above Ordnance Datum (Newlyn), than the position shown on the aforementioned Figure 4.1 unless a scheme of details including wirelines showing the alternative positioning of the turbine have been to and agreed in writing by the Planning Authority (in consultation with SNH) and thereafter no development shall take place in strict accordance with the agreed arrangement;
- ii. No micro-siting shall take place within areas of peat of greater depth than the original location;
- iii. No wind turbine, building, mast, access track or hardstanding shall be moved more than 50m from the position shown on the original approved plans;
- iv. No micro-siting shall take place within areas hosting Ground Water Dependent Terrestrial Ecosystems
- v. All micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works (ECoW).

No later than one month after the date of First Commissioning, an updated site plan must be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development. The plan should also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

*Reason: to control environmental impacts while taking account of local ground conditions, and to restrict Micrositing to a reasonable distance to ensure that any movement of turbines or infrastructure does not give rise to significant change to the layout and appearance of the development.*

## **11. Borrow Pits**

There shall be no Commencement of Development unless a site specific scheme for the working and restoration of each borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include;

- i. Topographic surveys of pre-construction profiles; and a detailed working method statement based on site survey information and ground investigations;
- ii. Details of the handling of any overburden (including peat (if present), soil and rock);
- iii. Drainage, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
- iv. A programme of implementation of the works described in the scheme;
- v. A dust management plan; and
- vi. Full details of the reinstatement, restoration and aftercare of the borrow pit(s).

The approved scheme shall thereafter be implemented in full.

Within 3 months of cessation of extraction of each borrow pit, post extraction topographical surveys shall be undertaken of the restored borrow pit profiles, the details of the topographic surveys of pre-construction profiles and the post extraction profiles shall be submitted to the Planning Authority.

*Reason: To ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures*

*contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit(s) at the end of the construction period.*

## **12. Borrow Pits – Blasting**

Blasting shall only take place on the site between the hours of 10.00 to 16.00 on Monday to Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on national public holidays, unless otherwise approved in advance in writing by the Planning Authority.

Ground vibration from blasting shall not exceed a peak particle velocity of 6mm/second at agreed blasting monitoring locations. The measurement shall be the maximum of three mutually perpendicular directions taken at the ground surface.

*Reason: To ensure that blasting activity is carried out within defined timescales to control impact on amenity.*

## **13. Ecological Clerk of Works**

There shall be no Commencement of Development unless the Planning Authority has approved in writing the terms of appointment by the Company of an independent Ecological Clerk of Works (ECoW) in consultation with SNH and SEPA. The terms of appointment shall;

- i. Impose a duty to monitor compliance with the ecological and hydrological measures required, the Construction and Environmental Management Plan (condition 14), the Land Management Plan approved in accordance with condition 22, and the species protection plans in accordance with condition 23, approved by virtue of the conditions attached to this deemed planning permission;
- ii. Require the EcoW to report to the Company's nominated construction project manager and the Planning Authority any incidences of non-compliance with the ecological and hydrological measures listed in the conditions at the earliest practical opportunity;
- iii. Require the ECoW to submit a monthly report to the Planning Authority (summarising works undertaken on site); and
- iv. Require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity.

The EcoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and until the completion of all post construction restoration works.

*Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.*

## **14. Construction and Environmental Management Plan**

There shall be no Commencement of Development unless a Construction and Environmental Management Plan ("CEMP") outlining site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The details of the CEMP shall be submitted to the Planning Authority at least 6 weeks before Commencement of Development.

The CEMP shall include (but shall not be limited to):

- a. a **site waste management plan** (dealing all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
- b. a **construction method statement** for the formation of the construction compounds, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing together with measures to ensure the hydrological connectivity is maintained and that tracks do not become preferential pathways of ground water;
- c. site specific details for management and operation of any **concrete batching plant** (including disposal of pH rich waste water and substances);

- d. details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning (if required) and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- e. a **pollution prevention and control method statement**, including arrangements for the storage and management of oil and fuel on the site;
- f. **soil storage** and management;
- g. a **peat management plan**, to include details of vegetated turf stripping and storage, peat excavation (including volumes), handling, storage and re-use;
- h. a **drainage management strategy** to greenfield rates 5L/s/hectare (whichever is the least), demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources;
- i. a **surface water and groundwater management and treatment plan**, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- j. measures to prevent ground water seeping into excavations, and measures identified to mitigation incursion of ground water in excavation should it occur;
- k. sewage disposal and treatment;
- l. temporary site illumination;
- m. the maintenance of visibility splays on the entrance to the site;
- n. the method of construction of the crane pads;
- o. the method of construction of the turbine foundations;
- p. the method of working cable trenches;
- q. the method of construction and erection of the wind turbines;
- r. details of watercourse crossings;
- s. **post-construction restoration**/ reinstatement of the working areas not required during the operation of the Development, including construction access tracks, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation.

The development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority in consultation with SNH and SEPA.

*Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented.*

## 15. Floating Roads

Floating roads shall be installed in areas where peat depths are in excess of  $\geq 0.5\text{m}$ , unless the use of floating roads where peat depths are in excess of 1m have been agreed in writing with the Planning Authority in consultation with SNH. Prior to the installation of any floating road, the detailed location and cross section of the floating road to be installed shall be submitted to and approved in writing by the Planning Authority. The floating road shall then be implemented in strict accordance with the approved details.

Reason: to ensure peat is not unnecessarily disturbed or destroyed.

## 16. Construction Hours

Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays. Outwith these specified hours, construction activity shall be limited to concrete pours, wind turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the Planning Authority.

HGV movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays.

*Reason: To protect the amenity of the local area and localised ecological interests.*

### **17. Traffic Management Plan (TMP)**

There shall be no Commencement of Development unless a traffic management plan has been submitted to and approved in writing by the Planning Authority. The traffic management plan shall include:

- a. The routing of all traffic associated with the Development on the local road network;
- b. Measures to ensure that the specified routes are adhered to, including monitoring procedures;
- c. Details of all signage, traffic control measures and lining arrangements to be put in place;
- d. Details of removal of any street furniture or infrastructure and the reinstatement;
- e. Provisions for emergency vehicle access;
- f. Identification of a nominated person to whom any road safety issues can be referred; and;
- g. Details of access to the site by abnormal loads/vehicles, including the number and timing of deliveries, an indicative delivery programme, the length, width and axle configuration of all extraordinary traffic accessing the site.

The approved traffic management plan shall thereafter be implemented in full, unless otherwise agreed in advance in writing with the Planning Authority.

*Reason: In the interests of road safety and to ensure that abnormal loads access the site in a safe manner.*

### **18. Road Condition Surveys**

There shall be no Commencement of Development, unless a programme of monitoring the condition of the public roads serving the site before, during and after the construction of the Development has been submitted to and approved in writing by the Planning Authority. Thereafter, any remedial works, as approved by the Planning Authority, or payment of extraordinary maintenance costs incurred by the Planning Authority as a result of the site traffic, are to be carried out or paid within three months of Final Commissioning of the Development.

*Reason: to ensure that any damage to the public road network is rectified.*

### **19. Access Management Plan**

a. There shall be no Commencement of Development until an access management plan shall be submitted to and approved in writing by the Planning Authority in consultation with Scotways and thereafter the development shall be undertaken in strict accordance with the agreed details unless any variation is agreed thereto. The access management plan shall identify all the existing national and local recreational routes within the 'Fallago Rig Wind Farm Site'. The access management plan shall include the following details;

- i. a route for the temporary diversion of Core Path 16 (Right of Way BB107) west of its existing route to follow the inside field boundary and details of its implementation;
- ii. a programme to re-instate Core Path 16 (Right of Way BB107) along its original historic route following the completion of construction works at Turbine 60;
- iii. a signage scheme including way-markers (at 500 metre intervals on CP16) and details of its implementation throughout the proposed development site and existing Fallago Rig Wind Farm Site;
- iv. details which shall be included on interpretation boards to direct and provide information provide information on the historic Muir route; and
- v. a programme for the annual maintenance (including vegetation management) of all recreational routes within the proposed development site and existing Fallago Rig Wind Farm Site;

Access along the routes, other than any alterations to Core Path 16 (Right of Way BB107) agreed in section a. shall not be disturbed or disrupted during construction and decommissioning, unless a detailed plan with respect thereto has been submitted to and approved in writing by the Planning Authority and thereafter implemented in accordance with the terms and timescales within the approved plan. Such a plan shall include:

- i. the identification of any area proposed to be excluded from statutory access rights and the reasons for such exclusion;
- ii. details of the closure or temporary diversion of any identified rights of way at the site and any associated signage;
- iii. details of the measures to ensure safe public access along the identified or diverted paths, tracks and rights of way during the construction and decommissioning phases of the Development; and
- iv. details for the reinstatement and upgrading of the affected routes, including details of way-marking and route interpretation.

Any agreed reinstatement and upgrading of the affected routes shall be carried out within 6 months of the Final Commissioning of the Development.

This condition is without prejudice to the need to obtain any other consent, permission or order in connection with the disturbance or disruption of use of a path or right of way.

*Reason: In the interests of recreational users of the Lammermuirs.*

## **20. Water Quality Monitoring Plan (WQMP)**

There shall be no Commencement of Development unless a Water Quality Monitoring Plan (WQMP) has been submitted to and approved in writing by the Planning Authority, in consultation with Marine Scotland Science, SNH and SEPA.

This plan should be cognisant of the guidelines set out in Marine Scotland's Generic Monitoring Programme for Monitoring Watercourses in relation to Onshore Wind Farm Developments (October 2015).

A minimum of 12 months pre-construction water quality monitoring shall be carried out at locations along the Dye Water and at one or more suitable control sites, to be agreed and set out in the WQMP.

Water quality monitoring and fisheries surveys will thereafter continue through construction and continue for two years from the date of Final Commissioning, the results of which shall be forwarded to the ECoW, and be made available to SNH, MSS and the Planning Authority upon request.

*Reason: To ensure that water quality, fauna and flora are protected during construction.*

## **21. Ecological Monitoring Programme**

There shall be no Commencement of Development unless a plan for the method, frequency and duration of ornithological monitoring over the construction, operational and decommissioning life-span of the 'Development' has been submitted to, and approved in writing by the Planning Authority, in consultation with Marine Scotland Science, SNH and SEPA.

The monitoring shall be carried out in strict accordance with the terms set out in the approved monitoring plan and the results of which shall be forwarded to the ECoW, and be made available to SNH, MSS and the Local Authority upon request.

*Reason: to monitor the watercourses over the operational life-span of the wind farm development and confirm, by monitoring, that no significant effects are occurring to the River Tweed SAC and other fauna and flora in the 'Proposed Development Site'.*

## **22. Land Management Plan (LMP)**

There shall be no Commencement of Development unless a land management plan has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The land management plan shall comprise land identified in the outline land management plan (Figure 1.1 of Appendix 9.F to the Environmental Statement) as Habitat Enhancement Area 4.

The land management plan shall compensate the loss of habitat resulting from the installation of turbines T56, T57 and T60 (Figure 4.1) together with their associated areas of hard standings and tracks; and mitigate the effects of displacement of birds and other ecology as a result of the construction works and the operation of the wind turbines hereby permitted through the implementation of the following objectives:

- i. Objective 1- Improvement to the condition of Blanket Mire Vegetation in Habitat Enhancement Area 4; and
- ii. Objective 2 – Improve habitat in Habitat Enhancement Area 4 to Increase the breeding bird population of golden plover, curlew and other breeding waders

The implementation of the approved land management plan shall commence within 12 months of the Commencement of Development.

The land management plan shall set out provisions for monitoring and review by a steering committee that will have responsibility for overseeing implementation of the land management plan. These reviews shall take place in years following completion of the works in year 1, 3, 5, 10, 15 and 20 or as otherwise agreed with the Planning Authority. Any amendments required following the reviews shall be submitted to the Planning Authority for written approval and then be carried out within 12 months of approval.

Unless otherwise agreed in advance in writing with the Planning Authority, the approved land management plan shall be implemented in full.

*Reason: In the interests of good land management and the protection of habitats.*

### **23. Ecological Protection Plans**

There shall be no Commencement of Development unless supplementary ecological surveys for protected species have been carried out by a suitably qualified person. The surveys shall comprise:

- i. Otter;
- ii. Badger;
- iii. breeding birds;
- iv. reptiles; and
- v. Amphibia
- vi. Bats

The survey results and any mitigation measures required for protected species on site shall be set out in a species mitigation and management plan, which shall inform construction activities. The plan shall be submitted to and approved in writing prior to the Commencement of Development by the Planning Authority, in consultation with SNH, and the approved plan shall then be implemented in full.

*Reasons: to ensure birds, especially breeding birds, are afforded suitable protections from the construction, operations and decommissioning of Fallago Rig 2.*

### **24. Programme of Archaeological Works**

There shall be no Commencement of Development unless a Written Scheme of Investigation (WSI) outlining a programme of archaeological work has been submitted to and approved in writing by the Planning Authority in consultation with the Council Archaeology Service. The terms of the approved WSI shall be observed prior to and during construction of the Development, to include measures to be taken to protect and preserve any features of archaeological interest in situ, the recording and recovery of archaeological features which cannot be so preserved and the reporting of results of the programme, including any subsequent investigations deemed necessary by the Planning Authority, to the Planning Authority for approval. The approved scheme of archaeological works shall thereafter be implemented in full.

*Reason: To ensure the protection or recording of archaeological features on the site.*

### **25. Peat Landslide Management**

There shall be no Commencement of the Development until a detailed peat landslide risk assessment, addressing the construction phase of the development and post-construction monitoring, has been approved in writing by the Planning Authority.

The peat landslide risk assessment shall comply with best practice contained in "Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments" published by the Scottish Government in January 2007, or such replacement standard as may be in place at the time of submission of the peat landslide risk assessment for approval. The peat landslide risk assessment shall include a scaled plan and details of any mitigation measures to be put in place.

Prior to Commencement of Development, the Company shall appoint and pay for an independent and suitably qualified geotechnical engineer acceptable to the Planning Authority, the terms of whose appointment (including specification of duties and duration of appointment) shall be approved by the Planning Authority.

The Company shall undertake continuous monitoring of ground conditions during the construction of the Development. Continuous analysis and call out services shall be provided by the geotechnical engineer throughout the construction phase of the Development. If a risk of peat failure is identified, the Company shall install such geotechnical instrumentation to monitor ground conditions as is recommended by the geotechnical engineer and shall monitor ground conditions. Any remediation work considered necessary by the geotechnical engineer shall be implemented by the Company to the satisfaction of the geotechnical engineer. Monitoring results shall be fed into risk analysis reports to be submitted to the Planning Authority on a quarterly basis during the construction of the Development.

*Reason: To minimise the risk of peat failure arising from the Development.*

## **26. Noise**

The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (Appendix 3), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables (within Appendix 3) at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

- a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Planning Authority on its request, within 14 days of receipt in writing of such a request.
- b) No electricity shall be exported until the wind farm operator has submitted to the Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.
- c) Within 21 days from receipt of a written request from the Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.
- d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The

proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Planning Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

e) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Planning Authority for the complainant's dwelling.

f) The wind farm operator shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

g) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the Planning Authority.

## **27. Television Reception**

There shall be no Commencement of Development unless a Television Reception Mitigation Plan has been submitted to, and approved in writing by the Planning Authority. The Television Reception Mitigation Plan shall provide for a baseline television reception survey to be carried out prior to the installation of any wind turbine forming part of the Development, the results of which shall be submitted to the Planning Authority.

The approved Television Reception Mitigation Plan shall thereafter be implemented in full.

Any claim by any individual person regarding television picture loss or interference at their house, business premises or other building, made during the period from installation of any turbine forming part of the Development to the date falling twelve months after the date of Final Commissioning, shall be investigated by a qualified engineer appointed by the Company and the results shall be submitted to the Planning Authority. Should any impairment to the television signal be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline television reception.

*Reason: To ensure local television services are sustained during the construction and operation of this development.*

## **28. Redundant turbines**

If one or more turbine fails to generate electricity for a continuous period of 12 months, then unless otherwise agreed in writing by the Planning Authority, the Company shall;

- a) by no later than the date of expiration of the 12 month period, submit a scheme to the Planning Authority setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored; and
- b) implement the approved scheme within six months of the date of its approval.



*Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection.*

## **29. Aviation Safety**

There shall be no Commencement of Development until the Company has provided the Planning Authority, Ministry of Defence, Defence Geographic Centre and NATS with the following information, and has provided evidence to the Planning Authority of having done so;

- the date of the expected commencement of each stage of construction;
- the height above ground level of the tallest structure forming part of the Development;
- the maximum extension height of any construction equipment; and
- the position of the turbines and masts in latitude and longitude.

*Reason: In the interests of aviation safety.*

## **30. Aviation Lighting**

Prior to the erection of the first wind turbine, the Company shall submit a scheme for aviation lighting for the wind farm to the Planning Authority for written approval. The scheme shall include details of infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety, unless otherwise agreed in advance and in writing by the Planning Authority.

No turbines shall be erected on site until the scheme has been approved in writing. The Development shall thereafter be operated fully in accordance with the approved scheme.

*Reason: To protect aviation safety.*

## **31. Site Decommissioning, Restoration and Aftercare**

i. The Development will cease to generate electricity by no later than the date falling twenty five years from the date of Final Commissioning. The total period for decommissioning and restoration of the Development Site in accordance with this condition shall not exceed three years from the date of cessation of electricity generation from the Development.

ii. Within 5 years prior to the expiration of this consent a detailed decommissioning, restoration and aftercare plan, shall be submitted to the Planning Authority for written approval in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan will provide detailed proposals for the removal of the Development, the treatment of ground surfaces (including consideration of the removal of access tracks should they no longer be required), the management and timing of the works and environment management provisions which shall include:

- a. a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
- b. details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- c. a dust management plan;
- d. details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- e. a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- f. soil storage and management;
- g. a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h. sewage disposal and treatment;

- i. temporary site illumination;
  - j. the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
  - k. a programme of monitoring the condition of the public roads serving the site before, during and after the decommissioning of the Development, together with measures to carry out any remedial works, as approved by the planning authority, or payment of extraordinary maintenance costs incurred by the council as a result of the site traffic. The works shall be carried out or paid within three months of Final Decommissioning of the Development.
  - l. details of watercourse crossings;
  - m. a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.
- iii. 6 months prior to the commencement of decommissioning of the Development, the approved detailed decommissioning, restoration and aftercare plan shall be reviewed by the Company and the Planning Authority, in consultation with SEPA and SNH. Any changes to the plan as required by the Planning Authority, SEPA or SNH shall be made by the Company and shall be submitted in writing for approval by the Planning Authority, in consultation with SEPA and SNH. The approved plan shall then be implemented in full.
- iv. 6 months prior to the commencement of decommissioning of the Development, details of the appointment of an Ecological Clerk of Works shall be submitted to and approved in writing by the Planning Authority (in consultation with SNH and the SEPA). The decommissioning ECoW shall oversee the implementation of the detailed decommissioning, restoration and aftercare plan.
- v. The Development Site shall be decommissioned, restored and aftercare thereafter undertaken in accordance with the approved plan, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA.

*Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

### **32. Site Decommissioning, Restoration and Aftercare**

- i. The Development will cease to generate electricity by no later than the date falling twenty five years from the date of Final Commissioning. The total period for decommissioning and restoration of the Development Site in accordance with this condition shall not exceed three years from the date of cessation of electricity generation from the Development.
- ii. Within 5 years prior to the expiration of this consent a detailed decommissioning, restoration and aftercare plan, shall be submitted to the Planning Authority for written approval in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan will provide detailed proposals for the removal of the Development, the treatment of ground surfaces (including consideration of the removal of access tracks should they no longer be required), the management and timing of the works and environment management provisions which shall include:
  - a. a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
  - b. details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
  - c. a dust management plan;
  - d. details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
  - e. a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
  - f. soil storage and management;

- g. a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h. sewage disposal and treatment;
- i. temporary site illumination;
- j. the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- k. a programme of monitoring the condition of the public roads serving the site before, during and after the decommissioning of the Development, together with measures to carry out any remedial works, as approved by the planning authority, or payment of extraordinary maintenance costs incurred by the council as a result of the site traffic. The works shall be carried out or paid within three months of Final Decommissioning of the Development.
- l. details of watercourse crossings;
- m. a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.

Points a – m noted above are not exclusive and the decommissioning and restoration plan should cover all development and aftercare undertakings which are deemed to be required by the Planning Authority to suitably address the physical impact of the development upon the site.

iii. 6 months prior to the commencement of decommissioning of the Development, the approved detailed decommissioning, restoration and aftercare plan shall be reviewed by the Company and the Planning Authority, in consultation with SEPA and SNH. Any changes to the plan as required by the Planning Authority, SEPA or SNH shall be made by the Company and shall be submitted in writing for approval by the Planning Authority, in consultation with SEPA and SNH. The approved plan shall then be implemented in full.

iv. 6 months prior to the commencement of decommissioning of the Development, details of the appointment of an Ecological Clerk of Works shall be submitted to and approved in writing by the Planning Authority (in consultation with SNH and the SEPA). The decommissioning ECoW shall oversee the implementation of the detailed decommissioning, restoration and aftercare plan.

v. The Development Site shall be decommissioned, restored and aftercare thereafter undertaken in accordance with the approved plan, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA.

Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

*Reason: To ensure the decommissioning and removal of the Development concurrently with Fallago Rig 1 in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.*

### **33. Financial Guarantee**

There shall be no Commencement of Development unless the Company has delivered a bond or other form of financial guarantee in terms acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations contained in condition 32 to the Planning Authority. The financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations.

The value of the financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations contained in condition 32. The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.

*Reason; to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.*

## **Appendix 1 – Drawing Numbers**

Figure 1.1	Site Context
Figure 1.2	Site Boundary
Figure 3.1	Site Layout and Constraints
Figure 3.2	Design Iterations
Figure 4.1	Site Layout
Figure 4.2	Indicative Turbine
Figure 4.3	Typical Road Types
Figure 4.4	Typical Culvert
Figure 4.5	Typical Bridge / Culvert
Figure 4.6	Turbine Foundation
Figure 4.7	Crane pad hardstanding
Figure 4.8	Substation
Figure 4.9	Cable Trench
Figure 4.10	Indicative Construction Compound
Figure 4.11	Indicative Batching Plant
Figure 4.12	Indicative Construction Programme
Figure 4.13a	Borrow Pit A
Figure 4.13b	Borrow Pit B
Figure 8.1	Designated Assets and ZTV to Blade Tip
Figure 8.2	Non Designated Heritage Assets
Figure 9.1	Ecological Designated Sites
Figure 9.2	NVC Survey Map
Figure 10.1	Location of Extension and Designated Ornithological Sites
Figure 11.1	Hydrological Features
Figure 11.3	Hydrological Constraints
Figure 12.1	Noise Monitoring Locations
Figure 13.1	Construction traffic route
Figure 16.1	Infrastructure locations

## **Appendix 2 - Definitions:**

'Final Commissioning' Means the earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling eighteen months from the date of First Commissioning.

'First Commissioning' Means the date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development.

'Commencement of Development' Means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

The 'Development' (Fallago Rig 2 wind farm) is defined as 12 turbines, each to a height of up to 126.5m to blade tip and an installed capacity 3.45MW, and their supporting infrastructure comprising access tracks, crane hard standings, a transfer and control building (and electricity sub-station if required), two borrow pits and two temporary construction compounds authorised by this consent and deemed planning permission.

For the purposes of the conditions, "the company" means EDF Energy Renewables Limited Registered number: 06456689. Registered office: 40 Grosvenor Place, London, SW1X 7EN , and its permitted assignees who are in possession of a letter of authorisation from the Scottish Ministers in accordance with condition 3.

'Fallago Rig Wind Farm Site' comprises Fallago Rig 1 and Fallago Rig 2 Wind Farms. And is defined as the site area set out in Figure 1.1 of the Environmental Statement.

## Appendix 3

### Guidance Notes for Noise Conditions

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farms” (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

#### Guidance Note 1

(a) Values of the LA90,10 minute noise statistic should be measured at the complainant’s property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS

4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant’s dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, such as direct measurement at a height of 10 metres, this wind speed, averaged across all operating wind turbines, and corrected to be representative of wind speeds measured at a height of 10m, shall be used as the basis for the analysis. It is this 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

#### Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound

level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the Local Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10 minute noise measurements and corresponding values of the 10- minute 10- metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the 10- metre height mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

### Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

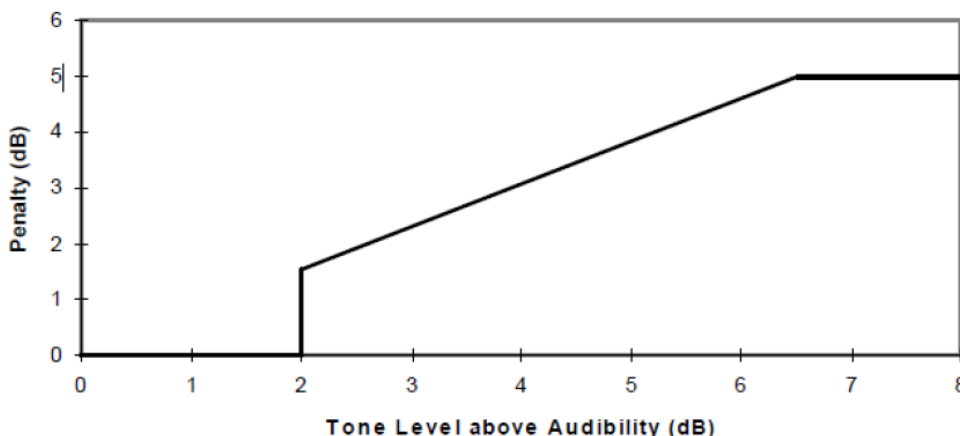
(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.

(e) A least squares “best fit” linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



#### Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e). Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise ( $L_3$ ) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The wind farm noise ( $L_1$ ) at this speed shall then be calculated as follows where  $L_2$  is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise  $L_1$  at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.



**Table 1 – Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10 minute as a function of the measured wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.**

Location	Measured wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
West Hopes	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0
Fasney Cottage	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0
Killpallet	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0
Byrecleugh	33.4	33.4	33.4	33.5	33.7	33.9	34.2	34.4	34.7	35.0	35.4	35.7

**Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB LA90,10-minute as a function of the measured wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.**

Location	Measured wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
West Hopes	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.7	34.4	34.9
Fasney Cottage	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0
Killpallet	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0	33.0
Byrecleugh	33.0	33.0	33.0	33.0	33.0	33.9	35.3	36.7	38.0	39.3	40.6	41.8

**Table 3: Coordinate locations of the properties listed in Tables 1 and 2.**

Property	Easting	Northing
West Hopes	355757	662730
Fasney Cottage	360968	663362
Killpallet	362880	660551
Byrecleugh	362821	658010

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**3 OCTOBER 2016**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 16/00043/FUL & 16/00058/LBC
<b>OFFICER:</b>	Julie Hayward
<b>WARD:</b>	Hawick and Hermitage
<b>PROPOSAL:</b>	Change of use from function hall and internal and external alterations to form 2 residential flats
<b>SITE:</b>	Orrock Hall Orrock Place Hawick
<b>APPLICANT:</b>	D & R Murray Ltd
<b>AGENT:</b>	Aitken Turnbull Architects Ltd

**SITE DESCRIPTION**

The building is situated on the western side of Sandbed within the Hawick Conservation Area. It is a category C Listed Building dating back to 1874. The building is a two storey (with a basement), square-plan, gabled, gothic former church with an advanced central asymmetrical gabled entrance and offset tower to the principal (east) elevation. It is constructed of coursed bull-faced sandstone with polished ashlar dressing and has irregular fenestration of predominantly pointed arch windows, small rose windows to the gable apexes, a pointed-arched hood-moulded entrance doorway with a two-light tracery windows and paired round-arched louvered belfry openings to the tower. The 6-bay gabled elevation to the north rising from the riverbed has segmental-arched windows at basement level and tall pointed-arched windows above. Window layouts were altered to form the upper flat and a doorway added to the right of the entrance leading to the upper flat. There is fixed glazing to the principal windows and timber sash and case windows elsewhere. The building has a slate roof.

The building is in a prominent position, corner-sited with the north elevation to the River Teviot and the main elevation joined to the parapet wall of the Albert Bridge. The Commonhaugh car park is to the north beyond the river and the Royal Mail sorting office is to the rear. The adjoining building to the south is an antique shop and Sonia's Bistro, Bridgehouse Guest House and Sergio's Restaurant are on the opposite side of the A7.

The property was last used as a café at basement level and a function room at ground floor level and there is a flat at first floor level. The café has now closed.

**PROPOSED DEVELOPMENT**

The proposal is to convert the ground floor into two flats. These would have two bedrooms, a living room/dining area, kitchen and bathroom. The flats would utilise the existing entrance from Sandbed. Internally, existing partitions would be removed and new partitions erected. There would be no external alterations to the front elevation. The existing window openings in the north, south and west elevations

would be fitted with fixed light glazing above ceiling height with gun metal grey solar reflective glass. Two new windows would be inserted into the west elevation. The existing steps would be removed from the door in the south elevation and a Juliet balcony would be installed of black powder coated aluminium.

The new and replacement windows would be grey metal composite double glazed, fully reversible windows.

## **PLANNING HISTORY**

90/00844/FULLBC: Formation of new access to flat. Approved 21<sup>st</sup> September 1990.

91/00758/FUL: Change of use from flat to office. Approved 11<sup>th</sup> September 1991.

## **REPRESENTATION SUMMARY**

There are no representations.

## **APPLICANTS' SUPPORTING INFORMATION**

- Flood Risk Assessment November 2015

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Hawick Flood Protection Scheme:** No response.

**Roads Planning Service:** The main road serving this property is a trunk road and, as such, the comments of Transport Scotland should be sought.

The property is adjacent to Orrock Place, which is a Council maintained road and, whilst there is no dedicated parking proposed for the development, this is the regeneration of an existing town centre building. In such circumstances I generally look more favourably on change of uses, particularly when considering the traffic generated by recent uses of the property. There is some on-street parking available in Orrock Place and the Common Haugh car park is within easy walking distance of the property. The close proximity to services and public transport routes means that residential use in this location stacks up well from a sustainable transport point of view. All matters considered I am able to offer my support for this proposal.

**Director of Education and Lifelong Learning:** This proposed development is located within the catchment area for Drumlanrig Primary School and Hawick High School. There are no contributions sought for this application.

**Flood Protection Officer:** The Indicative River, Surface Water & Coastal Hazard Map (Scotland) known as the "third generation flood mapping" prepared by SEPA indicates that the site is at risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any one year.

I would state that the models created by Halcrow for the Hawick Flood Protection Scheme are being taken as the indicator of flood level by SBC for this site, as there are large differences in the 1 in 200 year flood levels between this study and the Flood Risk Assessment (Flood Risk Assessment) undertaken by Terrenus.

Therefore, I would state that the 1 in 200 year flood level at this site is being taken as 103.27mAOD. Any residential development would have to be at this level plus 600mm freeboard, so 103.87mAOD at least.

I would be content that if the commercial use of the café on the lower ground floor is being kept the same and the only alterations are to make alterations to a residential property on the ground floor, where the floor level is above this 1 in 200 + freeboard level then I would not object to this alteration in terms of flood risk.

However, within the models which SBC has, the road outside the property is anticipated to flood to around 1.00 – 1.50m. In December 2015/January 2016 the Commonhaugh car park, Albert Road and Victoria Road were flooded on several occasions. Therefore, there would be no safe access and egress in and out of the site during flood events.

Unless the applicant can show that safe access and egress could be provided during periods of flood risk, I would object to this proposal on the grounds of flood risk.

**Re-consultation:** Having assessed the Flood Risk Information submitted by Terrenus, I would still support the information provided by Halcrow (now CH2M) which was undertaken by for the Hawick Flood Protection Scheme.

This said, I would agree that the final floor levels of the ground floor are above 103.87mAOD and would have no objections on these grounds.

However, I do not feel that the information has suitably shown that that safe access and egress could be provided at this site as the route suggested seems to be inundated to 0.66m of water at a 1 in 200 year plus climate change event. If the applicant can suitably show that that an access/egress route, that will be inundated to less than 0.3m during a 1 in 200 year plus climate change event, can be provided then this objection would be removed (0.3m is the maximum level in which emergency vehicles are safe to travel through).

It should be noted that the Hawick Flood Protection Scheme cannot yet be considered within this application as the estimated completion date is 2021/2022 and this will only protect to a 1 in 75 year flood event.

**Principal Officer (Heritage and Design):** The halls were originally built in 1874 as the UP Church and in 1951 the former church was converted to halls. The building was added to the statutory list in 1977 at category C. The main floor has been used as a shop since c1990 with a basement café and a flat at the upper floor.

The proposals are to convert the former retail unit, which occupied the main floor level, into two flats. No Design Statement has been submitted in support of the proposals.

I am content with the principle of the conversion; the interior appears to have been changed to insert the shop and flat on the upper level since it was originally used as a church and halls. The exterior is more of an architectural townscape feature lying in a prominent position next to the River Teviot. There have been some minor external changes to the exterior in the past.

Externally, changes are proposed to insert new and replacement windows in grey metal, double glazed with solar reflective glass film on the upper parts above ceiling

level. In addition it is proposed to add a small Juliet balcony to an existing opening, to which I have no objections.

Overall, I am content with the principle which should provide a sustainable use for this building. There are some detailed issues that we may need to consider if we are minded to approve the scheme.

### **Statutory Consultees**

**SEPA:** We object in principle to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy.

In October last year SEPA advised the applicants, in pre-planning consultation, that the increase in vulnerability of this site through redevelopment from halls to residential use would result in an objection in principle due to the significant flood risk at this site. There have been a number of significant flood events in Hawick with evidence to show that the area at Orrock Halls has been impacted. There have also been a number of detailed flood studies carried out on behalf of Scottish Borders Council in order to inform flood prevention measures in Hawick, showing that the site is at significant flood risk.

A Flood Risk Assessment (FRA) has now been provided in support of the application. However, the findings of this study are significantly different from those within the Halcrow (now CH2MHill) reports carried out for SBC. The information recorded following flooding in October 2005 and December 2015 also indicate the findings of the FRA are inaccurate.

The results of the hydraulic modelling indicate that flood levels at the site, which is immediately upstream of the Albert Bridge, are between 101.9mAOD and 102.1mAOD during the 0.5% AP event. The Halcrow study has a predicted flood level upstream of the Albert Bridge of approximately 103.27mAOD. The FRA indicates that the floor level of the lower ground floor is around 101.9mAOD and as such is not impacted during less extreme flood events. However, the information we hold shows that the site has been impacted by flooding during events of higher frequency than this. The report also indicates that the flood depths on the opposite bank at the Common Haugh are not so great that they would prevent access/egress to the north. However, survey information from the October 2005 event showed that flood water got to a depth of 0.65m on Victoria Road opposite the site.

Given the significant flood risk to the site we object in principle to this development. The evidence to demonstrate the risk exists through studies already carried out and also information from past flood events. Although the proposals are for redevelopment of an existing building it will lead to an increase in vulnerability and any residents would require to be evacuated and, due to the depth and velocity of flooding, this could pose a risk to life.

**Re-consultation:** We maintain our objection in principle to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy.

Given the location of the proposed development within the functional floodplain and that it involves a change of use to residential accommodation, which is considered more vulnerable than the existing use, we do not consider that it meets with the requirements of Scottish Planning Policy and our position is unlikely to change. The cornerstone of sustainable flood risk management is the avoidance of flood risk in the

first instance. We recommend that alternative, less vulnerable (non-residential) uses are considered for this building.

Further information has now been provided by Terrenus but this does not accord with flooding witnessed in Hawick in previous flood events and we would dispute that this model is a more accurate representation than the Halcrow model.

Although we acknowledge that the floor levels for the proposed residential accommodation were to be above the predicted 200-year flood level, we were not satisfied that safe access/egress during a flood event could be provided. This was further demonstrated in the flooding in December 2015 and January 2016 where Commonhaugh car park, Albert Road and Victoria Road were flooded on several occasions. The information from Terrenus indicates that access/egress can be provided to the south of the River Teviot. However, this is based on the completion of the Hawick Flood Protection Scheme (FPS) and the use of the lower predicted flood levels calculated within the FRA carried out by Terrenus: we disagree with the findings of this, based on historic information. The Sandbed area is known to flood frequently severely compromising access/egress to the south. The FPS has not yet secured funding and is to be designed to a 1.33% annual probability (1 in 75-year) standard of protection which is below the requirements for land use planning.

The letter from Terrenus also recommends that the existing flood wall adjacent to the site is raised to the 200-year flood level as predicted by the Halcrow model. We do not consider any flood prevention works carried out as part of a private development to be a formal flood defence and as such would not take this in consideration of our determination of the site should this be carried out.

**Transport Scotland:** No objections subject to a condition on parking being attached to the planning permission.

**Hawick Community Council:** No response.

#### **Other Consultees**

**Architectural Heritage Society of Scotland:** No response.

#### **DEVELOPMENT PLAN POLICIES:**

##### **SES Plan Strategic Development Plan 2013**

Policy 1B: The Spatial Strategy: Development Principles  
Policy 15: Water and Flooding

Local Development Plan 2016

PMD2: Quality Standards  
PMD5: Infill development  
ED3: Town Centres and Shopping Development  
HD3: Protection of Residential Amenity  
EP7: Listed Buildings  
EP9: Conservation Areas  
IS2: Developer Contributions  
IS7: Parking Provision and Standards  
IS8: Flooding

## **OTHER PLANNING CONSIDERATIONS:**

Scottish Planning Policy

Supplementary Planning Guidance:

Placemaking and Design January 2010

Developer Contributions April 2015

Guidance on Householder Developments July 2006

Replacement Windows and Doors October 2015

## **KEY PLANNING ISSUES:**

- Impact of the proposal on the character and appearance of the Listed Building and Conservation Area;
- Whether the proposal would affect the residential amenities of occupants of neighbouring properties;
- Whether the site is at risk of flooding.

## **ASSESSMENT OF APPLICATION:**

### **Planning Policy**

The site is within the development boundary for Hawick and so must be assessed against policy PMD5 of the Scottish Borders Council Local Development Plan 2016. This states that within development boundaries development on non-allocated, infill or windfall sites, including the re-use of buildings, will be approved if certain criteria are met. These criteria will be assessed within this report.

One criterion is that the proposal should not conflict with the established land use of the area. This is a mixed use area with shops, restaurants, residential and guest houses use. The upper floor of the building is already in residential use.

Policy ED3 states that the Council will seek to develop and enhance the role of town centres and allows a wide range of uses appropriate to a town centre. Proposals will generally be approved provided that the character, vitality, viability and mixed use nature of the town centre will be maintained and enhanced. The ground floor of this building is currently vacant as the café has closed. It is considered that residential use of the ground floor of this building would be in keeping with the mixed use character of the area and is a use appropriate for this town centre location.

### **Design and Impact on the Listed Building and Conservation Area**

Policy PMD2 requires all development to be of high quality in accordance with sustainability principles, designed to fit in with Borders townscapes and to integrate with its landscape surroundings. The policy contains a number of standards that would apply to all development. Policy PMD5 requires that the development respects the scale, form, design, materials and density of its surroundings; the individual and cumulative effects of the development should not lead to over-development or town cramming; the proposal should not detract from the character and amenity of the surrounding area.



Policy EP7 states that the Council will support development proposals that conserve, protect and enhance the character, integrity and setting of Listed Buildings. Policy EP9 states that the Council will support development proposals within or adjacent to Conservation Areas which are located and designed to preserve and enhance the special architectural or historic character and appearance of the Conservation Area, respecting the scale, proportions, alignment, density, materials and boundary treatments of nearby buildings and open spaces.

The Council's Supplementary Planning Guidance: Replacement Windows and Doors October 2015 states that the introduction of double glazing may be acceptable in replacement windows in category C Listed Buildings. In specific and justified circumstances it may be acceptable for replacement in UPVC. The replacement unit should have the same glazing pattern and method of opening.

The building has been altered internally since it was originally used as a church and halls, with the formation of the café and shop and flat at first floor level. The proposed work is mainly to the interior and involves the removal of existing partitions and the erection of new partitions, together with new suspended ceilings. The partitions have been designed to conceal the original cast iron columns which are to be located in cupboards.

The exterior is more of an architectural townscape feature located in a prominent position next to the River Teviot. There have been some minor external changes to the exterior in the past. Externally, new and replacement windows would be inserted, which would be double glazed and have grey metal frames, with solar reflective glass film on the upper parts above ceiling level. A small Juliet balcony would be added to an existing opening.

The external alterations are minor in nature and in keeping with the external appearance of the building. The proposal would bring a vacant section of this Listed Building back into use and this would benefit the building and the Conservation Area. It is considered that the proposal would not harm the character of appearance of the Conservation Area or the visual amenities of the area.

Conditions would control the details of the new and replacement windows and secure a historic building recording report. The proposal would not harm the architectural qualities or features of the Listed Building.

It is considered that an adequate residential environment can be created for future occupants of the proposed dwellinghouse and the proposal would not constitute an over-development of the site.

## **Flooding**

One of the policy principles contained within Scottish Planning Policy 2014 (SPP) is flood avoidance by safeguarding flood storage and conveying capacity and locating development away from functional flood plains and medium to high risk areas. To achieve this, the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.

SPP advises that Local Development Plans should use a flood risk framework to guide development. Medium to High Risk (where the annual probability of coastal or watercourse flooding is greater than 0.5% or 1:200 years) may be suitable for

residential development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction or are a planned measure in a current flood risk management plan. Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water-resistant materials and construction should be used where appropriate and Flood Risk Assessments (FRA) required for development in the medium to high category of flood risk.

In applying the risk framework Planning Authorities should take into account the proposed use of the site, depth of flood water, flow rate and path, loss of storage capacity, effects of floods on access, including by emergency services, and existing flood protection methods.

Policy 15 of the SESplan states that Local Development Plans should avoid any new development in areas at medium to high flood risk. Policy IS8 of the Local Development Plan advises that as a general principle, new development should be located in areas free from significant flood risk and developments will not be permitted if it would be at significant risk of flooding or would materially increase the probability of flooding elsewhere. The ability of flood plains to convey and store flood water should be protected.

This site is at flood risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any year (a medium to high risk).

The applicant's Flood Risk Assessment concludes that the ground floor of the building is suitable for residential development as the finished floor level would be 104.39mOD, above the peak flooding levels of 101.9 and 102.1mAOD and the redevelopment would not result in the loss of flood plain storage and so would have a neutral effect on neighbours. Safe access and egress is possible via Albert Bridge, Albert Road and Victoria Road.

SEPA objected to the proposal on flood risk grounds. They questioned the findings of the applicant's Flood Risk Assessment and advise that the Halcrow study carried out for the Council has a predicted flood level upstream of the Albert Bridge of approximately 103.27mAOD. Survey information from the October 2005 event showed that flood water to a depth of 0.65m on Victoria Road opposite the site. Although the proposals are for redevelopment of an existing building it will lead to an increase in vulnerability and any residents would require to be evacuated and, due to the depth and velocity of flooding, this could pose a risk to life.

The Council's Flood Protection Officer advised that the 1 in 200 year flood level at this site is 103.27mAOD. Any residential development would have to be at this level plus a 600mm freeboard, therefore 103.87mAOD. The road outside the property is anticipated to flood to around 1.00 – 1.50m and in December 2015/January 2016 the Commonhaugh car park, Albert Road and Victoria Road were flooded on several occasions. Therefore, there would be no safe access and egress in and out of the site during flood events.

Following these consultation responses further information from the applicant's flood consultant was submitted. This confirmed that the finished floor level of the flats would be 104.0mAOD and so above the flood level of 103.87mAOD. The report recommends an increase in the height of the wall between the site and the sorting office and between Albert Road and the bridge to 103.27mAOD.

SEPA was consulted on this information and maintain their objection. The site is located within the functional floodplain and the proposal involves a change of use to a more vulnerable use. SEPA acknowledges that the floor levels for the proposed residential accommodation would be above the predicted 200-year flood level, but are not satisfied that safe access/egress during a flood event could be provided. They again question the data used and the reliance on the future flood protection scheme. Sandbed area is known to flood frequently severely compromising access/egress to the south. The Flood Protection Scheme has not yet secured funding and is to be designed to a 1.33% annual probability (1 in 75-year) standard of protection which is below the requirements for land use planning.

In addition, SEPA do not consider any flood prevention works carried out as part of a private development to be a formal flood defence.

The Council's Flood Protection Officer acknowledged that the finished floor levels are above the 103.87mAOD flood level and has no objections on these grounds. However, he also believes that the information submitted has not suitably shown that that safe access and egress could be provided at this site as the route suggested seems to be inundated to 0.66m of water at a 1 in 200 year plus climate change event (0.3m is the maximum level in which emergency vehicles are safe to travel through).

The agent has submitted details for the proposed evacuation of the building should the area flood. He suggests installing an electronic early warning system to the external walls of the building, which would trigger when river levels/flood water rise to 101.85mAOD; this system would be linked to text/e-mail alerts and to internal alarms/sensors. In addition, all tenants and the landlord would be linked by phone to the SEPA Floodline warning system to ensure early warning in the event of a flood. An evacuation plan would be prepared and issued to all tenants outlining the procedure and a safe meeting point above the flood level.

The information provided indicates that the two flats would not be at risk of flooding and the development would not increase the risk of flooding elsewhere as there is no loss of the functional flood plain. However, access and egress would be potentially difficult during a 1 in 200 year flood event.

This makes this a very difficult application: The property is a Listed Building and the ground floor has been vacant for some time. Given the current economic climate, the chances of the building being re-used for any commercial use are low. The use of the building for residential purposes, whilst increasing its sensitivity, appears to be the only realistic future use of the property. There is a flat at first floor level and other flats within the surrounding area where access and egress would also be problematic.

The reality is that much of the centre of Hawick is at risk from flooding. That risk should not be underestimated, but the implications of that risk for development in the town centre must also be put into context. The Council has granted planning permission for other buildings in Hawick for a change of use to residential with an objection from SEPA in place, such as 4 and 5 Teviot Crescent, 30 Commercial Road and the former fire station in Old Manse Lane.

To refuse this application raises the prospect of blighting a prominent listed building and it is very likely that the ground floor would remain vacant for the foreseeable future, possibly falling into a state of disrepair. Moreover, such a decision would set a precedent which may limit the scope for the use of land and buildings Hawick town

centre. Against that background, and acknowledging that the proposed flats would not themselves be at risk, the more pragmatic response would be to consider the most appropriate mitigation to address the issue of access and egress.

Taking all these issues into account, it is therefore recommended that the planning application be approved with the objection from SEPA in place. If Members are minded to approve the application, it would have to be referred to Scottish Ministers.

### **Impact on Residential Amenities**

Policy PMD5 states that the development should not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing or overlooking. Policy HD3 states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted. Advice on light and privacy is contained within the Supplementary Planning Guidance: Guidance on Householder Developments July 2006.

The only residential property in close proximity to the site is the flat above. The proposal would not harm the residential amenities of occupiers of this property in terms of privacy and light. The change from function hall to residential may even improve the situation for the existing residents by removing a potentially noisy use.

### **Access and Parking**

Policy PMD5 requires that adequate access and servicing can be achieved. Policy IS7 requires that car parking should be provided in accordance with the Council's adopted standards.

No on-site parking is proposed but the Commonhaugh car park is to the north across the bridge and there is some on-street parking available in Orrock Place.

The Roads Planning Service has no objections as the proposal is for the regeneration of an existing town centre building. In such circumstances they look more favourably on change of uses, particularly when considering the traffic generated by recent uses of the property. The close proximity to services and public transport routes means that residential use in this location stacks up well from a sustainable transport point of view.

Transport Scotland has no objections subject to a condition no part of the development shall commence until such time as the developer can provide written confirmation that Scottish Borders Council Roads Planning Service is satisfied that adequate parking provision is available nearby commensurate with the adopted current residential parking standards. The Roads Planning Service has confirmed this in their consultation response and so the condition requested by Transport Scotland is deemed unnecessary.

### **Developer Contributions**

Policy IS2 states that where a site is acceptable but cannot proceed due to deficiencies in infrastructure or due to environmental impacts the Council will require developers to make contributions towards the cost of addressing such deficiencies.

No financial contributions are required towards education facilities but a contribution of £4,250 is required towards affordable housing and this would be secured through a legal agreement.

## CONCLUSION

The proposed development is considered acceptable and in compliance with policies PMD1, PMD2, EP7, EP9 and HD3 of the Scottish Borders Council Local Development Plan 2016. The proposal would not negatively impact upon the character of the Listed Building, character or appearance of the Conservation Area, residential amenities or the visual amenities of the area and would bring a vacant section of this Listed Building back into use.

It is accepted that although this part of the building is not at risk of flooding, the applicant has failed to adequately demonstrate that safe egress and access is possible during a flood event and there is no flood prevention scheme in place in Hawick at the moment. It is unlikely that the proposed building would be used for any community or commercial use, given the current economic climate in Hawick. To refuse this application would mean that this section of the building is blighted and remains vacant for the foreseeable future, to the detriment of the area and the Listed Building, and so it is recommended that the application be approved subject to the mitigation measures submitted by the agent.

## RECOMMENDATION BY RECOMMENDATION BY CHIEF PLANNING OFFICER:

In respect of planning application 16/00043/FUL I recommend the application is approved subject to the approval of the Scottish Ministers, a legal agreement addressing a contribution towards affordable housing and the following conditions:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. Notwithstanding the details indicated on the approved drawings, samples of the proposed new and replacement windows or details of the material, method of opening, glazing pattern, reflective glass and thickness and colour of the frames and astragals of all new and replacement windows to be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved details.  
Reason: To protect and enhance the character and appearance of the Listed Building and Conservation Area.
3. The flood mitigation measures contained within the agent's e-mail dated 26<sup>th</sup> August 2016 to be implemented as part of the development and following occupation of the flats.  
Reason: To provide safe access and egress in the event that the surrounding area floods.

In respect of Listed Building Consent application 16/00058/LBC I recommend the application is approved subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 16 of the Town and Country Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details.

3. A programme of Historic Building Photography to be carried out before and during the works hereby approved. Photos should be clearly numbered and plans of the building annotated to reflect where photos were taken. Results to be submitted to the Planning Authority as a single pdf file in the form of a Historic Building Recording Report upon completion of the development and prior to occupation of the flats.

Reason: To preserve by record a building of historical interest.

4. Notwithstanding the details indicated on the approved drawings, samples of the proposed new and replacement windows or details of the material, method of opening, glazing pattern, reflective glass and thickness and colour of the frames and astragals of all new and replacement windows to be submitted to and approved in writing by the Planning Authority before the development commences. The development then to be completed in accordance with the approved details.

Reason: To protect and enhance the character and appearance of the Listed Building and Conservation Area.

#### DRAWING NUMBERS

LOC-01	Location Plan
EXIST-01	Plans, Elevation and Sections as Existing
PP-01	Plans and Elevations as Proposed
PP-02	Suspended Ceiling Plan and Sections as proposed

#### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Chief Planning Officer and the signed copy has been retained by the Council.

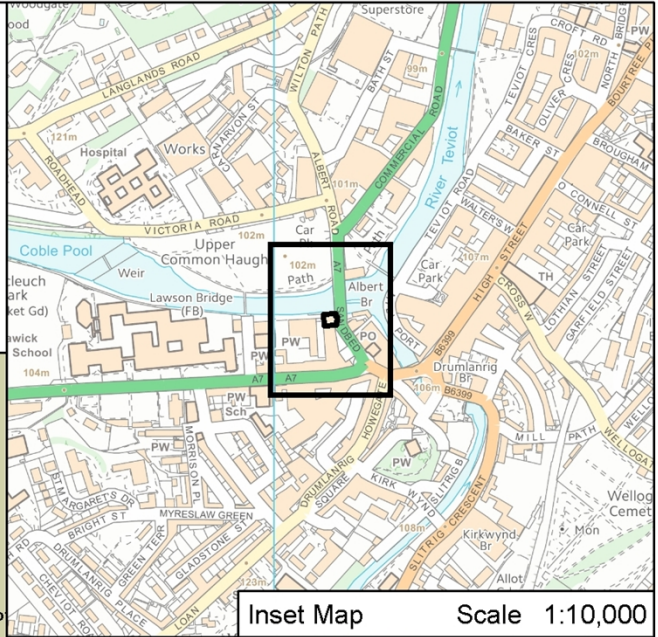
#### **Author(s)**

Name	Designation
Julie Hayward	Lead Planning Officer



16/00043/FUL & 16/00058/LBC

Orrock Hall  
Orrock Place  
Hawick



Inset Map Scale 1:10,000



Scale 1:1,000

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**PLANNING APPEALS & REVIEWS**

**Briefing Note by Chief Planning Officer**

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**PLANNING AND BUILDING STANDARDS COMMITTEE**

**3<sup>rd</sup> October 2016**

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**1 PURPOSE**

- 1.1 The purpose of this briefing note is to give details of **Appeals** and **Local Reviews** which have been received and determined during the last month.

**2 APPEALS RECEIVED**

- 2.1 Planning Applications

Nil

- 2.2 Enforcements

Nil

**3 APPEAL DECISIONS RECEIVED**

- 3.1 Planning Applications

Nil

- 3.2 Enforcements

Nil

**4 APPEALS OUTSTANDING**

- 4.1 There remained 4 appeals previously reported on which decisions were still awaited when this report was prepared on 22<sup>nd</sup> September 2016. This relates to sites at:

<ul style="list-style-type: none"> <li>Land North of Upper Stewarton, (Kilrubie Wind Farm Development), Eddleston, Peebles</li> </ul>	<ul style="list-style-type: none"> <li>Land North West of Whitmuir Hall, Selkirk</li> </ul>
<ul style="list-style-type: none"> <li>62 Castle Street, Duns</li> </ul>	<ul style="list-style-type: none"> <li>22 Bridge Street, Kelso</li> </ul>

## 5 REVIEW REQUESTS RECEIVED

## 6 REVIEWS DETERMINED

6.1	Reference:	16/00162/PPP
	Proposal:	Erection of dwellinghouse and garage
	Site:	Garden Ground of Lindisfarne, The Loan, Gattonside
	Appellant:	Mr H Armstrong

Reasons for Refusal: 1. The development would fail to comply with Policy PMD5(e) of the Local Development Plan 2016 because it would not be served by adequate access and the implications of the development would potentially be detrimental to road and pedestrian safety. 2. The development would fail to comply with Policy PMD2(q) of the Local Development Plan 2016 because it would lead to an adverse impact on road safety. In particular, the development would lead to increased traffic on The Loan, which is significantly constrained as regards gradient, visibility and passing opportunities, and this increased traffic would lead to an unacceptable risk to the safety of vehicular drivers and pedestrians using the route.

Method of Review: Review of Papers & Site Visit

Review Decision: Decision of Appointed Officer Overturned  
(Subject to condition and a S75 agreement)

## 7 REVIEWS OUTSTANDING

7.1 There remained 5 reviews previously reported on which decisions were still awaited when this report was prepared on 22<sup>nd</sup> September 2016. This relates to sites at:

• 5 East High Street, Lauder	• Land East of Langlee Mains Farmhouse, Galashiels
• Field No 0328, Kirkburn, Cardrona (16/00494/FUL)	• Field No 0328, Kirkburn, Cardrona (16/00495/FUL)
• 62 Castle Street, Duns	•

## 8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

Nil

## 9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED

Nil

## 10 SECTION 36 PUBLIC LOCAL INQUIRIES OUTSTANDING

10.1 There remained 2 S36 PLIs previously reported on which decisions were still awaited when this report was prepared on 22<sup>nd</sup> September 2016. This relates to sites at:

<ul style="list-style-type: none"><li>Land North of Nether Monynut Cottage (Aikengall IIa), Cockburnspath</li></ul>	<ul style="list-style-type: none"><li>(Whitelaw Brae Wind Farm), Land South East of Glenbreck House, Tweedsmuir</li></ul>
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**Approved by**

**Ian Aikman  
Chief Planning Officer**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
Laura Rogan	Clerical Assistant (Regulatory) 01835 824000 Ext 5634

**Background Papers:** None.

**Previous Minute Reference:** None.

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel. No. 01835 825431 Fax No. 01835 825071  
Email: [PLACEtransrequest@scotborders.gov.uk](mailto:PLACEtransrequest@scotborders.gov.uk)

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