

Public Document Pack



PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 24TH APRIL, 2023

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS AND VIA MICROSOFT TEAMS on MONDAY, 24TH APRIL, 2023 at 10.00 AM

J. J. WILKINSON,
Clerk to the Council,

17 April 2023

BUSINESS	
1.	Apologies for Absence
2.	Order of Business
3.	Declarations of Interest
4.	Minute (Pages 3 - 10) Consider Minute of the Meeting held on 27 March 2023 for approval and signature by the Chair. (Copy attached.)
5.	Applications Consider the following application for planning permission:
	(a) Cloch Forest Wind Farm, Land West Of Whitelaw Burn, Eddleston - 21/01134/S36 (Pages 11 - 54) Wind farm development comprising of 12 turbines (149.9 metres in height), associated infrastructure and battery energy storage system. (Copy attached.)
	(b) Pease Bay Caravan Site Cockburnspath - 22/01876/FUL (Pages 55 - 64) Variation of Condition 1 of planning permission 97/00461/FUL to allow year-round occupation of caravans. (Copy attached.)
6.	Revocation of Planning Permission (Pages 65 - 70) Consider report by Chief Planning and Housing Officer. (Copy attached.)
7.	Appeals and Reviews (Pages 71 - 76) Consider briefing note by Chief Planning and Housing Officer. (Copy attached.)

8.	Any Other Items Previously Circulated
9.	Any Other Items which the Chairman Decides are Urgent

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

Membership of Committee:- Councillors S. Mountford (Chair), J. Cox, M. Douglas, D. Moffat, A. Orr, N. Richards, S. Scott, E. Small and V. Thomson

Please direct any enquiries to William Mohieddeen
Tel: 01835 826504; Email: william.mohieddeen@scotborders.gov.uk

**SCOTTISH BORDERS COUNCIL
PLANNING AND BUILDING STANDARDS COMMITTEE**

MINUTES of Meeting of the PLANNING AND BUILDING STANDARDS COMMITTEE held in Council Chambers, Council Headquarters, Newtown St Boswells and via Microsoft Teams on Monday, 27th March, 2023 at 10.00 am

Present:- Councillors S. Mountford (Chair), M. Douglas, D. Moffat, A. Orr, N. Richards, S. Scott and E. Small

Apologies:- Councillors J. Cox and V. Thomson

In Attendance:- Lead Planning Officer (B. Fotheringham), Lead Roads Planning Officer (D. Inglis), Solicitor (F. Rankine), Democratic Services Team Leader and Democratic Services Officer (W. Mohieddeen).

1. **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 6 March 2023.

DECISION

AGREED to approve the Minute for signature by the Chair.

2. **APPLICATION**

There had been circulated copies of a report by the Chief Planning and Housing Officer on an application for planning permission which required consideration by the Committee.

DECISION

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

3. **APPEALS AND REVIEWS**

There had been circulated copies of a briefing note by the Chief Planning and Housing Officer on Appeals to the Scottish Ministers and Local Reviews.

DECISION

NOTED that:

(a) **An appeal decision had been received in respect of New quarry for Sand and Gravel Extraction, Land West of Slipperfield House Slipperfield Loch, West Linton – 21/00152/FUL – reporter’s decision: sustained.**

(b) **There remained 2 appeals previously reported on which decisions were still awaited when the report was prepared on 17th March 2023 which related to sites at:**

<ul style="list-style-type: none">• 1 Hall Street, Galashiels	<ul style="list-style-type: none">• The Old Cow Shed, Lennel, Coldstream
--	---

- (i) **Erection of dwellinghouse and associated work, Land South of Ebbastrand, Coldingham Sands, Coldingham – 22/01357/FUL;**
 - (ii) **Formation of access and boundary fence (retrospective), The Millers House Scotsmill Kailzie, Peebles – 22/01421/FUL;**
 - (iii) **Alteration and extension to dwellinghouse, Ratchill Farmhouse, Broughton – 22/01612/FUL;**
 - (iv) **Modification of condition No.1 of planning permission 15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse, Land at Disused Railway Line Rachan, Broughton – 22/01811/FUL; and,**
 - (v) **Installation of photo voltaic array to roof, Scott House, Douglas Square, Newcastleton – 22/01982/FUL;**
- (c) **There remained 11 reviews previously reported on which decisions were still awaited when the report was prepared on 17 March 2023 which related to sites at:**

• Land North East of Runningburn Farm, Stichill	• Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside
• Land South West of Castleside Cottage, Selkirk	• Land South West of Corstane Farmhouse, Broughton
• Land North and East of Clay Dub, Duns Road, Greenlaw	• 17 George Street, Eyemouth
• Dove Cottage Gate Lodge Press Castle, Coldingham, Eyemouth	• Ravelaw Farm, Duns
• Land South West of West Loch Farmhouse, Peebles	• 100 Abbotseat, Kelso
• Land West of Greenburn Cottage, Auchencrow	

- (d) **There remained one Section 36 Public Local Inquiry previously reported on which a decision was still awaited when the report was prepared on 17 March 2023 which related to a site at Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick.**

URGENT BUSINESS

Under Section 50B(4)(b) of the Local Government (Scotland) Act 1973, the Chair was of the opinion that the item dealt with in the following paragraph should be considered at the meeting as a matter of urgency, in view of the need to keep Members informed.

4. WIND FARM APPLICATIONS

With reference to paragraph 6 of the Minute of the Meeting held on 6 March 2023, the Lead Planning Officer advised Members that the Cloich Wind Farm application was being prepared for consideration by the Committee at its meeting to be held 24 April 2023. A visit to the application site was to be scheduled in the week prior to the meeting when the application would be considered.

**DECISION
NOTED the update.**

The meeting concluded at 10.30 am.

This page is intentionally left blank

APPENDIX I
APPLICATIONS FOR PLANNING PERMISSION

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
22/01205/FUL	Variation of Conditions 6 and 7 of planning permission 97/00640/MIN to enable night time operation of the existing asphalt plant	Land South West of Cowieslinn Quarry, Peebles

DECISION: Approved as per officer recommendation, subject to the following conditions:

1. a) The hours of operations for all working, with the exception of the asphalt plant and measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.
 b) In addition to the hours of operation stipulated in part a), the asphalt plant shall be permitted to operate between the hours of 2000 hours and 0100 hours Mondays to Fridays on up to 50 occasions per calendar year.
 c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request to the Planning Authority to increase its quota from 50 night-time operations in any calendar year (as specified within part (b) above). The Planning Authority will then decide, in writing, whether to increase the annual quota to number of occasions it deems appropriate.
 Reason: In the interests of amenity.

2. a) Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.
 b) Notwithstanding the terms of part (a) above, the dispatch of asphalt shall be permitted between the hours of 1800 hours and 0100 hours Mondays to Fridays on the occasions the asphalt plant is permitted to operate outwith the usual hours of operation stipulated within Condition 1(a).
 Reason: In the interests of amenity.

3. With the exception of the Conditions hereby amended as above, the development shall be implemented in accordance with the schedule of conditions approved under applications 97/00640/MIN and 01/00669/FUL and in accordance with all agreements/approvals under the terms of those conditions.
 Reason: To ensure the development is implemented and operated in accordance with all measures within the approved schedule of conditions under the original quarry planning consent and quarry extension planning consent, to ensure compliance the Development Plan and relevant planning policy guidance.

4. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a scheme of site lighting together with bund and planting screening of the site and access road is submitted to, and approved in writing by, the Planning Authority. The lighting and screening then to be implemented and operated in accordance with the approved scheme.
 Reason: To safeguard residential and ecological receptors in the vicinity of the site.

5. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a Noise Monitoring Plan for the night-time operation of the asphalt plant and associated vehicles is submitted to, and approved in writing

by, the Planning Authority. The Plan then to be implemented and operated in accordance with the approved details.

Reason: To safeguard residential receptors in the vicinity of the site.

Reference

22/01206/FUL

Nature of Development

Variation of Conditions 6 and 7 of planning permission 09/00468/MIN to enable night time operation of the existing asphalt plant

Location

Land South West of Cowieslinn Quarry, Peebles

DECISION: Approved as per officer recommendation, subject to the following conditions and informatives:

1. a) The hours of operations for all working, with the exception of the asphalt plant and measures required in an emergency situation, servicing, maintenance and testing of plant, shall be limited to the hours of 0700 hours and 2000 hours Mondays to Fridays and 0700 hours to 1200 hours on both Saturdays and Sundays. In addition, no operations shall be permitted on 25th and 26th December and 1st and 2nd January.
b) In addition to the hours of operation stipulated in part a), the asphalt plant shall be permitted to operate between the hours of 2000 hours and 0100 hours Mondays to Fridays on up to 50 occasions per calendar year.
c) Notwithstanding the terms of part (b) above, the asphalt plant operator may make a written request to the Planning Authority to increase its quota from 50 night-time operations in any calendar year (as specified within part (b) above). The Planning Authority will then decide, in writing, whether to increase the annual quota to number of occasions it deems appropriate.
Reason: In the interests of amenity.
2. a) Minerals shall only be dispatched from the site between 0700 hours and 1800 hours on Mondays to Fridays and 0700 hours and 1200 hours on Saturdays, with no movements on Sundays.
b) Notwithstanding the terms of part (a) above, the dispatch of asphalt shall be permitted between the hours of 1800 hours and 0100 hours Mondays to Fridays on the occasions the asphalt plant is permitted to operate outwith the usual hours of operation stipulated within Condition 1(a).
Reason: In the interests of amenity.
3. With the exception of the Conditions hereby amended as above, the development shall be implemented in accordance with the schedule of conditions approved under applications 01/00669/FUL and 09/00468/MIN and in accordance with all agreements/approvals under the terms of those conditions.
Reason: To ensure the development is implemented and operated in accordance with all measures within the approved schedule of conditions under the original quarry planning consent and quarry extension planning consent, to ensure compliance the Development Plan and relevant planning policy guidance.
4. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a scheme of site lighting together with bund and planting screening of the site and access road is submitted to, and approved in writing by, the Planning Authority. The lighting and screening then to be implemented and operated in accordance with the approved scheme.
Reason: To safeguard residential and ecological receptors in the vicinity of the site.
5. Notwithstanding the terms of any conditions under previous consents at the site, no night-time working of the asphalt plant to commence until a Noise Monitoring Plan for the night-time operation of the asphalt plant and associated vehicles is submitted to, and approved in writing

by, the Planning Authority. The Plan then to be implemented and operated in accordance with the approved details.

Reason: To safeguard residential receptors in the vicinity of the site.

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

24 APRIL 2023

**APPLICATION FOR CONSENT TO CONSTRUCT WIND FARM UNDER SECTION
36 OF THE ELECTRICITY ACT 1989**

ITEM: **SBC REFERENCE NUMBER:** 21/01134/S36
ECU REFERENCE NUMBER: ECU00003288

OFFICER: Mr Scott Shearer
WARD: Tweeddale West
PROPOSAL: Wind farm development comprising of 12 turbines (149.9 metres in height), associated infrastructure and battery energy storage system.

SITE: Cloich Forest Wind Farm
Land West Of Whitelaw Burn
Eddleston

APPLICANT: Cloich Wind Farm Partnership LLP
AGENT: Arcus Consultancy Services

1.0 PLANNING PROCESSING AGREEMENT

1.1 There is a planning processing agreement for the Council to determine its response at the Planning and Building Standards (P&BS) Committee on the 24th April 2023.

2.0 PURPOSE OF REPORT

2.1 To advise the Scottish Government of the response from Scottish Borders Council on an application submitted under section 36 of The Electricity Act 1989 (as amended) to construct 12 wind turbines and associated infrastructure within the Cloich Forest, near Eddleston.

3.0 PROCEDURE

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

3.2 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. The proposal is required to be determined via Section 36 (S36) of the Electricity Act 2017 because it comprises a wind farm with a generating capacity which exceeds 50MW. The ECU advertises the application 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. Any S36 approval granted by the Scottish Minister would benefit from deemed planning permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997.

- 3.3 Given the nature of the application, an Environmental Impact Assessment (EIA) was undertaken with further Supplementary Environmental Information (SEI) submitted.
- 3.4 It should be noted that if permission is granted, the Council (rather than the ECU) would become the relevant enforcement authority responsible for monitoring compliance with the terms of an approval including discharging any suspensive conditions attached to any consent.

4.0 SITE DESCRIPTION

- 4.1 The application site is located within Cloich Forest, a commercial coniferous plantation in the Cloich Hills north-west of Peebles. Peebles is just over 5km south-east of the site; Penicuik is approximately 8km to the north; West Linton is 6km to the west and Eddleston village is around 3km to the east. The administrative boundary with Midlothian lies approximately 3km to the north and 4 kilometres to the east of the site. South Lanarkshire is within 7km to the west.
- 4.2 The site lies in between a triangle of A class roads which consist of the A703 to the east, A701 to the west and A72 to the south.
- 4.3 Close to the centre of the site is a property (Courhope) not owned or controlled in full by the applicant. This is essentially a private property within an associated landholding.

Landscape Character

- 4.4 In terms of the 1998 Scottish Borders Landscape Character Assessment (1998), the entire site lies within the 'Plateau Outliers' Landscape Character Type (LCT). This LCT is described as an upland plateau landscape characterised by hill and ridges covered by mosaic coarse grassland, heather and forestry which is separated from adjoining landscape types by river valleys. Figure 5.1.4a of the ES shows the character type and surrounding types, which include 'Upland Fringe Grassland' to the north-east, 'Pastoral Upland Valley' and 'Dissected Plateau Moorland' to the east, 'Rolling Farmland' to the north-west, 'Upland Valley With Woodland' to the south and 'Upland Valley With Pastoral Floor' to the south-east and south-west.
- 4.5 The site is not located within any designated landscape areas. The Upper Tweeddale National Scenic Area (NSA) lies approx. 2.5km to the south. The locally designated Tweed Valley Special Landscape Area (SLA) lies closer to the site at approx. 1.2km to the. The Upper Tweedsmuir SLA is situated between 3 - 4km south-west of the site.

Historic Environment Designations

- 4.6 On the opposite side of the A703 lies the Portmore House and Gardens Historic Gardens and Designed Landscape (HGDL). Portmore House is a Category A Listed Building. Other Listed Building are located close to the site at Barony Castle. The village of Eddleston has a Conservation Area. Four Scheduled Monuments are located within the application site.

Designated Nature Conservation Sites

- 4.7 The Eddleston Water lies to the east of the development adjacent to the A703, this water course forms part of the River Tweed SAC. The existing public road which provides access to the development has a bridge crossing over the water course.

Public Access and Paths

- 4.8 The site is crossed by the Cross Borders Drove Road, an important walking route that starts at Newark Castle near Selkirk and ends where it meets the boundary of Borders/West Lothian in the Pentland Hills. The site is visible from sections of the John Buchan Way, a recreational route that starts in Peebles and ends in Broughton. This route is situated in places between 5 and 7km from the site. Within the site is a further promoted public path more than 4km in length, which links from the Drove Road to Shiplaw (on route of proposed access) via Cloich Farm/House. This latter path and the Drove Road are utilised as horse riding routes.

5.0 PROPOSED DEVELOPMENT

- 5.1 The proposed development represents a re-design of the consented Cloich Forest Wind Farm (12/01283/S36). The proposed development would comprise of a wind powered generating station with the following components;
- 12 wind turbines with a maximum tip height of 149.9m with a generating capacity of up to 57MW and associated infrastructure
 - Substation compound and buildings
 - Battery Energy Storage System (BESS) facility with a 20MW storage capacity
 - Public road widening works including modification of vehicular access with A703 public road and formation of secondary access
 - 2 Borrow pits for use during development, to be reinstated post-construction
 - Temporary construction compound
 - Forestry felling and compensatory planting
- 5.2 The applicant is seeking consent for an operational period of 30 years. At the end of this period, unless 're-powered' or unless a new planning permission is granted that would extend the wind farm's life, it would be decommissioned and the site restored in agreement with a decommissioning method statement.
- 5.3 Through the course of the application Turbine 8 has been relocated to address cultural heritage impacts.

6.0 PLANNING HISTORY

- 6.1 Consent was granted under S36 of the Electricity Act from the Cloich Forest Wind Farm at this site, (12/01283/S36). The candidate turbines were reduced from 132m to 115m to tip. The Council objected to the proposed development primarily on grounds of landscape character and visual amenity impacts but consent was granted on appeal following Public Local Inquiry (PLI).
- 6.2 This consent was granted on 8th July 2016. Condition 2 of that permission required the development to be commenced within 5 year of the consent being

granted. COVID 19 regulations extended the period of commencement until 30th September 2022. However, the development was not commenced before this date and the original permission has now lapsed.

7.0 REPRESENTATION SUMMARY

- 7.1 Third party representations 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. Third party representations are available via the ECU's public portal here; [Public Representations](#)

8.0 APPLICANTS' SUPPORTING INFORMATION

- 8.1 The application has been supported by a full Environmental Impact Assessment (EIA), split across four Volumes of text, figures, visualisations and a Non-Technical Summary. In addition to the EIA the application has been supported by;

- A Planning Statement
- Pre-Application Consultation Report
- Project Comparison Report

- 8.2 Supplementary Environmental Information (SEI) was submitted to SBC on 1st December 2022 which re-siting T8 and provided additional information relating to hydrology, heritage and forestry impacts.

- 8.3 An updated Planning Statement was also provided in response to Scottish Ministers approved version of NPF4. Further correspondence on Private Water Supply impacts has been provided by the applicants in response to the EHOs observations.

9.0 CONSULTATION RESPONSES:

- 9.1 The following consultation responses have been received by specialist officers within SBC.

- 9.2 **Access Ranger:** No objection. Recommended that the Cross Borders Drove Road core path and rights of way within the site should remain open and free from obstruction in accordance with the Land Reform (Scotland) Act 2003 and NatureScot's 'Good practice during Wind Farm Construction Guidance. Proximity of T1, 2, 3, 4, 5 and 7 do not provide separate distances for routes used for equestrian activity which is advocated by the British Horse Society.

- 9.3 **Archaeology Officer:** The proposed scheme continues to adversely affect the historic environment. The proposal adversely affects the setting of the White Meldon Scheduled Monument (SM) 2441 and Whaup Law Cairn SM 2755, with T8 also having potentially direct impacts on SM2755. Recognise consent was previously granted for a wind farm and mitigation by condition may be envisaged however, limited information on any mitigation or archaeological enhancements are detailed. Without this information, consider the proposals to fail to comply with Historic Environment Policy 3 and 4 and LDP Policy EP8a.

- 9.4 **Environmental Health (Noise):** No objection. Noise prediction methodology is consistent with ETSU-R-97. Predicted noise emissions are within the derived limits at all receptor locations. No cumulative assessment is necessary.

Recommend that maximum noise limits should be set by a planning condition and the Council should seek to confirm sound power levels for turbines that are to be erected.

9.5 **Environmental Health (Private Water Supply):** A detailed assessment has been undertaken raising the following concerns;

1. Impact on T3 on the Stewarton PWS
2. Whether all PWS systems within the PWS zones have been given due consideration

There is still uncertainty that the development as proposed will not adversely affect PWS, in particular the Stewarton PWS.

9.6 **Flooding and Coastal Management:** No objection. Accept measures proposed in the EIA to minimise flood risk and pollution of the water course in addition to further observations seeking to; ensure SuDS drainage keep to greenfield run-off rates; released water does not cause soil erosion or vegetation loss; construction drainage ditches down slope are not dug in a straight line; and any silt traps, matting and heck dames are retained after construction until surrounding soil is vegetated.

9.7 **Landscape Architect:** No objection. Taller turbines increase the visual effect of the development including its impact on the NSA but in comparison with the consented scheme this change does not justify an objection. T12 relates poorly to the landscape from VPs 7, 12 and 13. Recommend it be removed or relocated. No adverse residential amenity impacts are caused when applying best practice guidance.

9.8 **Roads Planning:** No objection subject to a condition seeking an agreement of a Traffic Management Plan to finalise delivery route, number of HGV movements as well as agreement of any ancillary works required to the public road to facilitate required to provide safe vehicle movements

10.0 Other Consultation Responses Submitted to the ECU

10.1 As members are aware, the Council is a consultee in the Section 36 application process and does not undertake any outside consultation itself. Consultation responses provided by other bodies are returned to the ECU and are available via the ECU's public portal here; [Consultation Responses](#)

11.0 LEGAL FRAMEWORK

- The Electricity Act 1989
- The Town and Country Planning (Scotland) Act 1997
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended)
- The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019

12.0 DEVELOPMENT PLAN POLICIES:

12.1 National Planning Framework 4

- Policy 1: Tackling the Climate and Nature Crises
- Policy 3: Biodiversity
- Policy 4: Natural Places
- Policy 5: Soils
- Policy 6: Forestry, Woodland and Trees
- Policy 7 Historic Assets and Places
- Policy 11: Energy

12.2 Local Development Plan 2016 (LDP):

- PMD1 Sustainability
- PMD2 Quality Standards
- ED9 Renewable Energy
- HD3 Protection of Residential Amenity
- EP1 International Nature Conservation Sites
- EP2 National Nature Conservation Sites and Protection Species
- EP3 Local Biodiversity
- EP4 National Scenic Areas
- EP5 Special Landscape Areas
- EP7 Listed Buildings
- EP8 Archaeology
- EP9 Conservation Areas
- EP10 Gardens and Designated Landscapes
- EP13 Trees, Woodlands and Hedgerows
- EP15 Development Affecting the Water Environment
- IS4 Transport Development and Infrastructure
- IS5 Protection of Access Routes
- IS8 Flooding
- IS9 Waste Water Treatment Standards and Sustainable Urban Drainage

13.0 OTHER PLANNING CONSIDERATIONS:

13.1 Adopted SBC Supplementary Planning Guidance (SPG) and other documents:

- Renewable Energy 2018 including Update of Wind Energy Landscape Capacity and Cumulative Impact Study 2016
- Visibility Mapping for Windfarm Development 2003
- Local Landscape Designations 2012
- Sustainable Urban Drainage Systems 2020
- Developer Contributions 2010
- Trees and Development 2008
- Biodiversity 2005

13.2 Scottish Government Advice and Guidance;

- Onshore Wind Turbines: Planning Advice [Online]
- Circular 3/2011 Environmental Impact Assessment (S) Regulations 2011
- PAN 60 Planning for Natural Heritage 2008

- PAN 51 Planning, Environmental Protection and Regulation
- PAN 3/2010: Community Engagement (2010)
- PAN 1/2011 Planning and Noise
- PAN 2/2011 Planning and Archaeology
- PAN 1/2013 Environmental Impact Assessment
- PAN 61: Planning and Sustainable Urban Drainage Systems
- PAN 69 Flood Risk 2015
- PAN 73: Rural Diversification
- PAN 75 Planning for Transport
- PAN 81 Community Engagement Planning with People
- Scottish Government Good Practice Principles for Shared Ownership of Onshore Renewable Energy Development 2016

13.3 **Historic Scotland Publications:**

- Scottish Historic Environment Policy (2011)

13.4 **NatureScot Publications:**

- Siting and Designing Windfarms in the Landscape Version 3 February 2017
- Visual Representation of Wind Farms Version 2.2 February 2017
- Assessing the Cumulative Impact of Onshore Wind Energy Developments 2012
- Spatial Planning for Onshore Wind Turbines – Natural Heritage Considerations 2015
- Good Practice during Wind Farm Construction 2019

13.5 **Other Publications:**

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

14.0 **ENERGY POLICY**

- Onshore Wind Policy Statement (OWPS) 2022
- Draft Energy Strategy and Just Transition Plan 2023
- The Climate Change Act 2008 (2050 Target Amendment Order 2019)
- United Nations Climate Change - The Paris Agreement 2015
- Climate Change Committee - The Sixth Carbon Budget: The UK's path to Net Zero (2020)
- Scottish Government (2020) Securing a green recovery on a path to net zero: climate change plan 2018-2032
- Climate Change (Scotland) Act 2009
- Climate Change (Emissions Reduction Targets) (Scotland) Act 2019

15.0 **KEY PLANNING ISSUES:**

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

- whether the site remains a suitable location for a wind farm
- magnitude of change between previous consented scheme and proposed scheme
- economic and energy benefits

- cultural heritage impacts
- impacts on residential amenity, including noise impacts
- impacts on private water supplies
- ecological and biodiversity impacts
- impacts on public access
- impact on road safety and road network

16.0 ASSESSMENT OF APPLICATION:

The Electricity Act 1989

- 16.1 This proposal is required to be assessed under section 36 of the Electricity Act 1989. The Electricity Act requires that in formulating proposals to generate electricity, regard shall be had to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural or historic interest and to mitigating the impact any proposals may have on these: and that Scottish Ministers shall have regard to these matters in considering an application under Section 36. The Development Plan is a material consideration in the determination of a Section 36 application.

Planning Policy

- 16.2 Since the determination of the original application by the Reporter in 2016, the planning policy framework has changed significantly. This revised proposal must be assessed against current national and local planning policy provision.

National Planning Framework 4

- 16.3 NPF4 sets out the Scottish Governments long-term spatial principles until 2045 and by applying these the national spatial strategy will support the planning and delivery of: sustainable places, liveable places and productive places. Central to the spatial strategy is the need to reduce greenhouse gas emissions and adapt to future implications of climate change. NPF4 acknowledges that meeting net zero climate ambitions will require rapid transformation across all sectors of our economy and society and every decision on future development must contribute to making Scotland a more sustainable place. Unlike its predecessors, NPF4 has elevated status as it forms part of the statutory development plan. Therefore it must be afforded considerable weight as part of the decision making process for all planning decisions.
- 16.4 NPF4 recognises that large scale electricity generation from renewable sources is essential to meet net zero emissions targets. The framework designates 18 National Developments to support the delivery of the spatial strategy. Any on or off shore wind farm that generates in excess of 50 megawatts of electricity is designated a national development. The volume of electricity generated by the current proposal would exceed this threshold. This proposal represents a National Development, which would help to deliver the spatial strategy.
- 16.5 Part 2 of NPF4 sets out the national planning policy framework to meet policy aspirations under the three themes of; sustainable places, liveable places and productive places. A range of Policies are relevant to this proposed development and NPF4 must be applied as a whole. However, when

considering the principle of this development proposal Policy 1: Tacking the Climate and Nature Crisis and Policy 11: Energy are relevant.

- 16.6 Policy 1 seeks to promote development that addresses the global climate emergency and nature crises. This development would generate electricity from a renewable source and would provide battery storage capacity that also plays an important role in meeting net zero emissions targets. This development draws clear support from this policy.
- 16.7 Energy policy principles are set out in Policy 11, which encourages, promotes and facilitates all forms of renewable energy development, including onshore wind farms and battery storage. The policy does not permit wind farm development to take place within National Parks or National Scenic Areas. The site is close to the Upper Tweeddale NSA, but its location out with either of these designations confirm that the proposal is effectively in an area which may be suitable for wind farm development. The policy also seeks for proposals to maximise net economic impacts, this matter will be discussed later in the report.
- 16.8 The energy policy sets out matters that are addressed in the design and mitigation of a development. These include impacts (including cumulative) on communities and individual dwellings; significant landscape and visual impacts; historic environment; biodiversity; trees and woodlands; public access; aviation and defence interests; telecommunications and broadcasting; road traffic; water environment; decommissioning of developments and site restoration. The policy now requires that in considering these 11 impacts, significant weight will be given to the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets.

Onshore Wind Policy Statement (OWPS)

- 16.9 Published on 25th December 2022, the OWPS reaffirms that the deployment of onshore wind is critical for meeting Scotland's energy targets. The statement renews the commitment to onshore wind technology and sets ambition for a minimum installed capacity of 20GW of onshore wind in Scotland by 2030. It recognises at paragraph 3.6.1 that; "*Meeting the ambition of a minimum installed capacity of 20 GW of onshore wind in Scotland by 2030 will require taller and more efficient turbines. This will change the landscape.*" (Original emphasis).
- 16.10 Despite the acceptance that more wind energy deployment is necessary, this is still not development at any cost with the Vision Statement for OWPS (see Annex 5) confirming that a balanced approach is still necessary in particular to ensure developments still respect biodiversity, natural heritage and landscape.

Scottish Borders Local Development Plan (LDP) 2016

- 16.11 The previous consent at this site was primarily determined against the Consolidated Local Plan 2011. In 2016 the Councils LDP replaced the 2011 Local Plan. Policy ED9 is the principal LDP Policy dealing with renewable energy development and supports commercial wind farms where they can be accommodated without unacceptable significant adverse impacts or effects, giving due regard to relevant environmental, community and cumulative impact considerations. If there are judged to be significant adverse impacts or effects which cannot be satisfactorily mitigated, the development will only be approved

if the Council is satisfied that the wider economic, environmental and other benefits of the proposal outweigh the potential damage arising from it.

- 16.12 The applicants consider that ED9 is now inconsistent with NPF4 as it does not make explicit reference to significant weight being placed on a development's contribution to renewable energy generation targets. Despite this, Policy ED9 does still permit the decision maker to attribute weight to environmental and other benefits arising from the development as they see fit. This would allow them to place greater weight on its contribution to energy targets, therefore it is not considered to be incompatible with NPF4.
- 16.13 The current LDP was under examination and at an advanced stage when the original application was at appeal. The Reporter did consider the previous scheme against Policy ED9 and at paragraph 7.53 of his decision, determined that; "*The proposed Cloich Forest Wind Farm development would be consistent with Policy ED9 as modified by the reporter. Whilst there are some significant adverse impacts they are acceptable, and the wider economic, environmental and other benefits that would arise would outweigh the planning harm arising from those effects.*" Although the 2012 scheme differs from this current proposal, the Reporter's decision to approve the development of a wind farm in this location, finding that it complied with current LDP policy provision, is a material consideration in the determination of this current proposal.
- 16.14 Policy ED9 also embodies the Council's Renewable Energy Supplementary Guidance (SG) 2018, which has been approved by the Scottish Government. Figure 6: Spatial Framework of the SG acknowledges that the development is located within an area that was identified to have potential for wind farm development.
- 16.15 The SG includes the Wind Energy Landscape Capacity and Cumulative Impact Study produced by Ironside Farrar. This was updated in 2016. The Council's Wind Energy Landscape Capacity and Cumulative Impact Study is still part of the Council's development plan and contains advice that is relevant to the consideration of this application. The site is within the Eddleston/Lyne Interfluvium of LCT 3. Plateau Outliers where the area was assessed to have medium/high landscape sensitivity and landscape value. The Study does recognise that the Cloich Forest Wind Farm was approved within this area and this latest proposal occupies the same location as the previously consented scheme.

Planning Policy Conclusion

- 16.16 The determination of the Scottish Ministers to grant consent for a commercial wind farm in this location is a material consideration. At the time of this determination, paragraph 170 of SPP required that areas identified for wind farms should be suitable for use in perpetuity. SPP has been superseded by NPF4 but it is reasonable to accept that appeal decision to approve the Cloich Forrest Wind Farm goes a long way to establish that the principle of a wind farm is acceptable in this location. Cognisance has to be taken that this is the starting point when assessing the merits of this latest proposal.
- 16.17 This current application is for a different scheme with fewer but taller turbines. It is required to be assessed against current development plan policies which

now includes NPF4. Current Development plan policies raise the significance of the climate emergency and continue to promote the use of onshore wind to meet net zero emissions.

16.18 In principle, NPF4, OWPS and the Councils LDP are supportive of renewable energy development in this location however, the benefits of energy production are still required to be weighed against any disbenefits arising from the proposed development as part of the planning balance. When this careful balancing exercise is being carried out NPF4 explicitly requires decision makers to give significant weight to the contribution a development will make towards renewable energy targets as part of their consideration. This requirement shifts the balance in favour of renewable energy developments nationally, but should not be considered as a blanket acceptance of wind energy development on land outside a national park or NSA. It is the act of the planning balance, which will still determine the suitability of a wind farm against prevailing development plan policies. The Reporters decision to approve a wind farm in this location carries significant weight in the planning balance. Members should, in their consideration of the current application, account for the magnitude of change between the impacts of the previous consent and the current proposal. The applicants have provided a Project Comparison Report, which assists with this consideration.

Climate Change and Renewable Targets

16.19 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, introduced a target of net zero greenhouse gas emissions by 2045 at the latest. To reach net zero, national target have been set to reduce emissions by at least 75% by 2030 and 90% by 2040. Scotland’s Climate Change Plan 2018-2032 sets out the road map for achieving those targets and has set the goal of 50% of Scotland’s energy need to be met by renewable energy by 2030. The deployment of further renewable energy developments are necessary to meet national energy targets and assist with the delivery of a green economic recovery.

16.20 The Scottish Governments OWPS states that in order to meet net zero emissions targets, a minimum installed capacity of 20GW of onshore wind will be required in Scotland by 2030. The OWPS calculated that 8.7GW of energy is being generated by existing wind farms as of June 2022. There was also found to be 11.3GW of onshore wind ‘pipeline’ projects which are spread across the following stages;

Status	GW
In Planning/Consenting	5.53
Awaiting Construction	4.56
Under Construction	1.17

(Source: OWPS paragraph 1.1.5)

16.21 Although the pipeline projects bring the energy generated close to the 20GW target, the following factors need to be considered;

- Not all projects currently in the planning/consenting process will obtain permission

- There is duplication in the figures where some projects have consent and are also seeking consent for changes, i.e. tip height increases (such as Cloich) so they feature in both the 'awaiting construction' and 'in planning' categories. Only one of these possible consents can be built.
 - Some existing wind farms contributing towards the existing installed capacity will have reached the end of its operational life by 2030 and it is not known if these schemes will be repowered.
- 16.22 The OWPS is clear that further onshore wind development will be necessary to meet renewable energy targets. The previous wind farm consent at this site had a predicted installed capacity of 54MW. This revised scheme would increase its contribution to 57MW with six fewer turbines. The EIA predicts that across its 30 year operational life the revised scheme would provide a carbon saving of over 1.8million tonnes. The applicants have also advised that the development has an agreed grid connection for April 2028 therefore if consented it would be operational in time to contribute towards the 20GW installed onshore wind target for 2030.
- 16.23 The revised scheme also includes a BESS facility that can import power from the national grid or wind turbines at the site and export this electricity to cope with supply and demand pressures. The BESS has a capacity for the storage of 20MW, which is recognised to form part of the energy mix required to meet national energy targets.
- 16.24 It is clear that this development would make an important contribution to meeting renewable energy targets and as stated previously NPF4 requires that this contribution now carries more weight in the 'planning balance'.

Economic and Socio-Economic Benefits

- 16.25 Wind energy developments can make an important contribution to the UK economy. Net economic impact is a material planning consideration and local and community socio-economic benefits include employment, associated business and supply chain opportunities.
- 16.26 The ES outlines the socio-economic benefits of the development and these include:
- Creation of up to 75 jobs during construction period
 - Capital expenditure is predicted to be £75.2million across the developments operational life. Of that, £27m is expected to be spend nationally with £9m predicted to be spent locally.
 - The development will contribute £5k annually per MW of installed capacity towards community benefit funds
 - The development will provided the opportunity for shared community ownership of up to 25% of the completed development
- 16.27 It is accepted that jobs would be created during construction and should the developer use local firms and businesses there is potential for employees to use local facilities and services, such as accommodation and shops. Following the construction phase the development would sustain a low number of jobs although this would increase during decommissioning. The developers proposed contribution to community benefit funds does align with the £5,000 level prescribed by the *Good Practice Principles (GPPs) for Community*

Benefits from Onshore Renewable Energy Developments, however this is not a material consideration for the Councils determination of this application.

- 16.28 The overall net economic benefits are estimations of the effects of the proposed development. NPF4 Policy 11, criteria c) requires wind farms development to maximise net economic and socio-economic impacts. At this stage no guidance available to corroborate if these effects are indeed being maximised. Nevertheless it is accepted that the proposed Development has the potential to provide positive net economic benefits both for the local community the Scottish Borders and Scotland.

Landscape and Visual Impacts

- 16.29 Policy 11 of NPF4 and LDP Policy ED9 requires consideration of the landscape and visual impacts, including cumulative impacts. Account must be taken of the position adopted by NPF4. Policy 11 acknowledges that significant landscape and visual impacts are to be expected from some forms of renewable energy development. Where these impacts are localised and/or appropriate design mitigation has been applied, NPF4 deems that these landscape and visual effects are acceptable. The acceptance of some level of landscape and visual impact arising from developments such as wind farms is a clear shift from the policy position of Scottish Planning Policy which was in place at the time of determination of the original position.
- 16.30 Account should also be taken of the Renewable Energy SG and relevant guidance within the Ironside Farrar Landscape Capacity and Cumulative Impact Study.
- 16.31 The site is close to the Tweeddale NSA and the locally designated Tweed Valley SLA and Tweedsmuir SLA. NSA impacts require consideration against NPF4 Policy 4 criteria c) and LDP Policy EP4. SLA impacts require consideration against NPF4 Policy 4 criteria d) and LDP Policy EP5. The thrust of these policy considerations seeks to protect the integrity of each specific landscape designations and where any significant adverse effects arise, development should only take place there these impacts are outweighed by social, environmental or economic benefits.

Theoretical Visibility

- 16.32 The Zone of Theoretical Visibility (ZTV) illustrates the potential visibility of the turbines to hub and tip. Figure A1 Blade Tip Comparative ZTV illustrates in green shading areas where this development would introduce new visibility. Yellow shading is areas already affected by the previously Consented Scheme and would remain affected by the proposed development. Some new visibility is suggested directly to the west of the site in the valley containing the A701 from Lamancha towards Blyth Bridge. There are limited new locations within the Scottish Borders where there will be new visibility of a wind farm as a result of the proposed tip height increase.
- 16.33 The proposed development will unquestionably result in a visibility of taller turbines from affected locations. Impacts arising from this will be discussed below. Nevertheless, assessment of the Theoretical Visibility ZTV suggest that the increase in turbine height does not result in a significant increase in visibility of the wind farm from locations that were not previously affected by the earlier scheme.

Landscape Impact

- 16.34 Landscape impacts occur when looking towards, from and through the site. The proposed wind farm retains its central siting within an upland landscape, maintaining its physical separation to more intimate neighbouring landscapes. The Ironside Farrar report notes that this plateau landscape provides topographical containment and recognised that consent was previously granted for a wind farm within this centre of the LCT.
- 16.35 The LVIA predicts that the increase in the height of the turbines changes the effects on the landscape character of six LCTs from 'Not Significant' to 'Significant'. Since the original scheme was assessed practices for assessing LVIA have changed which includes some of the descriptions of the residual effects of a development. It is to be expected that by increasing the height of the turbines, they will appear larger within the host LCT and appear more prominent when they are visible from neighbouring LCTs.
- 16.36 A significant consideration for this proposal is its impact on the NSA. A range of viewpoints are selected to discuss these impacts;

Viewpoint (VP) 4 – Black Meldon

- 16.37 This VP lies on the northern edge of the NSA viewing across the Tweed Valley SLA towards the development. The PCR wireline confirms there is a slight reduction in the spread of turbines with less stacking however, the proposed turbines do appear noticeably larger. From this VP there is already existing visibility to the NE, out of the NSA towards the Bowbeat windfarm in the Moorfoot Hills. It is considered that the scale of proposed turbines are not well contained by the receiving landscape, which results in the taller turbines appearing more prominent. The Landscape Architect considers that this view north out of the NSA does provide a view of an attractive landscape, nevertheless it is a view of a landscape which lacks the qualities which define the NSA or the Tweed Valley SLA for that matter.

Viewpoint 14 – B712 / Stobo Road

- 16.38 This VP is located within the NSA. Against the earlier scheme, noticeably fewer turbines are visible but become more in focus, particularly T2. The rising landform at both sides provides containment.

Viewpoint 16 – Haswelsykes

- 16.39 This VP is on the John Buchan Way from the NSA looking towards the Meldon Hills. These are distinctive hill features within the Tweeddale landscape and are located within the Tweed Valley SLA.
- 16.40 The proposed development will increase the lateral spread of turbines slightly, with the blade of T12 marginally extending the wind farm to the west of the Black Meldon. The larger turbines appear more prominent on the skyline. The windfarm does still appear behind the Black Meldon where its peak offers containment but the increase tip height results in the development appearing more dominating in this landscape.

Viewpoint 19 – Cademuir Hill Fort

- 16.41 This VP is channelled towards the Meldon Hills and the Pentland Hills beyond from the eastern side of the NSA. From this VP it is clear that the Meldons are not particularly large hills but their conical shape is distinctive. This VP is from higher land where the Meldon Hills are less imposing but the increased height of turbines will reduce the dominance of the Meldon Hills within their landscape setting.

Viewpoint 23 – Stobs Law

- 16.42 This VP offers an important panorama from an elevated location within the NSA with distinctions between different landscape character types. From this location there is visibility of Bowbeat across the skyline to the NE with the large town of Peebles also evident on the valley floor. The proposed development appears to sit below the skyline. The intervening distance towards the development helps to minimise the magnitude of change between the consented and proposed scheme.
- 16.43 Considering impacts on the the Tweed Valley SLA and Tweedsmuir SLA impacts, these are both local designations. The Tweed Valley SLA is focused on the valley landscapes along the River Tweed. The SLA includes the Meldon Hills. Harmful impacts will occur from outward views from more elevated locations within the SLA, which includes those discussed above at VP4. Other than that, similar to the consented scheme the ZTV confirms that there is generally limited impact from the valley floor.
- 16.44 As previously noted by the Reporter, impacts on the Tweedsmuir SLA will be similar to those experienced from the NSA. There are no areas of significantly new visibility of the development from this SLA.
- 16.45 Overall, the proposal does result in some detrimental landscape impacts, particularly from hilltops. On comparing the landscape impacts of the consented development against the proposed scheme the Landscape Architect accepts that this latest proposal generally increases the effects of the development on landscape character however these effects are not considered to be significant enough to warrant an objection. The proposed development increases the significance of the wind farm from three VPs within the NSA nevertheless it remains separate from the NSA and also the affected SLAs. While the development may have greater impacts on the setting of both the national and locally designated landscape areas, the proposals do not pose any significantly adverse effects on the scenic or landscape qualities of the designated areas.

Visual Impact – roads and paths

- 16.46 The development site is surrounded by a number of roads and paths which are important visual receptors in the area. Key viewpoints are discussed below;

Viewpoint 6 – Core Path 154 Near Eddleston

- 16.47 This VP is from rising land to the east of Eddleston looking across a rolling rural landscape which features large areas of forestry. The PCR wireline for this VP shows that despite the reduction in the number of turbines, the development occupies a similar length of the Cloich Hills skyline. The larger turbines are

more prominent and their scale does jar to a certain extent with the scale of the receiving landscape. Intervening woodland planting will still provide a sense of separation to the revised scheme and it is noted that in the medium to longer term the replanting of forestry will provide an element of screening in front of some of the turbines, albeit only their lower level.

Viewpoint 11 and 13 – A703

- 16.48 These VPs are from the A-class road connecting Peebles and Penicuik. VP7 shows visibility of the wind farm to the north of Peebles. This is a well-used road where visibility of the development could affect the greatest number of receptors. From these VP's the reduction in the number of turbines can be appreciated. The revised layout introduces a gap between T6 and T9, which is unfortunate and increasing the scale height of turbines to 149.9m does make them more obvious. However, their scale is still readily contained from the rising land to the SW of T2. The increase in tip height does not result in any harmful visual effects from this important VP.
- 16.49 VP13 depicts a southward view of the development from the A703 at Leadburn. The turbines do appear tall but this is mitigated to a certain extent by the receptor being able to appreciate that the development is located within a much larger landscape where eye may be drawn to the more dramatic landforms beyond to the south. In the foreground, there is a rolling ridge which offers some containment and also the larger farm buildings which follow the rising gradient of the landscape. The height difference between T11 and T12 on the edge of the development means that T12 does sit up on the outer edge of the layout.

Viewpoint 7 – Minor Road near Spylaw and Wester Deans

- 16.50 This is a minor road also with a southward view towards the development. The PCR illustrates that the revised scheme extends the spread of turbines across the skyline. The proposed 149.9m turbines are less well contained by the ridge of the Cloich Hills. Woodland planting in the foreground provides some screening. The revised scheme poses unfortunate visual impact for local road users and residents at this VP. In particular the Landscape Architect notes location of T12 appears prominent.

Viewpoint 12 and 18 – A702

- 16.51 These VPs are from the well-travelled A-class road to the north western part of the Scottish Borders providing access to West Linton and Carlops as well as South Lanarkshire to the SW and Midlothian to the NE. VP12 is on the approach descending down into West Linton. The southern part of the revised layout remains well contained by the skyline. T8 – T12 are more dominant with T12 again appearing the most prominent where it sits above other turbines on the edge of the array, which it appears a prominent outlier.
- 16.52 VP18 is from just outwith the Scottish Borders Local Authority Area however given its proximity it will affect receptors frequently travelling this part of the A702. The tops of turbines are still visible across the skyline with the increased scale of turbine meaning more of the upper area is visible, however this change is not deemed to be significant.

Viewpoint 10 - A701 and Viewpoint 8 - B7059 between Boghouse and Kaimehouse

- 16.53 These VPs are from major and minor roads within 5km to the west of the development experience similar impacts. From these VPs only a small number of turbines are visible but T12 is most apparent as it is the only turbine where its tower hubs and blades are visible.

Cross Borders Drove Road (east and west)

- 16.54 This is an important recreational and walking route. VP1 is located to the west of the development and VP2 to the east. These VPs are between 1.4 and 2.4km to the nearest turbine so users of this road will be in close proximity to the development. Users of the route will be impacted with views of larger turbines, especially from VP2 (west) where the height of turbines will appear prominent. This is an undesirable effect of this development but the previously consented scheme also posed 'significant' effects for the Drove Road. The tip height increased does result in greater visual impacts for users of this route.
- 16.55 Overall, increasing the height of the turbines does result in turbines appearing more prominent from various viewpoints within the surrounding road and path network. While the number of turbines have been reduced, the spread of the turbines across the skyline is similar to that of the consented development. In particular T12 often appears as an outlier which sits higher than other turbines drawing further attention to the proposed development.

Visual Impact – Residential Amenity

- 16.56 Visual impacts on residential amenity, whether from settlements or individual properties, use a type of methodology that has become known as the "Lavender Test". The "Test" is an assessment approach that has been taken in a number of appeal cases to assess impacts, even though it is not universally applied nor is there any agreement or Scottish Government guidance recommending its usage. The "Lavender Test" not only refers to the impact on houses but also their gardens. It sets quite a severe threshold of whether a wind farm would be so overbearing and dominant on a property that it would make it an unattractive place to live. Much would contribute to that assessment including proximity, elevation, main outlook from windows, interruption by screening or buildings, location of garden ground, approach roads and tracks etc. These matters are considered and advised in the Renewable Energy SG.
- 16.57 Whilst all matters must be considered in the overall assessment, the greatest weight simply has to be given to direct and unavoidable impacts from inside dwellinghouses and, in particular, main habitable room windows. There is also evidence that decisions are taken on the number and proportion of properties within an area that may experience such impacts. The fewer the properties impacted, the less weight that would hold in the overall planning balance.
- 16.58 The Reporter identified that the consented scheme would pose the most significant impacts on the following residential properties; the Stewarton Group, the Harehope group, Cloich Farmhouse, Observatory (also known as Earlyburn) and Boreland. A Residential Visual Amenity Assessment (RVAA) has been carried out for the revised proposal. The RVAA identifies that these groups and properties (excluding Boreland) would remain the residential receptors which will have the greatest impact on their amenity.

- 16.59 The revised proposal does not result in moving any turbines significantly closer to any of the affected residential properties. The Reporter considered the implications of the consented scheme would have on the amenity of the identified properties in paragraphs 2.107 – 2.117 of their Report to the Scottish Ministers. This thoroughly examined where the turbines may be visible from for these residential receptors. These areas of visibility remain relevant for this revised scheme.
- 16.60 The proposed tip height increase does result in turbines becoming more visually dominating for these receptors. Intervening woodland and forestry planting will not screen the revised proposals to the same extent than the consented scheme. Undeniably, the increase in turbine height does increase the effects the development would have on residential visual amenity. When these effects are compared against the effects of the consented development, increasing the tip height of turbines to 149.9m is not judged to result in the development being so overbearing that it would render the overall living conditions to be an unattractive place to live and breach the threshold for residential visual amenity impacts. To reflect the requirements of the micro-siting condition of the consented scheme it is also recommended that the turbines in the SE corner (T2 –T5) should not be microsited closer to the Stewarton or Harehope group.
- 16.61 The RVAA has excluded assessing the impact on properties outside of the 2km Study Area. This has removed an assessment of Boreland which was previously identified to have significant impacts. Given its impacts were assessed previously it would have been advantageous to include this property as part of a detailed RVAA assessment. It would be anticipated that the impacts on this property will increase, similar to those assessed above however at approximately 4.5km distance from the development the increased turbine height are unlikely to result in the change failing to meet the Lavender test thresholds. This also applied for other affected residential properties within the surrounding area.

Cumulative Landscape and Visual Impacts

- 16.62 At the determination of the original Cloich Forrest Wind Farm, the Reporter raised concerns that the design of an adjacent wind farm to the west known as Hag Law would not be compatible with one another. Concerns were also raised with the relationship between the Cloich Forrest Wind Farm and Kilrubie WF directly to the east. Since Cloich was approved by the Scottish Ministers, Hag Law was refused by the Council with this decision being upheld at appeal and Kilrubie has since been withdrawn. Since these decisions, there has been no further developments on either of these schemes.
- 16.63 Currently there are no wind farm proposals within 20km of the application site that are at application stage. The development will have cumulative impacts with Bowbeat, however these impacts are not visually significant within the landscape. Overall, the development does not pose any significant cumulative landscape and visual impacts with other existing or proposed wind farms.

Landscape and visual impact of associated infrastructure

- 16.64 The proposed associated infrastructure includes, roads, borrow pits, control compound and BESS facility. These are not considered to give rise to any significantly adverse and unacceptable landscape and visual impacts. Final details of all new structures, surfaces and enclosures can be agreed by condition.

Landscape and Visual Impact Conclusions

- 16.65 The proposed development will result in landscape and visual impacts where the scale of the turbines are not readily contained by the receiving landscape. Also, from selected viewpoints, turbines can appear prominent on the skyline. Despite the increase in turbine height, the proposed development is not found to have introduced large areas of new visibility from the surrounding environment at locations that would not have been impacted by the consented scheme. Clearly when the development will be visible, the taller turbines will appear more prominent. This poses some unfortunate landscape and visual effects. In particular, they appear dominant alongside the Meldon Hills from southern viewpoints where these hills form part of the landscape setting of the Upper Tweeddale NSA and nearby roads, paths and residential properties experience increased visual effects.
- 16.66 The decision to grant approval for the consented scheme has affectively set a baseline for landscape and visual impacts that the Reporter judged to be acceptable within this environment. Informed by the assessment of the Landscape Architect, when the landscape and visual effects of this revised proposal are compared against the effects of the consented scheme, the resultant increase in landscape and visual effects have been found to be marginal although concerns are raised about the prominence of T12 from VPs 7, 12 and 13. The development has not been judged to pose any significantly adverse effects on the scenic or landscape qualities of the adjacent NSA or SLAs.
- 16.67 Since the approval of the consented scheme, the planning policy context for considering a wind farms landscape and visual effects has changed significantly with NPF4 now accepting that these developments may result in significant landscape and visual impacts. The acceptability of a windfarm in this location has already been established. Increasing the height of the turbines will result in the turbines being more perceptible from the affected locations however this change does not necessarily give rise to significantly harmful landscape and visual effects when compared against the effects of the consented scheme and the more permissive position adopted by NPF4. Overall, the resulting effects of this proposal are not found to conflict with prevailing development plan requirements for landscape and visual impacts, including NSA and SLA implications, subject to seeking to address the detrimental visual impacts of Turbine 12 by reposting the turbine to a lower elevation within the site.

Residential Amenity

- 16.68 Policy ED9 of the LDP and Policy 11 of NPF4 requires the impacts on communities and individual dwellings (including visual impact, residential amenity, noise and shadow flicker) to be considered. LDP Policy HD3 states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted. Members will note that visual impacts have been considered earlier in the report.

- 16.69 A noise assessment has been provided with an updated noise assessment undertaken as part of the SEI. This has been assessed by an acoustic consultant on behalf of SBC. The predicted noise levels are confirmed to be within the relevant limits at all receptor locations with no cumulative assessment found to be required owing to its distance to other wind farms.
- 16.70 It is recommended that there are no noise-related reasons to consider that the scheme could not be in compliance with development plan policies and Supplementary Guidance. If Members were minded to support this application, planning conditions could be recommended to the ECU to set appropriate noise levels and confirm the sound power level of the turbine which is to be installed at the site. In event of any noise complaints, the Council as 'relevant enforcement authority' could seek suitable investigation and resolution of any noise nuisance caused by the development.

Traffic Management, Road Safety and Access

- 16.71 Policy ED9 of the LDP and Policy 11 of NPF4 requires impacts of the construction of wind farms on public and trunk roads to be considered. The approved Renewable Energy SG also requires full consideration of the impacts including the structural and physical ability of the network to accommodate the traffic and impacts on local communities.
- 16.72 Access to the site for abnormal loads within Scottish Borders road network is from the Leadburn Junction on the A703 to the site entrance. This is the same route which was identified to serve the 2012 consent. RPS have not objected to the route identified by the applicants but it is considered that further analysis of the route is required to confirm the extent of the works required to the road to ensure the developments abnormal loads can access the site safely. A pre-development condition survey of all construction routes is required to be carried out, and once works commence, regular inspections should take place with any damage caused by construction traffic being remediated.
- 16.73 It is recommended that further agreement of the access route as well as its suitability to accommodate abnormal loads and any upgrades and remedial works thereafter can be addressed by a condition seeking the agreement of a detailed Traffic Management Plan (TMP).

Cultural Heritage

- 16.74 Against Policy 11 of NPF4 impacts arising from an energy development on the historic environmental are required to be addressed by the project design and mitigation. Policy 7 is directly concerned with historic assets and takes a stronger line whereby a development should protect and enhance historic environment assets.
- 16.75 Locally, the LDP requires the application to be assessed against Policy ED9 in respect of impacts on the historic environment and Policies EP7 and EP8 seek to protect the appearance, fabric or setting of Listed Buildings and Scheduled Monuments or other national, regional or local assets are relevant. Development proposals that adversely affect such assets would only be permitted if it can be demonstrated that the benefits of the proposal clearly outweigh the heritage value of the asset and there are no reasonable alternative means of meeting the development need. The supporting text of

Policy EP8 establishes the aim of the policy is to give Scheduled Ancient Monuments and any other archaeological or historic asset or landscapes strong protection from any potentially damaging development.

- 16.76 The Council's Renewable Energy SG contains advice on assessing the impacts of wind energy developments on the historic environment, both direct and indirect impacts. It augments the aforementioned Policies and also provides information on how setting of historic structures and places are assessed, including the use of guidance from Historic Environment Scotland – Managing Change in the Historic Environment: Setting. The SEI has sought to address the impacts of T8 on this historic environment. The impact of the development on both direct and indirect archaeological impacts are considered below.

Direct Archaeological Impacts

- 16.79 There are three Scheduled Monuments (SM) located within the application site. In assessing the original layout, the Archaeology Officer noted that T8 and its related infrastructure was close to Whaup Law Cairn (SM 2755) that it could be a direct impact. The repositioning of T8 has moved the development further from the SM which alleviates this concern. No other significant direct impacts have been identified. Any other direct archaeological impacts can be addressed by a suitably worded planning condition to agree a programme of archaeological mitigation.

Indirect Impacts

- 16.80 In response to the 2012 application, the Council considered that the proposal would pose major significant impacts to the settings of individual scheduled monuments close to the site as well as others within 10km of the site. The Council felt that proposal would cause significant major impacts on a well-preserved historic/ cultural landscape which is primarily appreciated from hills to the south and west of the development, including the Meldons and Cademuir Hill.
- 16.81 In assessing the implications of the current proposal, the Archaeology Officer considers the development will adversely affect the historic environment. Attention is drawn to Viewpoint 19: Cademuir Hill Fort looking towards the White Meldon SM where it would be overtopped by turbines. Similar impacts are experienced from Viewpoint CH3: Easter Dawyck Hill Fort and Settlement. Despite the concerns about proposal, when comparing the impact of the proposal against the consented scheme it is conceded that there is little noticeable difference between the two from the majority of the cultural heritage receptors, including hillfort locations on the Meldons and Portmore House and Estate.
- 16.82 The Archaeology Officer has identified that there are some noticeable differences between the two schemes caused by impacts of T10 and T8 on the setting of Whaup Law Cairn SM. The applicants have sought to address the impacts caused by T8 by relocating the turbine to a lower elevation as advised by the Archaeology Officer.
- 16.83 In conclusion, the development of a wind farm in this location still gives rise to some negative impacts on the setting of individual scheduled monuments and the experience of the historic landscape to the south and west of the

development. Although this proposal would increase the height of turbines within the site when compared against the consented scheme it has not been found to cause any additional significant impacts on cultural heritage assets. Since the original development was approved it is also relevant to note that we must now attribute greater weight to the renewable energy benefits brought by this development. It is acknowledged that this proposal has not addressed the Council's cultural heritage concerns that were expressed in the determination of the original scheme however the Scottish Ministers decision to approve a wind farm in this location represents a significant material consideration. In the absence of this development giving rise to any additional adverse impacts on historic environment assets, it is considered that the proposal will comply with prevailing planning policies.

Other Cultural Heritage Impacts

- 16.84 The development does not detrimentally affect the setting of any listed buildings or Conservation Areas which are located within the Scottish Borders when compared against the effects of the original development.

Natural Heritage

Ecology, Habitats, Protected Species and Ornithology

- 16.85 The proposal has to be assessed against policies EP1, EP2 and EP3, which seek to protect international and national nature conservation sites, protected species and habitats from development. Policy ED9 requires consideration of the impacts on natural heritage, hydrology and the water environment, augmented by the Renewable Energy SG. Policy 3 of NPF4 seeks for national developments to conserve, restore and enhance biodiversity.
- 16.86 The access to the development crosses the Eddleston Water which forms part of the River Tweed SSSI and SAC. The development will utilise the existing bridge crossing and poses no direct impacts on the SSSI/SAC.
- 16.87 The Council did not oppose a wind farm at this site on any natural heritage grounds. This proposal has been accompanied by a range of new ecological, protected species and ornithological surveys. Other than the need for a breeding bird protection plan, the results of the updated surveys have not predicted that this revised scheme would cause any new or significantly adverse impacts on any ecological interests. The impacts of the development on natural heritage interests can be mitigated by seeking to re-attach the ecological conditions from the previous consent which can recommend the agreement of;
- Employment of an Ecological Clerk of Works
 - A Habitat Management and Enhancement Plan
 - A Construction Method Statement
 - A Biodiversity Monitoring and Management
- 16.88 An additional condition covering a Breeding Bird Protection Plan is recommended.
- 16.89 Against Policy 3 of NPF4, as a national development this proposal is sought to 'enhance biodiversity'. No guidance has been issued to determine how such enhancements are to be measured however it is understood that the Scottish

Government have commissioned research to explore this. At this stage is it not clear how enhancements are to be measured, nevertheless the agreement of a Habitat Management and Enhancement Plan by condition can seek to ensure that a suitable level of positive biodiversity improvements are provided by the developer.

Carbon Rich Soils, Deep Peat and Priority Peatland Habitat

- 16.90 Policy ED9, ED10 and the Renewable Energy SG require consideration of the impact of the development on carbon rich soils. Policy 5 of NPF4 protect carbon rich soils, restore peatlands and minimise soil disturbance. The policy does however permit renewable energy development to be acceptable in principle on peatlands.
- 16.91 The previously consented development did not raise any significant concerns on any sensitive soil conditions. The development will not impact on any areas of deep peat. It is noted that the revisited position of T8 and additional construction compound have marginally greater impacts on peat than the original layout, however these impacts are not significant. It is recommended that impacts of development on areas of peat can be addressed by suitably worded conditions including peat management plan.

Hydrology

- 16.92 ED9 of the LDP and Renewable Energy SPG seeks to avoid proposals for wind farms being located within an area that is likely to be affected by flooding. The developments should avoid polluting any water courses should be designed to ensure that the proposal causes no risk to any private water supplies. Policy 11 of NPF4 requires the project design and mitigation to address these impacts.
- 16.93 In terms of flood risk the Councils flooding engineers are satisfied that the development will not result in any flood risk. The additional mitigation measures which they are seeking can be captured within a construction environmental management plan as part of a drainage management strategy.
- 16.94 Turning to private water supply, this matter was thoroughly investigated as part of the Public Local Inquiry for the consented scheme where it was concluded that the impacts on private water supplies could be addressed by conditions seeking further investigation and the submission of a Groundwater Monitoring Plan.
- 16.95 The Council does not have in 'in house' hydrologist to provide specific detailed advice in response to hydrology aspects of private water considerations, however Environmental Health colleagues assist with assessment on private water supplies. Members will be aware that third parties have maintained their concerns about applicant's assessment of the impacts that the development would have upon private water supplies and in particular the impact it would have on the Stewarton group of buildings. Supplementary Environmental Information was provided to seek to address third party and SEPA objections which included the impact of the construction and operation of T3 on the groundwater flow of the water supply believed to serve the Stewarton group.
- 16.96 The SEI has not provided an assurance that the development will not impact on any private water supplies, however, SEPA has removed their holding

objection provided further monitoring is put in place of the previous unsuitable borehole investigation to further assess the impacts of T3.

- 16.97 Members will be aware that the properties which rely on a private supply do not have access to public water therefore it is imperative that their supplies are not affected by the development. On comparing the layout of the consented and proposed schemes they would appear to have similar impacts on private water supplies including potential impacts on the Stewarton group. Since the determination of the consented scheme, further private water supply investigations have been carried out although there still appears to be areas of uncertainty. Having discussed the matters further with our EHO it is officers opinion that their concerns can be addressed by suitably worded planning conditions which seek to agree;
1. A private water supply method statement to detail all avoidance/and or mitigation measure to secure the quality, quantity and continuity of water supplies.
 2. An emergency response plan to address any of the avoidance/mitigation measures failing
 3. Restriction on the construction of T3 and its associated infrastructure until further information is provided to confirm that the development will not adversely affect the Stewarton private water supply or the micro-siting of T3 to a location which would not affect this supply.
- 16.98 Subject to suitably worded conditions covering the above matters it is recommended that the development can take place in a manner which would not detrimentally affect private water supplies.

Other Matters

- 16.99 The revised scheme has not raised any new significantly adverse effects on any other matters listed in Policy ED9, including shadow flicker, impact aviation and defence and telecommunications, that requires further consideration of the Council.

17.0 CONCLUSION

- 17.1 The adoption of NPF4 has made it clear that the renewable energy deployment remains a key priority for the Scottish Government. NPF4 and the OWPS 2022 confirm that more onshore wind farms will be required to meet legally binding net zero emissions targets. It is clear that planning decisions have a key role to play to tackle the climate emergency. However, similar to planning and energy policies which were in place at the time of determination of the original application, a careful balancing exercise is required to be undertaken against prevailing development plan policies where the benefits of energy production, and the disbenefits of environmental impact are weighed carefully against one another as part of the planning balance.
- 17.2 NPF4 now explicitly requires that decision makers must give significant weight to the contribution a development would make toward renewable energy and climate change targets. Compared against the consented scheme, this revised proposal will provide an additional electrical output. The level of its additional contribution may not be vast but it would generate more electricity with fewer turbines within a timescale to meet Scottish Governments targets to generate 20GW of on shore wind by 2030. The proposal also provides battery storage

capacity and that has an important role to play in the transition to net zero in addition to the developments wider net economic benefits.

- 17.3 The proposed development would result in some significant landscape and visual impacts. Increasing the height of the turbines means they are more perceptible from affected locations. The position of T12 does appear visually prominent from a number of viewpoints but relocating this turbine to a lower ground level could address this specific concern.
- 17.4 The landscape and visual impacts posed by this development are not discounted but it must be recognised that NPF4 is more accommodating of resulting landscape and visual effects arising from wind farm development. This development would take place at a location, which was previously determined to be appropriate for wind farm development by the Scottish Ministers. Importantly when the landscape and visual effects of the consented scheme are compared against the effects of the consented scheme, the resulting impacts are not judged to be significantly harmful. Although the development may only provide a modest contribution to renewable targets this is still a valuable contribution and greater weight has to be placed on the environmental benefits of generating renewable energy at this site. Under this specific context, it is considered that on balance, the benefits outweigh the negatives – provided T12 is relocated. This can be covered by condition.
- 17.5 For the reasons set out above, that the proposed development accords with the relevant provisions of the development plan and that there are no material considerations which would outweigh this finding.

18.0 RECOMMENDATION BY CHIEF PLANNING & HOUSING OFFICER

- 18.1 It is recommended that Scottish Borders Council do not object to the proposed Cloich Forest Wind Farm, provided Turbine 12 is relocated to a lower position within the site so that it does not appear as visually prominent within the landscape. It is also recommended that the following conditions are attached to any consent that may be granted:

1. Duration of Consent

The consent is for a period of 40 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

Commencement of Development shall be no later than five 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 Scottish Ministers and the Planning Authorities no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that consent is implemented within a reasonable period, and to allow the Scottish Ministers and the Planning Authorities to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.

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 assignation 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 assignation having been granted.

Reason: to safeguard the obligations of the consent if it is assigned 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 such an incident occurring.

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

5. Implementation in accordance with approved plans and requirements

Except as otherwise required by the terms of this section 36 consent and deemed planning permission, the Development shall be undertaken in accordance with the Application (including the EIAR as amended or supplemented by the AEI).

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

6. Design and operation of turbines

a. There shall be no Commencement of Development unless full details of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour (which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the planning authority.

b. The turbines shall be consistent with the candidate turbine or range assessed in the environmental statement, and the tip height thereof shall not exceed 149.9 metres above ground level.

c. 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 wind farm is decommissioned.

d. All wind turbine blades shall rotate in the same direction.

e. None of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings/enclosures, ancillary buildings 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.

Reason: 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

7. 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 Battery Energy Storage System (BESS) facility and parking areas have been submitted to and approved in writing by the planning authority. The substation building, associated compounds, fencing, external lighting and BESS facility 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

8. Micro-siting

(1) Subject to paragraph (2), all wind turbines, buildings, masts, areas of hard standing and tracks shall be constructed in the location shown on Figure 2.1 of the Supplementary Environmental Information submitted on 1 December 2022

(2) Wind turbines, buildings, masts, areas of hard-standing and tracks may be

adjusted by micro-siting within the site, but micrositing is subject to the following restrictions, unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and SNH)—

(a) no wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on Figure 4.1;

(b) no building, mast, access track or hard-standing shall be moved more than 50 metres from the position shown on the original approved plans;

(c) no wind turbine shall be moved more than 50 metres from the position shown on the original approved plans and no turbines (T2, T3, T4 and T5) shall be moved closer than the location specified in figure 2.1 of the Supplementary Environmental Information submitted on 1 December 2022 to any of the dwellings at Upper Stewarton, the Stewarton group (Nether Stewarton Farmhouse, Stewarton House, Stewarton Toll, Stewarton Lodge) and the Harehope group (Harehope Cottage, Harehope Steading, Old Harehope, Harehope Farmhouse);

(d) all micro-siting permissible under this condition must be approved in advance in writing by the Ecological Clerk of Works.

(2) 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 hard-standing, 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 Ecological Clerk of Works or Planning Authority's approval, as applicable.

Reason: to control environmental impacts while taking account of local ground conditions, and specifically to limit changes to positioning of turbines where they are closest to residential property and where their relocation would have the potential to change the level of impact on residential amenity and hydrology to that hereby consented.

9. Borrow Pits

There shall be no Commencement of Development unless a scheme for the working 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;

- a. A detailed working method statement;
- b. Details of the handling of any overburden (including peat, soil and rock);
- c. Drainage, including measures to prevent surround areas of peatland from drying out;
- d. A programme of implementation of the works described in the scheme;
- and e. Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period. The approved scheme shall thereafter be implemented in full.

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.

10. Planning Monitoring Officer

There shall be no commencement of development unless the planning authority has first approved the terms of appointment by the company of an independent and suitably qualified environmental consultant to assist the council in the monitoring of compliance with conditions attached to this deemed planning permission during the period from commencement of development to the date of Final Commissioning and thereafter throughout the period of operation of the wind farm.

Reason: to enable the development to be suitably monitored during the construction phase to ensure compliance with the consent issued

11. 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 (in consultation with NatureScot and SEPA). The terms of appointment shall:

- a. Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the environmental statement and other information lodged in support of the application, the Construction and Environmental Management Plan and other plans approved in terms of the Construction Method Statement and Habitat Management and Enhancement Plan (conditions 12 and 15); and
- b. Require the Ecological Clerk of Works to report to the company's nominated construction project manager any incidences of non-compliance with the works for which the Ecological Clerk of Works is responsible for monitoring at the earliest practical opportunity.

The Ecological Clerk of Works shall be appointed on the approved terms from commencement of development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 12.

No later than 18 months prior to decommissioning of the development or the expiration of this consent (whichever is the earlier), the company shall submit details of the terms of appointment by the company of an independent Ecological Clerk of Works throughout the decommissioning, restoration and aftercare phases of the development to the planning authority for approval in consultation with Scottish Natural Heritage and SEPA. The Ecological Clerk of Works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

Reason: to secure effective monitoring compliance with the environmental mitigation and management measures associated with the development.

12. Construction Method Statement

There shall be no commencement of development unless a Construction Method Statement 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 Scottish Natural Heritage and SEPA.

The Construction Method Statement shall include (but shall not be limited to):

- a. a Construction Environmental Management Plan outlining the procedures, mechanisms and responsibilities for implementing the environmental controls outlined in the Construction Method Statement and the separate management plans listed below;
- b. site waste management plan (dealing with 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;
- c. details of the formation of the construction compound, welfare facilities, any areas of hard-standing, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- d. details of borrow pit excavation and restoration;
- e. a dust management plan;

- f. 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;
- g. a pollution prevention and control method statement, including arrangements for the storage of oil and fuel on the site;
- h. soil storage and management;
- i. a peat management plan;
- j. a drainage management strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources
- k. sewage disposal and treatment;
- l. temporary site illumination;
- m. the construction of the access into the site and the creation and maintenance of associated visibility splays;
- 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 and meteorological masts;
- 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, borrow pits, construction compound 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;
- t. a wetland ecosystems survey and mitigation plan, where appropriate; and
- u. a felling and forestry wastes management plan, where appropriate;
- v. a strategy for monitoring, control and mitigation in respect of construction noise, and a methodology to be applied in instances where complaints are received in relation to construction noise.

The development shall be implemented thereafter in accordance with the approved Construction Method Statement unless otherwise approved in advance in writing by the planning authority in consultation with NatureScot 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.

13. 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 Bank Holidays or Public Holidays . Outwith these specified hours, development which is audible from any noise sensitive property shall be limited to turbine foundation construction, turbine installation, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless

otherwise approved in advance in writing by the relevant Planning Authority.

Reason: In the interests of local amenity.

14. Traffic Management Plan

There shall be no commencement of development until a Traffic Management Plan (TMP) has been submitted to and approved in writing by the Planning Authority. The TMP to include:

- a. The detailed delivery route and vehicle numbers for all cars, HGV deliveries and abnormal loads associated with the development and measures to ensure that the specified routes are adhered to, including monitoring procedures;
- b. Details of all ancillary works required to the public road network to facilitate deliveries, including all signage and lining arrangements, a programme and timescales for implementation and reinstatement proposals after the development is complete and a programme and timescales for completion;
- c. Road condition survey of all proposed access routes carried out prior to the development commencing and details of any upgrading works and a regime for routine maintenance during construction of the development. Any remedial works required as a result of damage/deterioration by construction traffic (to be highlighted in a post-construction road condition survey) to be rectified at the expense of the developer after the development has been completed in accordance with an agreed timescale. Any emergency repairs identified during the construction period to be rectified within one week, unless otherwise agreed;
- d. Details of tree or hedge removal along the route for the abnormal loads and a scheme for replacement planting and a timescale for its implementation and completion;
- e. Swept path analysis drawings for agreed areas of concern along the route for the abnormal loads and remedial measures;
- f. Areas of the abnormal load route where the removal of street furniture, including lighting, is required and all temporary lighting measures required for the duration of the abnormal load movements;
- g. Name and contact details of a nominated person to whom any road safety issues can be referred.
- h. A trial run to be undertaken on the finalised abnormal load route, with representatives from the Council present.

The approved TMP thereafter to be implemented in full, unless otherwise agreed in advance in writing by the Planning Authority and all work within the public road boundary to be undertaken by a contractor first approved by the Council.

Reason: To ensure all construction traffic access the site in a safe manner and that any upgrading works or repairs to public roads are carried out timeously to the Council's specifications, in the interests of road safety.

15. Habitat Management and Enhancement Plan

There shall be no commencement of development unless a Habitat Management and Enhancement Plan has been submitted to and approved in writing by the planning authority in consultation with RSPB Scotland, Forestry Commission Scotland and SEPA. The Habitat Management and Enhancement Plan shall set out proposed long term

management and enhancement of the wind farm site and shall provide for the maintenance, monitoring and reporting of habitat on site in relation to bats, schedule 1 raptors, breeding birds, reptiles, amphibia, woodland, wetland, grassland and heathland management.

The approved Habitat Management and Enhancement Plan will be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted to the planning authority for written approval in consultation with RSPB Scotland, Forestry Commission Scotland and SEPA.

Unless otherwise agreed in advance in writing with the planning authority, the approved Habitat Management and Enhancement Plan shall be implemented in full.

Reason: in the interests of good land management and the protection and enhancement of habitats

16. Biodiversity Monitoring and Management

Prior to the commencement of the development and, in the case of items (b) and (c) prior to the commencement of any on-site works or development, the following plans, programmes and/or survey results shall have been submitted to, and approved by the Planning Authority:

(a) a programme of monitoring of Schedule 1 raptor species and protected mammals including bats and badgers, agreed with the Planning Authority and in consultation with Scottish Natural Heritage and RSPB Scotland;

(b) supplementary surveys for protected species (including otter, bat, badger, red squirrel, breeding birds), carried out by a suitably qualified person or persons in a manner appropriate to the phasing of the development, to inform a Species Mitigation and Management Plan;

(c) a Species Mitigation and Management Plan relating to the species identified in clause (b);

(d) an Integrated Water Quality and Fisheries Management Plan agreed with Marine Scotland-Freshwater Laboratory and River Tweed Commissioners (at least 12 months before construction starts), with a programme of pre-construction water quality and fisheries surveys to establish a baseline, plus during and after construction water quality monitoring (in addition to visual checks required under the Construction and Environmental Monitoring Plan).

In the case of (a), the programme shall be undertaken pre-construction, during construction, and for years 1, 2, 3, 5, 10 and 15 once the wind farm becomes operational.

In the case of (b), the results of these surveys should be used to inform construction activities and any required mitigation proposals for protected species on the site, and shall be strictly adhered to in the course of development.

In the case of (c) and (d), all on-site works and development shall thereafter be carried out in accordance with the approved plan(s).

Reason: To ensure that reasonable protection is given to biodiversity on and utilising the site; species protected by law are not harmed as a result

of the development taking place; the protected species are afforded due protection (and to enable greater understanding of the impacts of development of this nature); and proposed mitigation measures are effective in protecting fisheries within and downstream of the proposed development.

17. Breeding Birds

There shall be no commencement of development unless a Breeding Bird Protection Plan (BBPP) has been submitted to and approved in writing by the planning authority in consultation with RSPB Scotland and thereafter shall be implemented in accordance with the agreed details. The BBPP shall set out mitigation to limit the disturbance of the development on goshawk and crossbill.

Reason: To ensure suitable protection is given to breeding birds and ensure they are not harmed as a result of any effects of the development.

18. Archaeological Clerk of Works

There shall be no commencement of development unless the planning authority, in consultation with Historic Environment Scotland, has approved the terms of appointment by the company of an independent Archaeological Clerk of Works, and the company has secured the implementation of a written scheme of investigation outlining a programme of archaeological mitigation. The scope of the Archaeological Clerk of Works's appointment shall include:

- a. Monitoring implementation and compliance with a programme of archaeological mitigation works approved by the planning authority in a written scheme of investigation which shall specify:
 - i. An archaeological watching brief on relevant excavations where unknown archaeological deposits or features may exist;
 - ii. A paleo-environmental sampling and dissemination strategy in areas where deep peat will be impacted by development;
 - iii. A post-excavation research and dissemination strategy in the event of significant discoveries determined as such by the Archaeological Clerk of Works and planning authority. All post-excavation research and dissemination shall be completed within 3 years of the completion of on-site investigations;
 - iv. The erection of suitable fencing around known archaeological assets, to be determined by the Archaeological Clerk of Works and planning authority, where there is potential damage during development;
 - v. A strategy of LiDAR survey of the impacted historic landscape to be agreed between the company and the planning authority and to include community engagement, interpretation and dissemination;
- b. Advising the company on adequate protection of archaeological interests on the site;
- c. Checking for new records of archaeological interests for which additional mitigation may be required;
- d. Directing the micro-siting and placement of turbines and tracks away from known assets and discovered assets of archaeological significance where in situ preservation is warranted;
- e. Monitoring the compliance with mitigation, reinstatement and restoration measures approved in this consent; and
- f. Reporting any breaches of the mitigation, reinstatement and restoration measures approved in this consent to the planning authority in writing.

The Archaeological Clerk of Works shall be appointed on the approved terms throughout the period from commencement of development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 12. No later than 18 months prior to decommissioning of the development or the expiration of this consent (whichever is the earlier), the company shall submit details of the terms of appointment by the company of an independent Archaeological Clerk of Works throughout the decommissioning, restoration and aftercare phases of the development to the planning authority for approval, in consultation with Historic Environment Scotland. The Archaeological Clerk of Works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.
Reason: To ensure the protection or recording of archaeological features impacted by development.

19. Replanting of Forestry

There shall be no commencement of the development unless a woodland planting scheme to compensate for the removal of existing woodland (“the Replanting Scheme”) has been submitted for the written approval of the planning authority in consultation with Forestry Commission Scotland Conservator.

The Replanting Scheme must comply with the requirements set out in the UK Forestry Standard (Forestry Commission, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers, or such replacement standard as may be in place at the time of submission of the Replanting Scheme for approval. The Replanting Scheme must include:

- (a) details of the location of the area to be planted;
- (b) details of land owners and occupiers of the land to be planted;
- (c) the nature, design and specification of the proposed woodland to be planted;
- (d) details of all consents required for delivery of the Replanting Scheme and timescales within which each will be obtained;
- (e) the phasing and associated timescales for implementing the Replanting Scheme;
- (f) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks, replacement planting, fencing, ground preparation and drainage; and
- (g) proposals for reporting to the planning authority on compliance with timescales for obtaining the necessary consents and thereafter implementation of the Replanting Scheme.

Unless otherwise agreed in writing by the planning authority, the development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained. In the event that there is no reasonable prospect of the relevant consents necessary for implementation of the approved Replanting Scheme being obtained, then the company shall submit an amended Replanting Scheme to the planning authority for approval in consultation with Forestry Commission Scotland. Unless otherwise agreed in writing by the planning authority, the development shall not be commissioned to supply

electricity on a commercial basis unless all relevant consents necessary for implementation of the approved amended Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained.

The approved Replanting Scheme (or, as the case may be, an approved amended Replanting Scheme) shall be implemented in full, unless otherwise agreed in writing by the planning authority after consultation with Forestry Commission Scotland Conservator.

Reason: to secure replanting to mitigate against effects of deforestation arising from the Development.

20. Noise

The rating level of noise immissions from the combined effects of the wind turbines forming part of the development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of this consent. The turbines shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria and:

a. The company shall continuously log power production, wind speed and wind direction. These data shall be retained for a period of not less than 24 months. The company shall provide this information to the planning authority within 14 days of receipt in writing of a request to do so.

b. There shall be no First Commissioning of the Development until the company has received written approval from the planning authority of 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 company 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. The written request from the planning authority shall set out at least the date, time and location to which the complaint relates 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(s) 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 emissions. 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 condition 19 paragraph c above, and such others as the independent consultant considers likely to result in a breach of the noise limits.

e. Where the property to which a complaint is related is not listed in the tables attached to this condition, the company 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 property 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 property. The rating level of noise immissions resulting from the combined effects of the wind turbines shall not exceed the noise limits approved in writing by the planning authority for the complainant's property.

f. The company shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions within 2 months of the date of the written request of the planning authority for compliance measurements to be made under paragraph e, unless the time limit is extended in writing by the planning authority. Certificates of calibration of the instrumentation used to undertake the measurements 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, the company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to condition 19 paragraph d above unless the time limit has been extended in writing by the planning authority.

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

Location including co-ordinates	Standardised 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
Nether Stewarton Properties*	37	37	37	37	37	37	37	37	38	40	41	42
Ruddenleys Properties**	35	35	35	35	35	35	35	36	39	41	43	44
Cloich Farm	35	35	35	35	35	35	35	36	38	41	44	48
Harehope Properties***	35	35	35	35	35	35	35	39	42	45	47	49
Upper Stewarton	39	39	39	39	39	39	39	39	39	40	41	42

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

Location including co-ordinates	Standardised 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
Nether Stewarton Properties*	43	43	43	43	43	43	43	43	43	43	43	45
Ruddenleys Properties**	43	43	43	43	43	43	43	43	43	43	43	43
Cloich Farm	43	43	43	43	43	43	43	43	43	43	43	43
Harehope Properties***	43	43	43	43	43	43	43	43	43	43	46	49
Upper Stewarton	43	43	43	43	43	43	43	43	43	43	43	45

* Nether Stewarton Farm, Stewarton House, Stewarton Lodge, Stewarton Toll

** White Heather Cottage Ruddenleys, The Carriage House Ruddenleys, Ruddenleys Cottage, Ruddenleys House

***Harehope Cottage, The Steading Harehope, Old Harehope, Harehope Farmhouse

Reason: to protect nearby residents from undue noise and disturbance; to ensure that noise limits are not exceeded; and to enable prompt investigation of complaints.

21. Private Water Supplies

There shall be no commencement of development unless the following private water supply matters have been submitted to and agreed in writing with the Planning Authority:

a. a method statement (private water supply plan) has been submitted to and approved in writing by the planning authority, detailing all avoidance and/or mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this consent and which may be affected by the development. In particular, the method statement shall include a water quality and quantity (yield) monitoring plan for every private water supply which may be affected by the development during the construction, operational and decommissioning phases of the development.

b. a site-specific emergency response plan has been submitted to and approved in writing by the planning authority, detailing all additional (emergency) measures to be delivered in the event of the avoidance and/or mitigation measures (identified as part a.) unpredictably failing to secure a sufficient supply of wholesome water to properties which are served by private water supplies at the date of this consent and which

may be affected by the development. In particular, the plan shall identify all measures necessary to secure a sufficient and continuous supply of wholesome water to the properties until such time as the pre-development water supply conditions (quality, quantity and continuity) are reinstated, along with the criteria necessary for liability for the unpredicted event(s) to be attributed to the development and the duration of this liability, as far as reasonably practicable. Finally, in the event that the pre-development water supply conditions cannot be reinstated or the additional measures include new infrastructure (e.g. source, pipework, tank, treatment, etc.), the plan must include consideration of any long-term additional operation and maintenance tasks, including running costs, and confirmation of where liability for and/or responsibility thereof is to be attributed to the development/applicant.

Reason: To maintain a secure and adequate quality water supply to all properties with private water supplies which may be affected by the development.

22. Private water supply – Turbine 3

There shall be no commencement of development in relation to the construction of Turbine 3 (T3) or any of its associated infrastructure (including the new access track between T3 and T4/T5) until a scheme of details has first been submitted to and approved in writing by the planning authority, informing on the groundwater table and/or groundwater flow direction to demonstrate that the development will not impact the Nether Stewarton (“Stewarton”) private water supply system in terms of quality, quantity and continuity of water supply. In the event that any assessment or site investigation concludes that the location of T3 or its infrastructure could adversely impact the Stewarton or any other private water supply system(s), a scheme of details to mitigate the impact(s) on the private water supply system(s) should be submitted to and approved in writing. Alternatively, it may be appropriate for T3 and its infrastructure be re-sited to another location under Condition 8, providing no adverse impacts to any private water supply systems as a consequence of the re-siting are able to be confirmed in writing and approved by the planning authority

Reason: Further information is required to determine the impact of the Turbine 3 (T3) development site on private water supplies and seek to maintain a secure and adequate supply to all properties with private water supplies which may be affected by the development.

23. Water and Flood Risk Management

There shall be no commencement of development unless the following matters have been submitted to and approved in writing by the planning authority and thereafter the development shall be carried out in accordance with the approved details:

- a. design details of new crossings or alterations to previous crossings to ensure that there is no decrease in flow conveyance and subsequently increased flood risk caused by the crossings;
- b. details of regular maintenance relating to new water crossings and drains, to mitigate by reducing surface water runoff impact;
- c. details of levels of discharges from SUDS or other drainage, confirming how it will be kept to existing Greenfield run-off rates;
- d. written explanation of how it is proposed to manage the minimisation of sediment entering the surrounding water courses.

Reason: to minimise impact on the water environment and to ensure that flood risk is ameliorated.

24. 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, all to the satisfaction of the planning authority.

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

25. 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:

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

Reason: in the interests of aviation safety

26. 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: in the interests of aviation safety

27. Site Decommissioning, Restoration and Aftercare

The development will be decommissioned and 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 restoration of the site in accordance with this condition shall not exceed three years from the date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

There shall be no commencement of development unless a decommissioning, restoration and aftercare strategy has been submitted to and approved in writing by the planning authority in consultation with NatureScot and SEPA. The scheme shall detail measures for the decommissioning of the development, restoration and aftercare of the site and will include, without limitation, proposals for the removal of the above ground elements of the development, the treatment of ground surfaces, the management and timing of the works, and environmental management provisions.

No later than 3 years prior to decommissioning of the development or the expiration of this consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare method statement, shall be submitted to the planning authority for written approval in consultation with NatureScot and SEPA. The detailed decommissioning, restoration and aftercare plan will provide updated and detailed proposals for the removal of above ground elements of the development, the treatment of ground surfaces, 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 hard-standing, 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 of oil and fuel on the site;
- f. soil storage and management;
- g. sewage disposal and treatment;
- h. temporary site illumination;
- i. the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- j. details of watercourse crossings;
- k. 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.

The development shall be decommissioned, site 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 NatureScot 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.

28. 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 25 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 25. 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.

29. Public Path/Access Protection, Enhancement and Management

There shall be no commencement of development until a Public Path and Access Management Plan has been submitted to and approved in writing by the planning authority, in consultation with the Forestry Commission Scotland Ranger. The plan shall include (but not be limited to) the following:

- a. timings of any intended diversion, closure or obstruction of any public right of way (note that these are likely to need a separate consent);
- b. measures for ensuring that paths kept open during development are safe and can be traversed without undue harm to the amenity of users;
- c. measures to ensure that users of the path network and accessible areas more generally are able to navigate through and adjacent to the site, including mapping and signage;
- d. any temporary installations such as gates, stiles and bridges and the duration of their installation;
- e. proposals to restore original paths to an acceptable condition between construction and decommissioning and once full decommissioning has taken place; and
- f. proposals to enhance public access within and adjacent to the site during the lifetime of the development.

Reason: the development would interact with a range of public paths and accessible areas, with development effects causing changes that require careful management to ensure that the experience of users is not harmed unacceptably or, where it will be harmed, that the level and nature of harm is limited and controlled to minimise development effects.

18.2 Informatives

1. In relation to Condition 22, the potential re-siting or micro-siting of any turbines and associated infrastructure has the potential to impact private water supply systems, particularly if the sources have not been fully risk assessed (i.e. the true source locations have not been determined) and the aquifers (origin of the water) or distribution networks (pipework, tanks,

etc.) serving said sources are undetermined and inadvertently impacted by the re-sited infrastructure. As such, as far as reasonably practicable, it must be ensured that all private water supply systems have been suitably risk assessed, and so it is recommended that the following information request be attached to the planning consent for this purpose:

(a) An ArcGIS overlay (plate/map/figure) should be provided of the PWS Search Zone (i.e. including the site boundary of the wind farm, the area within 3 km of the site boundary and source catchments) showing every PWS source point (i.e. the point where water is collected/sourced) risk assessed as per Section 5 and Table 10.1 of Technical Appendix A10.2 (PWSRA) of the EIA Report. Each source point should be labelled with the Source Reference Number as detailed in Table 10.1 and, if any source point depicted is not the true location of the source (“true source location”) but it is simply the first point (e.g. a chamber) through which the water is being channelled or collected, then this should also be identified – e.g. through appropriate colouring, symbol shape, etc.

(b) An ArcGIS overlay should be provided of the PWS Search Zone showing every PWS source point screened-out of the risk assessment as per Table 10.2 of Technical Appendix A10.2 (PWSRA) of the EIA Report. Each source point should be labelled with the Source Reference Number as detailed in Table 10.2 and, if any source point is not the true source location, then this should also be identified – e.g. through appropriate colouring, symbol shape, etc.

(c) An ArcGIS overlay should be provided of the PWS Search Zone showing every property which has an undetermined water supply/source point, as per Table 10.3 of PWSRA V2. Each property (or collection of properties in close proximity to one another) should be labelled with the Source Reference Number as detailed in Table 10.3 of Technical Appendix A10.2 (PWSRA) of the EIA Report.

19.0 DRAWING NUMBERS

SEI Figure 2.1	Site Layout
SEI Figure 3.2	Indicative Scottish Power Transmission Temporary Construction Compound
SEI Figure 3.3	Indicative Substation and BESS Compound
SEI Figure 3.4	Indicative Control Building and BESS Elevation
Figure 3.2	Indicative Turbine Elevation
Figure 3.3	Indicative Foundation Design
Figure 3.4	Indicative Crane Hardstanding
Figure 3.5	Indicative Trench Detail

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Service Director (Regulatory Services) and the signed copy has been retained by the Council.

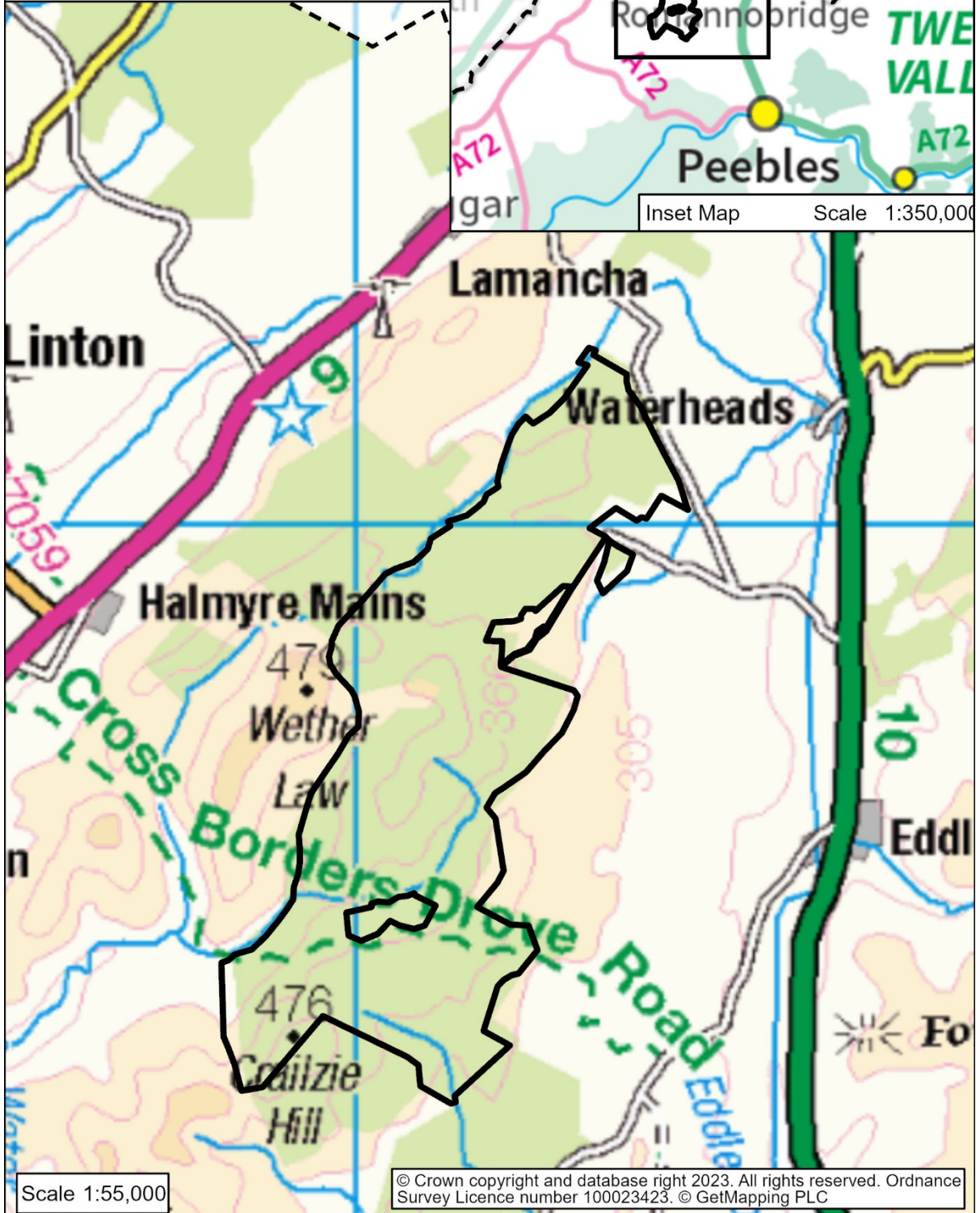
Author(s)

Name	Designation
Scott Shearer	Peripatetic Planning Officer



21/01134/S36

Cloich Wind Farm



Scale 1:55,000

© Crown copyright and database right 2023. All rights reserved. Ordnance Survey Licence number 100023423. © GetMapping PLC

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

24 APRIL 2023

APPLICATION FOR PLANNING PERMISSION

ITEM: **REFERENCE NUMBER:** 22/01876/FUL

OFFICER: Paul Duncan
WARD: East Berwickshire
PROPOSAL: Variation of Condition 1 of planning permission 97/00461/FUL to allow year-round occupation of caravans
SITE: Pease Bay Caravan Site Cockburnspath
APPLICANT: Verdant Leisure
AGENT: Tetra Tech

PLANNING PROCESSING AGREEMENT:

A Planning Processing Agreement is in place until 24 April 2023.

SITE DESCRIPTION:

Pease Bay Holiday Park is located around one mile east of the village of Cockburnspath in East Berwickshire. It is comprised of 330 caravan pitches, an on-site shop and an entertainment complex. The majority of the pitches (292) are privately owned. A further 30 are short term holiday lets with the remainder for staff or vacant.

The caravan park is served by an unclassified public road that connects with the A1 trunk road at a roundabout to the north of Cockburnspath and with the A1107 Coldingham Tourist Road a few hundred metres to the south. The Southern Upland Way and the Berwickshire Coastal Path follow the minor road to the south of the site.

The site area is well in excess of 2ha therefore the application meets the definition of a Major Application under The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009, even though it is a Section 42 application. A Section 42 application is a planning application which seeks to vary or omit one or more planning conditions attached to the original consent. This means that the final decision on the application is not a delegated matter and must be taken by the Committee, irrespective of the recommendation or the number of objections.

PROPOSED DEVELOPMENT:

The application as originally submitted sought the removal of the two planning conditions detailed below:

Planning Condition A - (Condition 1 of 97/00461/FUL)

This 1997 application sought planning permission for the 'Amendment of condition on previous consent, to allow opening from March to January'. It was approved subject to one condition which is worded as follows:

*No occupation of caravans to be permitted during the month of February.
Reason: To prevent the permanent occupation of any caravan.*

Planning Condition B - (Condition 2 of 01/00063/COU)

This 2001 application sought permission for an extension of the holiday park on land to the south of the unclassified public road. The application was approved subject to two conditions, one of which restricted use during the month of February. A Section 42 application can only be made in respect of the variation or removal of a condition or conditions attached to one permission. A separate application is therefore required if the applicant wishes to pursue the variation or removal of this condition.

Revised Proposal

Following discussions the applicant now seeks to vary Planning Condition A (condition 1 of 97/00461/FUL) only. They have suggested the following wording for the variation:

The development hereby approved shall be occupied for holiday use only and shall not be used as a person's sole or main residence. The operator shall maintain an up-to-date register of the names of all holiday makers staying in the holiday units and their main home addresses. This information shall be made available for inspection at all reasonable times by an authorised officer of the Planning Authority.

Reason: To ensure compliance with the adopted development contributions policy, to retain effective control over the development and to ensure that the property, in line with the details presented in support of the planning application, is only ever used to accommodate short-term holiday lets and is not used as a private dwellinghouse by any long term or permanent residents.

PLANNING HISTORY:

There is a lengthy planning history at Pease Bay Holiday Park. The agent has detailed much of this history in their supporting letter. They identify the following applications from the years prior to 1990:

- B102/75: Provision of caravan parking for 12 touring caravans. Approved, 15 April 1976.
- B143/79: Erection of laundry. Approved, 11 October 1979.
- B021/80: Use of land for 12 touring caravans. Approved, 26 February 1980.
- B277/80: Erection of 13 permanent caravans. Approved, 17 February 1981.
- B233/86: Alterations to form new shop/dwellinghouse. Approved, 19 December 1986.
- B126/87: 12 new caravan berths. Approved, 24 July 1987.
- B244/89: Alterations to site layout and variations of conditions. Approved, 14 November 1989.

Planning application history from 1990 onwards is summarised below:

- 90/00216/FUL [B334/90]: Extension of existing touring caravan park. Refused, 12 February 1991.
- 92/00155/FUL [B167/92]: Erection of building for shop, office and recreational facilities. Approved, 21 September 1992.
- 92/00156/FUL [B297/92]: Part change of use from shop, office and recreational facilities to public house. Approved, 18 December 1992.
- 94/00199/FUL [B333/94]: Erection of toilet block. Approved, 24 January 1995.
- 95/00170/FUL [B316/95]: Extension to recreational building. Approved, 17 January 1996.
- 96/00164/FUL [B023/1996]: Alterations to form games room and general-purpose room. Approved, 8 March 1996.
- 97/00321/FUL: Extension to recreation building to create function room and new entrance. Approved, 16 October 1997.
- 97/00461/FUL: Amendment of condition on previous consent, to allow opening from March - January. Approved, 11 December 1997.
- 97/00462/FUL: Extension to games/general purpose building to form porch. Approved, 13 November 1997.
- 98/00225/FUL: Erection of shop and office. Approved, 13 March 1998.
- 99/01503/FUL: Erection of toilet block. Approved, 15 December 1999.
- 00/01331/COU: Conversion of redundant toilet block to dwellinghouse. Approved, 6 December 2000.
- 01/00063/COU: Extension to park to provide additional touring pitches. Approved, 13 March 2001.
- 05/01717/COU: Change of use and alterations to form dwellinghouse. Approved, 11 November 2005.
- 10/01209/FUL: Change of use of touring park to form site for additional 20 No static vans (retrospective). Withdrawn, 30 August 2020.
- 18/01041/FUL: Change of use of land and road and plot layout to form extension to caravan park. Withdrawn, 16 October 2018.
- 19/01709/FUL: Change of use of land and road and plot layout to form extension to caravan park. Refused, 29 April 2020.
- 21/0108/FUL: Change of use of land and plot layout to form extension to Caravan Park. Approved by Local Review Body, 20 January 2023.

REPRESENTATION SUMMARY:

No representations have been received in response to this application.

APPLICANTS' SUPPORTING INFORMATION:

- Cover letter containing application supporting case

DEVELOPMENT PLAN POLICIES:

The development plan currently comprises National Planning Framework 4 and the Local Development Plan 2016. Certain policies of the Council's Proposed Plan 2020 which are not at Examination are also a material consideration but do not form part of the development plan. None are considered to be relevant in this instance.

National Planning Framework 4

Policy 1: Tackling the Climate and Nature Crises
Policy 2: Climate Mitigation and Adaptation
Policy 3: Biodiversity
Policy 4: Natural Places
Policy 10: Coastal Development
Policy 13: Sustainable Transport
Policy 18: Infrastructure First
Policy 19: Heating and Cooling
Policy 22: Flood Risk and Water Management
Policy 23: Health and Safety
Policy 29: Rural Development
Policy 30: Tourism

Local Development Plan 2016:

PMD1: Sustainability
PMD2: Quality Standards
ED7: Business, Tourism and Leisure Development in the Countryside
ED8: Caravan and Camping Sites
HD3: Protection of Residential Amenity
EP1: International Nature Conservation Sites and Protected Species
EP2: National Nature Conservation Sites and Protected Species
EP3: Local Biodiversity
EP5: Special Landscape Areas
EP14: Coastline
EP15: Development Affecting the Water Environment
EP16: Air Quality
IS7: Parking Provision and Standards
IS8: Flooding
IS9: Waste Water Treatment and Sustainable Urban Drainage

OTHER PLANNING CONSIDERATIONS:

Planning Circular 4/1998: The Use of Conditions in Planning Permissions
Scottish Borders Tourism Strategy 2013-2020
Scottish Borders Tourism Action Plan

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Economic Development: Supportive of the application, which will hopefully encourage more people to visit and stay in the area throughout the year, thereby providing more economic benefits to businesses located in Berwickshire and throughout the Scottish Borders and helping to develop and sustain the supply chains within the local area.

Environmental Health: No response at the time of writing.

Roads Planning Service: No objections to the removal of this condition.

Other Consultees

Community Council: No response at the time of writing.

KEY PLANNING ISSUES:

- Whether the principle of varying the condition would be acceptable, having particular regard to the six tests of planning conditions set out in Policy 18 of NPF4 and in Planning Circular 4/1998: The Use of Conditions in Planning Permissions.
- Whether there would be any adverse impacts arising from the proposal, for example in terms of the climate crisis, road safety or neighbouring amenity.
- Whether there would be any benefits - including economic benefits – that might outweigh any adverse impacts in the overall planning balance.

ASSESSMENT OF APPLICATION:

Planning Policy

LDP policies ED7 and ED8 are broadly concerned with new rural tourism developments or their extension of existing facilities. Pease Bay Holiday Park is an established visitor destination and permission is sought only for its occupation for one additional calendar month per year. The policies do not apply directly to a circumstance such as this but remain relevant nonetheless. In general terms, they encourage appropriate rural economic activity that avoids or mitigates adverse impacts. In these terms they are generally supportive of a proposal such as this, subject to the detailed assessment set out later in the report. The list of more detailed considerations found in NPF4 policy 30 (Tourism) criterion b) are also addressed below, where relevant.

Planning Circular 4/1998: The Use of Conditions in Planning Permissions

Policy 18 of NPF4 lists the six tests all planning conditions should meet. These are set out in greater detail within Planning Circular 4/1998: The Use of Conditions in Planning Permissions. The existing condition and its proposed variation are considered against the six tests below.

1) Necessity, 2) relevance to planning and 3) relevance to the proposed development

The requirement of the existing condition (planning condition 1 of 97/00461/FUL) that the caravans are not occupied during the months of February is not a necessity in planning terms. It is a legacy of a previous approach taken in the regulation and

operation of caravan parks. The principle of varying the condition to remove this requirement is acceptable provided sufficient controls are secured over occupancy.

4) Enforceability

The enforceability of the existing condition has not been tested to date. The condition is brief in length and the control it achieves is fairly limited: it only requires that caravans are not occupied during the month of February each year. The proposed variation would omit this requirement and add new controls over the year-round usage of the caravans. The enforceability of the varied condition is considered to be improved over the existing condition. This is a material consideration of significant weight.

A more robust condition specifically restricting occupancy length may have been preferable in other circumstances however the applicant has not agreed to this.

5) Precision

For the sake of precision and clarity the applicant's suggested condition wording has been slightly amended. The resulting condition is considered to be clear and precise. The amended condition wording is set out at the end of this report.

6) Reasonableness in all other respects

The varied condition is considered reasonable and appropriate. The condition wording is broadly as suggested by the application agent. They have not raised any concerns with the minor changes to their suggested condition wording.

Climate and Sustainability

Policy 1 of National Planning Framework 4 (Tackling the climate and nature crises) states that significant weight will be given to the global climate and nature crises when considering all development proposals.

Pease Bay Holiday Park is an existing tourism destination. It benefits from good links to the public road network being a short distance from the A1 trunk road. Connections to the public transport network are fairly limited. It seems reasonable to assume that the vast majority of visitors access the site using private motor vehicles. The climate impact of an additional month of private car travel is therefore a material consideration to be considered in the overall planning balance, weighed against other factors such as economic benefits. There is however the question of whether it would be resource efficient - or indeed reasonable - to keep the holiday park closed on such grounds.

It is assumed that the caravans do not benefit from the high standards of insulation that modern dwellinghouses are required to meet. It is therefore appropriate to consider the emissions resulting from an additional period of occupation during the winter months. Given most visitors would be vacating permanent dwellinghouses it would be difficult to conclude whether the net result of this would be adverse or not.

Economic Impacts

The existing condition imposes a blanket restriction on the occupancy of caravans during the month of the February each year. The holiday park is understood to close to visitors each February. Allowing the holiday park to remain year-round should boost the local economy and would align with the Scottish Borders Tourism Strategy's aim of encouraging year-round tourism. The Economic Development team support the

application and identify potential for more people to visit and stay in the area throughout the year, thereby providing more economic benefits to businesses located in Berwickshire and throughout the Scottish Borders and helping to develop and sustain the supply chains within the local area.

It is recognised that the month of February is not peak holiday season and that demand for the facility may be lower. Additional demand generated during the quieter tourist months may be all the more valued in the local economy for this very reason.

It is also recognised that the proposal may simply displace demand that may currently be met by other accommodation in the area. Given the vast majority of the caravans are in private ownership this is unlikely to be a significant effect. In any event, the planning system does not seek to interfere with market forces by regulating the supply of holiday accommodation.

Neighbouring Amenity

LDP policy HD3 states that development that is judged to have an adverse impact on the amenity of residential areas will not be permitted. It details considerations for assessment including overlooking, sunlight provisions and the generation of traffic. NPF4 policy 23 (Health and Safety) criterion e) states that development proposals that are likely to raise unacceptable noise issues will not be supported. Further issues for consideration would include light pollution.

The nearest dwellinghouses include Old Linhead and Linnhead Farmhouse to the west and Riverside Cottage to the south. Given the distances involved, there are no concerns in respect of overlooking or loss of light/ sunlight. Nor should the direct effects of noise, light and odour generation within the holiday park be significant at such distances. Impacts associated with traffic to and from the caravan park would arise, for example noise, however the degree of impact should be no greater than currently experienced during the other 11 months of the year.

Overall, the proposed development is not considered to give rise to any significant neighbouring amenity concerns.

Vehicular Access, Road Safety and Parking

Policy PMD2 requires developments to have no adverse impact on road safety and adequate vehicular access. Policy IS7 requires that car parking should be provided in accordance with the Council's adopted standards.

The development is served by existing parking and vehicular access infrastructure and there are no proposals to alter these arrangements. The proposal would impact the local road network through the generation of additional traffic to and from the site during the month of February. This is outwith the peak holiday season. The Roads Planning Service has raised no concerns with the proposal. It is considered that the development satisfies relevant planning policies in relation to road safety, vehicular access and parking.

Ecology, Designated Sites

Two nationally designated Sites of Special Scientific Interest (SSSIs) lie some distance away to the north-west and south of the site (the Pease Bay Coast SSSI and Pease Bridge Glen SSSI respectively). Two further SSSIs are located to the east (Old Cambus Quarry SSSI and Siccar Point SSSI). Local and international ecological

interests may also be present at or close to the site. NPF4 policy 4 (Natural places) and LDP policies EP1-3 would therefore be relevant

There are no construction works required therefore potential ecological impacts would be limited to the impact of the additional period occupation. Minor impacts could arise from traffic to and from the site, lighting, visitor interference with habitats, and the disposal of foul waste. However, there are no known issues in these regards at present and there is no basis to conclude any materially adverse impact would arise specifically from this proposal.

NPF4 policy 3 (Biodiversity) b) is also relevant. This states that major developments will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity. Careful consideration has been given to these requirements and whether they should be applied here. Whilst the wording of the policy is clear and robust, any such requirement would need to satisfy the six tests of planning conditions set out in Policy 18 of NPF4. Given the application seeks only a modest extension of the period of occupation of an existing holiday park it is not considered reasonable or proportionate to the development in question to insist on such requirements in this instance.

Insofar as the proposal may be considered to amount to Schedule 2 development under the Environmental Impact Assessment (EIA) Regulations 2017, an EIA is not deemed to be required.

Landscape, Visual and Setting Impacts

The holiday park provides good opportunities to access to the natural environment as required by criterion b) of NPF4 policy 30 (Tourism). A well established network of footpaths support this giving access to other parts of the Berwickshire Coast Special Landscape Area (SLA) which the site sits within. LDP policy EP5 (Special Landscape Areas) is relevant as regards impacts to the SLA, as is NPF4 policy 4 (Natural Places).

Landscape and visual impacts would be limited to effects associated with the occupation of the caravans such as the parking of visitors' vehicles. In the context of an existing caravan park, the degree of such impacts would be close to nil.

There are no listed buildings, scheduled monuments or conservation areas nearby that would be affected in setting terms.

Flooding

A small number of caravans are shown to be at risk of flooding in SEPA's flood risk mapping. This is an existing situation. No change in land use is proposed nor are any physical works which may affect flood risk or storage capacity. As the applications are simply to amend the period of occupation it is not considered justifiable to pursue such issues under the remit of a S42 application particularly given the reason for the condition in question does not relate to the issue of flood risk. Moreover, relevant planning policies IS8 of LDP 2016 and 22 of NPF4 are not worded with the assessment of a proposal such as this in mind, and there is therefore no clear policy conflict arising.

Water and Drainage

There are no proposals to change water supply or drainage arrangements.

CONCLUSION

Subject to compliance with the schedule of conditions, the development will accord with the relevant provisions of the National Planning Framework 4 and Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

I recommend the application is approved subject to the following conditions:

1. The development hereby approved shall be occupied for holiday use only and shall not be used as a person or persons' sole or main residence. The operator shall maintain an up-to-date register of the names of all holiday-makers staying in the holiday units and their principal home addresses. This information shall be made available for inspection at all reasonable times by an authorised officer of the Planning Authority.

Reason: To ensure compliance with the adopted development contributions policy, to retain effective control over the development and to ensure that the development, in line with the details presented in support of the planning application, is only ever used for holiday use and is not used as a private dwellinghouse by any permanent residents.

DRAWING NUMBERS

Plan Ref

Plan Type

Location Plan

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

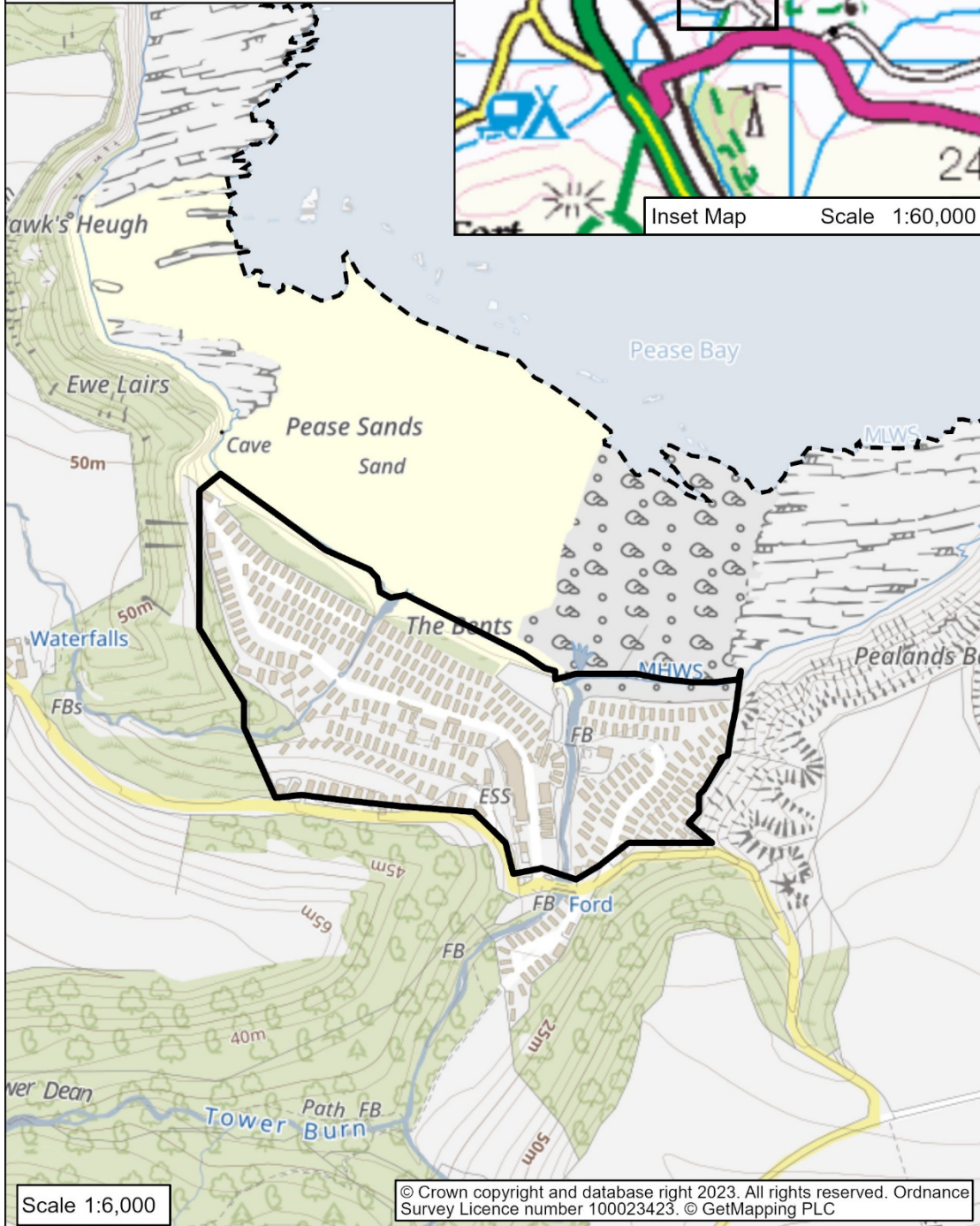
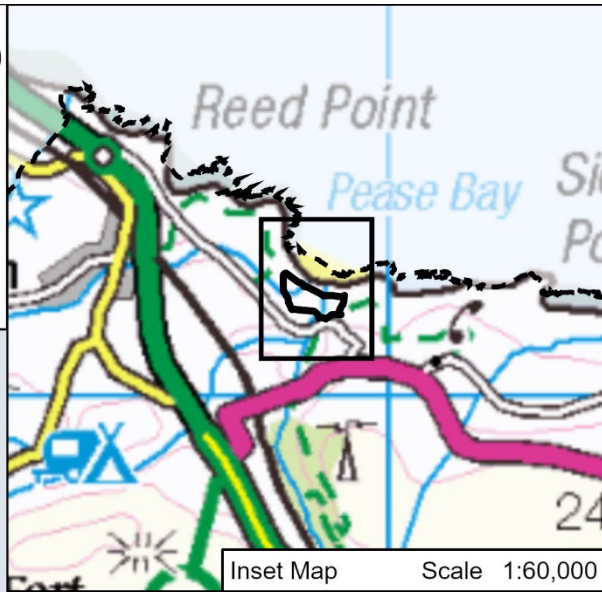
Author(s)

Name	Designation
Paul Duncan	Planning Officer



22/01876/FUL

Pease Bay
Caravan Park





REVOCATION OF PLANNING PERMISSION

Report by Chief Planning and Housing Officer

PLANNING & BUILDING STANDARDS COMMITTEE

24 April 2023

1 PURPOSE AND SUMMARY

- 1.1 This report seeks Members approval of a revocation Order under Section 65 of the Town and Country Planning (Scotland) Act 1997, to revoke planning permission 11/01527/FUL for the erection of a dwelling with carport and stables/workshop/store on land North West of Greenlawdean Farmhouse, Greenlaw.**
- 1.2 Under Section 65 of the Town and Country Planning (Scotland) Act 1997, the planning authority has the power to revoke or modify any permission to develop land granted on an application. In exercising this function, the planning authority must have regard to the development plan and any other material considerations. Revocation of planning permission under Section 65 of the Act may be exercised where the permission relates to the carrying out of a building or other operations, at any time before those operations have been completed.
- 1.3 Under the Council's scheme of delegation to the Chief Planning & Housing Officer, the decision to revoke planning permission must be made by the Planning & Building Standards Committee.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee exercise the power conferred by Section 65 of the Town and Country Planning (Scotland) Act 1997 and make an Order revoking the planning permission granted under reference 11/01527/FUL.**

3 BACKGROUND

- 3.1 Planning permission for the erection of a dwelling with carport and stables/workshop/store was approved in 2012 following a successful appeal to the Local Review Body (LRB) on the grounds of non-determination. Having considered the appellants supporting information and the case officer's assessment of the application, the LRB concluded that a building group did exist at Greenlawdean, but the proposed dwellinghouse would not be seen as a logical extension of the group and would not be well related to the existing building group.
- 3.2 The LRB then considered whether a sufficiently strong case had been presented by the applicant to justify the erection of an isolated dwellinghouse for a retiring farmer. At the time the application was submitted and the appeal considered by the LRB, the farm operation was a large and viable business and the proposed new dwelling (for Mr Leggate and his wife) would allow the applicants son (or daughter) to occupy the existing farm house and assume responsibility for the operation of the farm. The LRB agreed that there was a direct operational need for a new house to serve the existing and established rural business. Members also agreed that there were no suitable sites, houses or buildings suitable for conversion within the existing farm steading to accommodate the proposed new dwelling.
- 3.3 The LRB, after considering all relevant information, concluded that the development was compliant with the Development Plan in place at the time of determination, and that there were no other material considerations that would justify departure from the plan. The appeal was upheld, and following completion of a Section 75 Legal Agreement, permission was issued, subject to a number of planning conditions.
- 3.4 The planning permission was subsequently implemented following discharge of all pre-commencement conditions. The planning officer confirmed this in writing in March 2015. The first section of foundations were formed on site in July 2018 and the appointed officer confirmed that the permission had therefore been implemented. No further works have taken place on site but the consent, having been implemented, remains extant.

4 REQUEST TO REVOKE PLANNING PERMISSION

- 4.1 In October 2022, Smith & Garret were instructed by the executors of the late Peter Leggate (applicant) to apply for a revocation of the above consent. Following implementation of the planning permission, the construction of the house was delayed and Mr Leggate unfortunately fell ill, sadly passing in the summer of 2022.
- 4.2 The Leggate family has decided that Mr Leggate's successors will inherit parts of his estate, with the remaining land being sold. There is therefore no longer any need, or desire to construct the approved dwelling, and Mr Leggate's successors have agreed to remove the existing section of foundation, restore the land to its former condition and seek revocation of the consent.
- 4.3 The Section 75 attached to the original consent secured development contributions of £4205 towards Education & Lifelong Learning (to be settled upon completion or occupation of the dwelling). It also ensured that the land is held as a single property and farmed as single agricultural unit and that no party of the farm shall be separately sold or otherwise disposed of. The agent is aware that a further application to remove this legal burden on the land will also be required. This will be considered separately.
- 4.4 Under Section 66 of the Act, where an Order is opposed, it shall not take effect unless it is confirmed by the Secretary of State. Where a planning authority submits such an order, notice is served on the owner of the land affected, the lessee and occupier of the

land affected and any other person who, in their opinion, will be affected by the order. Where a valid objection is received, then the matter would have to be heard at Public Local Inquiry.

- 4.5 Where a Section 65 Order is unopposed (as is the case with this request) the procedures set out under Section 67 of the Act would apply. Instead of submitting the Order to Scottish Ministers for confirmation, the planning authority shall advertise the fact that the Order has been made. The advertisement must specify that the persons affected by the Order have at least 28 days to give notice to the Secretary of State. If no notice is given the Order will take effect without confirmation no less than 14 days after the expiry of the notice period. Any advertisement published must be sent to the Secretary of State not more than 3 days after publication.
- 4.6 Smith & Garratt has confirmed in their letter of 25 October 2022 that the Order, should it be agreed, will be unopposed.
- 4.7 The extant planning permission was assessed against the prevailing policies contained within the Approved Structure Plan 2001-2018 and consolidated Scottish Borders Local Plan 2011. The relevant policies were considered to be H7, H8 and N20 of the Structure Plan and policies G1, G5, D2 and Inf4 of the Local Plan. Other material considerations included the Council's approved Supplementary Planning Guidance note on New Housing in the Borders Countryside.
- 4.8 Since the LRB's decision to approve the application, both the Structure Plan and Local Plan have been replaced by the Scottish Borders Local Plan 2016 and more recently, National Planning Framework 4. These documents now form part of the Council's Development Plan. The SPG on new housing in the countryside has not been updated or replaced.
- 4.9 Whilst the Structure Plan and Local Plan have been superseded, there has not been a significant shift in policy or supplementary planning guidance since the extent permission was approved. There has however been a significant change in personal circumstances, and the need for the new dwelling no longer exists and the request to revoke the permission will not conflict with the principal aims of the Development Plan or supporting guidance.

5 IMPLICATIONS

5.1 Financial

There are no costs attached to any of the recommendations contained in this report. Where planning permission is revoked, Section 76 of the Town and Country Planning (Scotland) Act 1997 provides that the applicant or other persons with an interest in the land affected may claim compensation if they suffer loss as a result. A claim could be made, for example, if building work has already started or expenditure has been incurred in the preparation of plans. In the current case, the risk of the applicant's successor's seeking compensation is considered very low. The agent has indicated that they do not wish to proceed with the development and will not oppose the Order.

5.2 Risk and Mitigations

There is a risk that if the revocation were subject of a valid objection then the matter would have to be considered at a Public Local Inquiry, which would incur the Council additional costs and time. Also (as noted above) the revocation of planning permissions can (in some circumstances) result in claims for compensation from affected parties (see paragraph 5.1 above) but the risk associated with this is considered to be low.

5.3 Integrated Impact Assessment

Not applicable

5.4 Sustainable Development Goals

No impact

5.5 Climate Change

Not applicable

5.6 Rural Proofing

Not applicable

5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

6 CONSULTATIONS

6.1 None.

Approved by

Name	Designation
Ian Aikman	Chief Planning and Housing Officer

Author(s)

Name	Designation
Barry Fotheringham	Lead Planning Officer

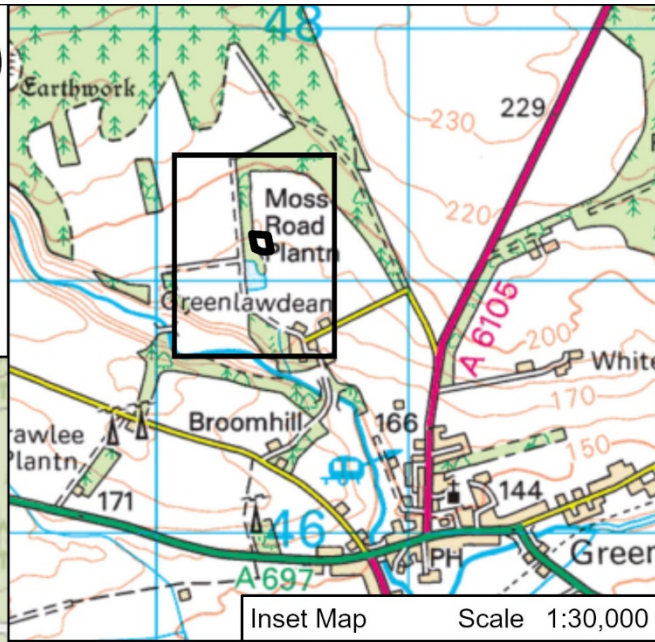
Background Papers: Planning application 11/01527/FUL
Local Review Body Decision 12/00015/RNONDT

Previous Minute Reference: None

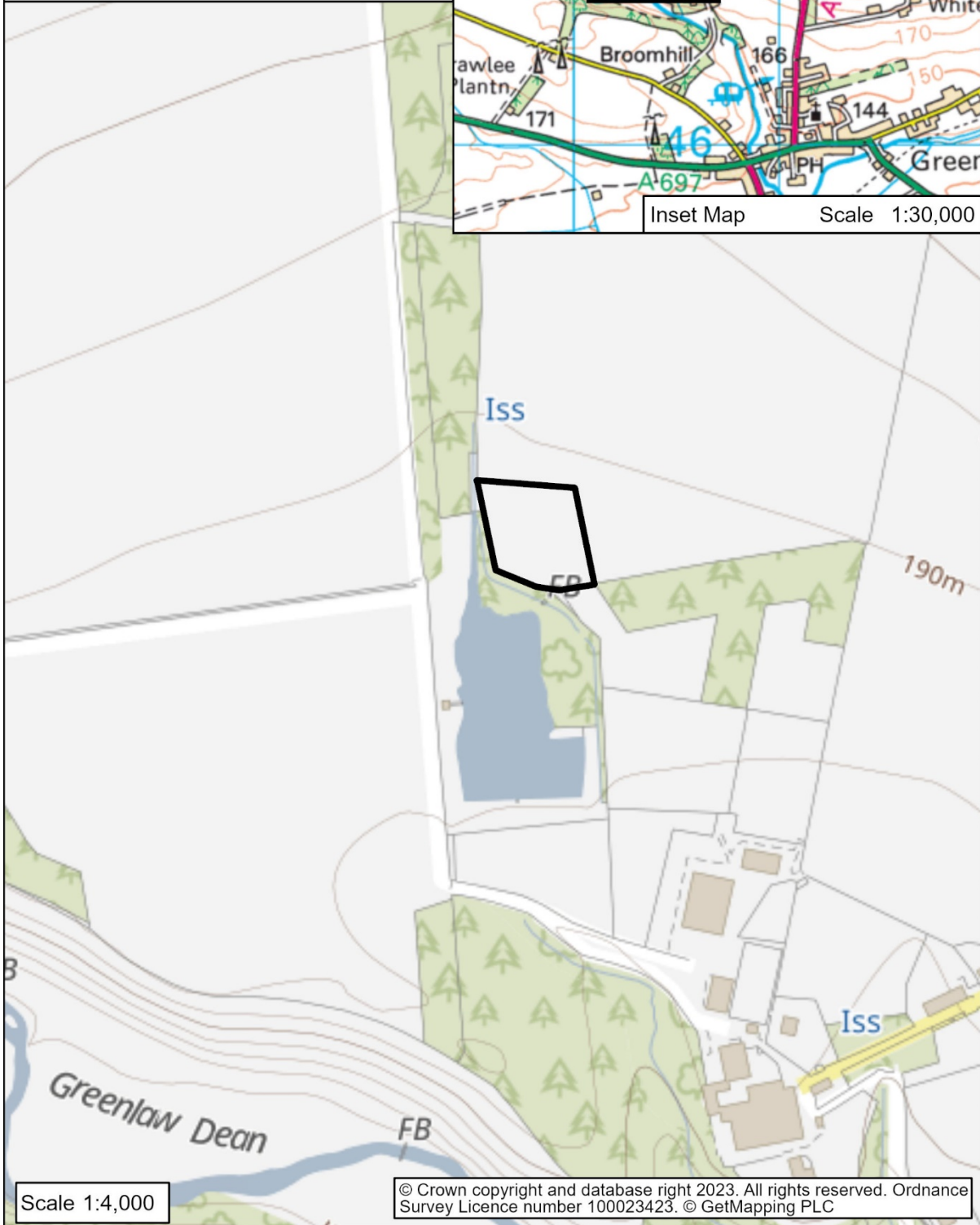


11/01527/FUL

Greenlawdean Farmhouse
Greenlaw



Inset Map Scale 1:30,000



Scale 1:4,000

© Crown copyright and database right 2023. All rights reserved. Ordnance Survey Licence number 100023423. © GetMapping PLC

This page is intentionally left blank

PLANNING APPEALS & REVIEWS

Briefing Note by Chief Planning & Housing Officer

PLANNING AND BUILDING STANDARDS COMMITTEE

24th April 2023

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

- 2.1.1 Reference: 23/00072/LBC
Proposal: Installation of insulated plasterboard system to walls
Site: 68 High Street, Coldstream
Appellant: Mrs Joanne Noade

Reason for Refusal: The proposal fails to comply with Policy 7 of the National Planning Framework 4 and Policy EP7 of the Scottish Borders Local Development Plan 2016 as the proposed development would have an adverse impact on the interior of the listed building.

Reasons for Appeal: The Appellant states that the existing lounge, dining & kitchen cornice is being retained and will be physically unaffected by the installation. This is also the case with the timber panelled window shutters. The skirting's that will be affected will be replaced with like for like profiles which have been recorded and will be purpose made in the installers workshop.

[Please see the DPEA Website for the Appeal Documents](#)

Method of Appeal: Written Representations

2.2 Enforcements

Nil

2.3 Works to Trees

Nil

3 APPEAL DECISIONS RECEIVED

3.1 Planning Applications

Nil

3.2 Enforcements

Nil

3.3 Works to Trees

Nil

4 APPEALS OUTSTANDING

4.1 There remained 2 appeals previously reported on which decisions were still awaited when this report was prepared on 13th April 2023. This relates to sites at:

- | | |
|-----------------------------|--|
| • 1 Hall Street, Galashiels | • The Old Cow Shed, Lennel, Coldstream |
|-----------------------------|--|

5 REVIEW REQUESTS RECEIVED

5.1 Reference: 22/00788/FUL
Proposal: Alterations and dormer extension to dwellinghouse
Site: 11 Tweed Avenue, Peebles
Appellant: Mr Gary Neale

Review against non-determination of Application.

5.2 Reference: 22/01416/PPP
Proposal: Erection of 2no dwellinghouses
Site: Land South of 1 Kelso Road, Coldstream
Appellant: Mr Andrew Douglas-Home

Reason for Refusal: The proposed development would be contrary to Policy PMD4 and Policy HD2 of the Scottish Borders Local Development Plan 2016, as well as the Council's Supplementary Planning Guidance 'New Housing in the Borders Countryside 2008' in that it would erode the integrity of the development boundary for the settlement of Coldstream, it would not relate well to an existing building group, it would break into an undeveloped field outwith the group's sense of place, to the detriment of the character and appearance of the building group. Furthermore, the development is contrary to Policy ED10 of the Local Development Plan 2016 as the development would result in the permanent loss of prime quality agricultural land, which is a valuable and finite resource. This conflict with the development plan is not overridden by any other material considerations.

5.3 Reference: 22/01739/FUL
Proposal: Erection of dwellinghouse with detached garage

Site: Land West of The Old Barn Westwater, West Linton
Appellant: Mr Ian Swan

Reasons for Refusal: 1. The development would be contrary to policies HD2 and PMD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside guidance in that the proposed development is unsympathetic to the adjoining buildings and the surrounding context in terms of siting, access, orientation, form, scale, height, massing and materials. Furthermore, no account has been taken of the trees within to the site meaning the proposal is also contrary to policy EP13. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations. 2. The development would be contrary to policies HD2 and PMD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside guidance in that the proposed development is unsympathetic to the adjoining buildings and the surrounding context in terms of siting, access, orientation, form, scale, height, massing and materials. Furthermore, no account has been taken of the trees within to the site meaning the proposal is also contrary to policy EP13. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

5.4 Reference: 22/01740/PPP
Proposal: Erection of dwellinghouse
Site: Paddock West of Hardens Hall, Duns
Appellant: Ms Norma Conroy

Reason for Refusal: The proposed development is contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 as the scale of addition for the existing building group has been exceeded during the current Local Development Plan period and there is no spare capacity to add an additional dwellinghouse. Furthermore, the proposed development would fail to comply with Policy PMD1 and Policy PMD2 as there is no footway to support pedestrian movements between the application site and the settlement of Duns. This would unduly impact upon pedestrian safety and it would not provide adequate access to sustainable transport modes, which would result in over reliance on the private car.

5.5 Reference: 22/01935/FUL
Proposal: Installation of timber gates (retrospective)
Site: Church House, Raemartin Square, West Linton
Appellant: Mr JM And Mrs G Barton

Reason for Refusal: The development would be contrary to policies EP9 and PMD2 of the Local Development Plan 2016 in that the alterations to the gates would have an unacceptably adverse impact on the character and appearance of the conservation area and on the visual amenity of this residential area. There are no other material considerations that are sufficient to overcome the adverse visual impact resulting from the proposed development.

5.6 Reference: 23/00034/PPP
Proposal: Erection of dwellinghouse
Site: Land North of Belses Cottage, Jedburgh
Appellant: Mr Kenneth Short

Reasons for Refusal: 1. The development is contrary to policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 because it would constitute housing in the countryside that would not relate well to a building group and would lead to an unjustified sporadic expansion of development into a previously undeveloped field. In any case, the capacity of the building group has exceeded the limitations allowed for by Policy HD2. The resulting visual impact of the development would be adverse and, therefore, also conflict with policy PMD2.

Furthermore, there is no overriding economic justification to support the development, and the development has no support from NPF4. This conflict with the development plan is not overridden by any other material considerations. 2. The development is also contrary to policy PMD2 of the Local Development Plan 2016 in that the means of access onto a public road out with a settlement boundary would adversely affect the road safety of this road, including but not limited to the site access without providing any overriding economic and or road safety improvements. This conflict with the development plan is not overridden by any other material considerations.

5.7 Reference: 23/00056/FUL
Proposal: Change of Use from Class 4 to Class 2 Veterinary Practice
Site: 2 Rowan Court, Cavalry Park, Peebles
Appellant: Two Rivers Veterinary Practice Ltd

Reason for Refusal: The development would be contrary to Policy 26 of the NPF4 and Policy PMD3 and Policy ED1 of the Local Development Plan 2016 in that the use as a veterinary practice (falling within Class 2 of The Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended, would be a commercial activity that would not be complementary, or ancillary, to the Cavalry Park Strategic High Amenity Site and a use such as that would prejudice its primary function. Furthermore, it would ultimately lead to the loss of allocated business and industrial land when there is a known need for such sites. Other material considerations, including the applicant's need for new premises, are fully acknowledged but, on balance, do not override the loss of the site to Class 4 uses, nor the potentially undesirable precedent that would result from the loss of this extent of floorspace to a non-compliant use.

6 REVIEWS DETERMINED

6.1 Reference: 21/01618/FUL
Proposal: Erection of dwellinghouse
Site: Land South West of Castleside Cottage, Selkirk
Appellant: Mr P J Lewis

Reason for Refusal: The proposed development would, due to its design and materials, be unsympathetic to, and adversely impact on, the character of the existing building group, contrary to Policies PMD2 and HD2 of the Local Development Plan 2016, and contrary to Placemaking and Design Supplementary Planning Guidance 2010 and New Housing in the Borders Countryside Supplementary Planning Guidance 2008. Other material considerations do not override these policy conflicts and the harm that would arise as a result of the development.

Method of Review: Review of Papers & Further Written Submissions

7 REVIEWS OUTSTANDING

7.1 There remained 15 reviews previously reported on which decisions were still awaited when this report was prepared on 13th April 2023. This relates to sites at:

• Land North East of Runningburn Farm, Stichill	• Land at Silo Bins Edington Mill Chirnside, Edington Mill Road, Chirnside
• Land South West of Corstane Farmhouse, Broughton	• Land North and East of Clay Dub, Duns Road, Greenlaw
• 17 George Street, Eyemouth	• Dove Cottage Gate Lodge Press Castle, Coldingham, Eyemouth
• Ravelaw Farm, Duns	• Land South West of West Loch Farmhouse, Peebles
• 100 Abbotseat, Kelso	• Land West of Greenburn Cottage, Auchencrow
• Land South of Ebbastrand, Coldingham Sands, Coldingham	• The Millers House Scotsmill Kailzie, Peebles
• Ratchill Farmhouse, Broughton	• Land at Disused Railway Line Rachan, Broughton
• Scott House, Douglas Square, Newcastleton	•

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 One S36 PLI previously reported on which a decision was still awaited when this report was prepared on 13th April 2023. This relates to a site at:

• Land West of Castleweary (Faw Side Community Wind Farm), Fawside, Hawick	•
--	---

Approved by

**Ian Aikman
Chief Planning & Housing Officer**

Signature

Author(s)

Name	Designation and Contact Number
Laura Wemyss	Administrative Assistant (Regulatory) 01835 824000 Ext 5409

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