

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

18 JULY 2016

APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989

ITEM: **REFERENCE NUMBER:** 15/00020/S36

OFFICER: Craig Miller

WARD: Tweeddale West

PROPOSAL: Wind farm comprising 14 wind turbines, substation, control room, two temporary compounds, access tracks, four borrow pits and meteorological mast

SITE: Land at Whitelaw Brae 3km south of Tweedsmuir and west of Fruid Reservoir

APPLICANT: Whitelaw Brae Wind Farm Limited

AGENT: n/a

1.0 PURPOSE OF REPORT

1.1 To advise the Scottish Government, as a result of the submission of Further Environmental Information, of any amendment to the previous response from Scottish Borders Council on the application by Whitelaw Brae Wind Farm Ltd, to construct a 14-turbine wind farm on land lying at Whitelaw Brae south of Tweedsmuir and west of Fruid Reservoir

2.0 PROCEDURE

- 2.1 Scottish Borders Council (SBC) is a consultee as a 'relevant authority'. All of the turbines and new infrastructure would be sited within the Borders.
- 2.2 The views of SBC will be provided to the Energy Consents and Deployment Unit at Scottish Government (ECDU), the body responsible for processing onshore Section 36 planning applications. In this instance, the application is required to be determined via Section 36 because the wind farm would have an output of more than 50MW (50.4MW). The ECDU advertises the application and carries out direct 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 officers within the Council.
- 2.3 It should be noted that if permission is granted, the local authority (rather than the ECDU) would become the relevant enforcement authority responsible for monitoring compliance with the terms of an approval and any conditions imposed thereon.
- 2.4 Scottish Borders Council considered the initial S36 Consultation last year and the Committee, at their meeting in August 2015, decided to object to the application. The objections, which were communicated to the ECDU, were as follows:

Reason for Objection 1: Impact on Landscape Character:

The proposed development would be contrary to Policies G1, EP2 and D4 of the Scottish Borders Local Plan 2011 and Policy 10 of the South-East Scotland Strategic Development Plan

(SESplan) 2013 in that, taking into consideration the following factors, it would unacceptably harm the Borders landscape:

- Significant impacts on the perception, setting and qualities of identified wild land (Area 2 Talla Hart Fell) to the south and east of the site in an area with high fragility to change.
- Significant impacts on the designated Tweedsmuir Uplands Special Landscape Area and contrary to the management recommendations seeking to maintain wildness and limit impacts of tall developments, both in relation to the higher summits/wild land to the south and to the more localised intimate landscapes centred around the reservoirs to the east and north-east

Reason for Objection 2: Adverse Visual and Amenity Impacts:

The proposed development would be contrary to Policies G1, D4, BE2 and H2 of the Scottish Borders Local Plan 2011, Policy EP8 of the Local Development Plan 2013 and Policy 10 of the South-East Scotland Strategic Development Plan (SESplan) 2013 in that, taking into consideration the following factors, the development would give rise to unacceptable visual and amenity effects:

- Low containment within the 5km range and consequent significant visual impacts from sensitive receptors including public roads (such as the main tourist route of the A701 and the Fruid minor road), a right of way, hill summits and dwellinghouses. In respect of the identified residential receptors, the developer has failed to demonstrate that the impacts would not be overbearing and significantly adverse.
- Significant cumulative and scale impacts on sensitive receptors and on a unique landscape character type and capacity to the east of the A701 corridor, inappropriately extending the existing Clyde/Clyde Extension/Glenkerie cluster into previously undeveloped land, bridging a strong visual boundary between landscape character types and setting precedent for further inappropriate incursion.
- Significant detrimental impacts to two archaeological sites of national significance, Asset HA5 and the Scheduled Hawkshaw Castle.

2.5 The full Committee Report is attached to this report as Appendix 1 and Members should refer to it as background in considering the Further Environmental Information submission that the Council are now being asked for their views on. The S36 Application is being heard by Public Local Inquiry at the end of August 2016 and Officers will be participating in the Inquiry which is being held by the DPEA.

2.6 This Report will assess the changes to the scheme and additional information, together with consideration of the amended scheme against the new Council Policy context represented by the Local Development Plan. Members will then be advised as to whether there should be any adjustment to the previous objections relayed to the ECDU

3.0 SITE DESCRIPTION:

3.1 Appendix 1 details the site location and size. The FEI submission makes no change to this.

4.0 PROPOSED DEVELOPMENT:

4.1 The development still comprises of the following:

- 14 wind turbines and their foundations
- Crane hardstanding areas
- Substation/control room buildings and compound

- Underground electrical and communication cables to each turbine
- Access track and onsite access tracks
- 4 new water crossings including the River Tweed
- 1 no. 80m temporary meteorological mast
- 1 no. 80m permanent meteorological mast
- Borrow pits (up to 4) for use during development, to be reinstated post-construction
- Two temporary construction and site storage compounds
- Felling of 52 hectares of commercial forestry
- Habitat Management plan for blanket bog, black grouse and riparian planting
- Community benefits package amounting to £6.3 million over project lifespan

4.2 The FEI changes the position of Turbine 11 and amends the substation layout to incorporate two battery storage units and one inverter/transformer unit, still within the previous substation footprint. There is also a slight reduction in the length of internal access tracks as a result of the repositioning of Turbine 11. Turbine 11 has moved 1.42km almost due west from the previous position north of Turbine 12 to a position north of Turbine 1.

5.0 NEIGHBOURING SITES/SCHEMES RELEVANT TO CONSIDERATION OF CURRENT PROPOSAL:

5.1 Three wind farms, either existing or proposed, were considered to be of significance in terms of cumulative consideration of the Whitelaw Brae site and these are detailed in Section 5 of Appendix 1. In considering these against the amendments in this FEI, it should be noted that the Glenkerie Extension was subsequently approved by the Scottish Government. The new Harryburn S36 proposal west of Clyde should also be considered.

6.0 PLANNING HISTORY:

6.1 This is detailed in Section 6 of Appendix 1.

7.0 APPLICANTS' SUPPORTING INFORMATION

7.1 As the application is 'EIA Development', changes to the scheme and additional supporting information must follow the regulations under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000. The FEI consists of the following items:

- Volume 1 – Further Environmental Information Report (May 2016)
- Volume 2 – Further Environmental Information Figures (May 2016)
- Volume 3 – Further Environmental Information Visualisations (May 2016)
- Volume 4 – Further Environmental Information Technical Appendices (May 2016)
- Further Environmental Information Non Technical Summary (May 2016)

7.2 The amendments and additional information are detailed in Table 1.1 of Volume 1 and have largely been made to attempt to overcome the Historic Scotland objection, but also to respond to some consultee comments and objections. In addition to the amendments mentioned above, a Youtube video has been made available showing the development from the perspective of moving traffic on the A701. Members can view this by using the following link:

https://www.youtube.com/watch?v=Zl_EJC3nPcY

7.3 The FEI also now provides additional Compensatory Planting Proposals in Technical Appendix 17.1 and the applicant is currently in discussion with the Forestry Commission regarding the scheme. It replaces 52HA of Sitka Spruce with 53HA of more mixed species, including 24.3HA broadleaves and an additional 26.9HA open ground.

- 7.4 Technical Appendix 6.8 now includes further analysis of the impacts of the revised scheme on residential amenity, including a series of photographs, wirelines, photomontages and significance assessment against the seven properties previously identified as being likely to experience the greatest effects.
- 7.5 Other revisions and assessments are listed in Tables 1.1 and 6.1 of Volume 1 FEI Report. This includes updated landscape and visual impact, cultural heritage and noise assessments.
- 7.6 All FEI submissions have been available for viewing both within accessible public locations and on the Council's Public Access System.

8.0 REPRESENTATION SUMMARY

- 8.1 Third party representations on the FEI submission are submitted to the ECDU and it is for them (and the DPEA) to take the representations into consideration when assessing the proposed development on behalf of Scottish Ministers. It is known, however, that SNH maintain their concerns previously submitted to the ECDU, adding concerns over the need for additional mitigation and screening of the substation area and the impacts on the open landscape of the A701 as a result of the compensatory planting proposals.

9.0 DEVELOPMENT PLAN POLICIES:

- 9.1 The previous Section 36 consultation was considered against the Consolidated Scottish Borders Local Plan 2011. This has now been superseded by the Scottish Borders Local Development Plan 2016, the following Policies being applicable to the proposal:

Policy PMD1 – Sustainability
 Policy PMD2 – Quality Standards
 Policy ED9 – Renewable Energy Development
 Policy HD3 – Protection of Residential Amenity
 Policy EP1 – International Nature Conservation Sites and Protected Species
 Policy EP2 – National Nature Conservation Sites and Protected Species
 Policy EP3 – Local Biodiversity
 Policy EP4 – National Scenic Areas
 Policy EP5 – Special Landscape Areas
 Policy EP7 – Listed Buildings
 Policy EP8 – Archaeology
 Policy EP10 – Gardens and Designed Landscapes
 Policy EP13 – Trees, Woodlands and Hedgerows
 Policy EP15 – Development Affecting the Water Environment
 Policy IS2 – Developer Contributions
 Policy IS5 – Protection of Access Routes
 Policy IS8 - Flooding
 Policy IS9 – Waste Water Treatment Standards and Sustainable Urban Drainage

SESplan Strategic Development Plan June 2013:

Policy 10 - Sustainable Energy Technologies

10.0 OTHER PLANNING CONSIDERATIONS:

- 10.1 Adopted SBC Supplementary Planning Guidance and other documents:

Supplementary Planning Guidance on Renewable Energy 2007
Supplementary Planning Guidance on Wind Energy 2011
Supplementary Planning Guidance on Local Landscape Designations 2012
Supplementary Planning Guidance for Biodiversity 2005
Supplementary Planning Guidance for Developer Contributions 2011
“Landscape Capacity and Cumulative Impact” July 2013.

10.2 Scottish Government Planning Policy and Guidance:

Scottish Planning Policy (June 2014)
National Planning Framework for Scotland (3) (June 2014)
Historic Environment Scotland Policy Statement (June 2016)
PAN 1/2011 Planning and Noise
PAN 2/2011 Planning and Archaeology
PAN 51 Planning, Environmental Protection and Regulation
PAN 60 Planning for Natural Heritage 2008
PAN 1/2013 Environmental Impact Assessment

10.3 SNH Advice

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

10.4 Other Advice

Directive 2009/147/EC of the European Parliament and of the Council (Conservation of Wild Birds).
ETSU-R-97 – The Assessment and Rating of Noise from Wind Farms (??)

11.0 **CONSULTATION RESPONSES:**

11.1 **Landscape Architect:**

Based on the considerations in Policy ED9 of Local Development Plan 2016, the change to the scheme, with the removal of a turbine along the eastern edge but the addition of a further turbine to the western side does not alter our assessment that there is an unacceptable negative impact on an area that has a high fragility to change and is closely associated with an area designated as Wild Land. Nor do the changes to the scheme materially change the cumulative landscape and visual effects

In particular, the removal of a turbine from the eastern side and the introduction of an additional turbine along the western edge does alter the effects on sensitive visual receptors, with a small reduction of visual effect to receptors at viewpoint 4 but an increased visual effect on receptors on the A701.

It should be noted that Section 5 of Technical Appendix (TA) FEI 6.7 Route Analysis of A701 states that *‘The sensitivity of (route) users is judged to be high through all sections of the routes in line with the methodology set out in the LVIA (paragraph 6.220)’* and this increases the sensitivity of visual receptors on A701 from between Low and Medium as was the original assessment in Paragraph 1.8 of ES.

I do not agree with the Summary conclusion of the On-Site Analysis of Section 8 of TA FEI 6.7. While it is accepted the effects will be most significant within relatively close range of the site this includes a substantial proportion of the A701 that was analysed. The 2020 Renewables –

Whitelaw Brae A701 Flythrough demonstrates that there will be a number of sections of the route where the Whitelaw Brae turbines would be clearly visible from the A701 where the existing arrays to the east are not visible. The introduction of turbines into a new area to the east of A701 will have significant sequential cumulative landscape and visual impacts by virtue of affecting an area previously free of wind turbines.

The main viewpoints from which there will be an altered view of the turbines are:-

Viewpoint 2 - between Hawkshaw and Glenbreck on A701. There will be greater visual effect on receptors travelling southwards along A701 when looking towards the site, particularly for a stretch of the road north of Viewpoint 2. The relocated turbine will be a very visible feature looking up the Fingland Burn valley from the road and will be more centrally located at the front of the array in the vista formed by the V-shaped valley sides. This will increase the visual effects of the scheme which, for Viewpoint 2, has already in the ES been deemed Moderate (Significant), to Moderate – Substantial (Significant) (ES Vol 1 - 6.244:Table 6.8 and 6.250 – 6.251)

Viewpoint 4 – Fruid Dam. The removal of turbine 11 affects a small change in the visual impact of the turbines arrayed across the landscape. Turbine 11 was, at 1.1km nearest to receptors at Fruid dam but with its removal the nearest turbine is now 1.4km. Nonetheless visual effect of turbines across the hillside is only slightly reduced, remaining Substantial (Significant) as already noted in the ES (Vol 1 -6.244:Table 6.8 and 6.252-6.253)

Viewpoint 22 – Black Dod. The distribution of turbines when seen from this elevated viewpoint will be improved with the overlap and clustering of 6, 1 and 11 resolved by turbine 11's relocation. Nonetheless the visual effects still remain Moderate (Significant) as noted in ES (Vol 1 - 6.244:Table 6.8 and 6.264 – 6.265)

Viewpoints 9 – Hart Fell Rig and Viewpoint 11 - Broad Law. The appearance of altered scheme is slightly more visually unsatisfactory as, from both these viewpoints, the rotors of Turbine 11 sits uncomfortably below the adjacent turbines.

Talla – Hart Fell Wild Land –

Technical Appendix 6.4 Wild Land Assessment of the ES comes to the conclusion that *'within the north-western part of WLA, closest to the proposed development, potential medium change was noted to two of the attributes'* and *'as such a significant Moderate effect is anticipated to this part of the WLA ranging to around 5km from the proposed development.'* In terms of intrusion into the Wild Land the changed scheme does not materially alter my opinion that this is not an appropriate location for a windfarm.

11.2 Archaeology Officer:

The FEI has been reviewed in light of the applicant's Rebuttal Statements to both myself and HS dated 3 July 2015. The FEI has very helpfully corrected a key omission from the ES and Rebuttal Statements by providing visualisations (FEI Heritage Viewpoint 9.11 a and b) from the Fingland Burn Platform Settlement (the ES asset labelled HA5). The new visualisations illustrate the key setting relationships of HA5 with the valleys of the Fingland Burn and Cleugh Head Burn, and the hills that constrain these. The principle change to the scheme, the movement of Turbine 11 from the setting of Hawkshaw Castle, has sought to address Historic Environment Scotland's key concern without reference to the concerns expressed by the Council.

Overall, while the removal of Turbine 11 from a key view from Hawkshaw Castle has eliminated one element of setting impact, views into the site are still significantly impacted by Turbines 4-6 and this is not in keeping with national and local policy or guidance. Likewise, the continued presence of turbines on Peat and Glengonnor Hill, and the new intrusion of Turbine 11, in the

setting of asset HA5, an asset judged to be of national significance, is not in keeping with policy or guidance. I therefore maintain my recommendations for objecting to the scheme as currently proposed.

The removal of Turbine 11 from one aspect of Hawkshaw Castle's setting has addressed a concern raised by both Historic Environment Scotland and the Council. This is a positive step, but does not address the remaining setting impacts as outlined in both my initial consultation response and my subsequent response to the applicant's Rebuttal Statement. In addressing (and by virtue acknowledging) Historic Environment Scotland's concerns, they have not addressed the equally relevant views of the Local Authority on matters of setting. Turbines 5, 6, and to a lesser degree 4, will still pose a significant impact to the setting of Hawkshaw Castle by introducing a new and incongruous element into the current setting, dominating the valley setting and, by virtue of scale, diminishing the appearance of the Castle's location when viewed from the track on Benner Dod. As illustrated in the applicant's viewpoint 9.10, the experience of Hawkshaw Castle when viewed from Benner Dodd, the first and best place to appreciate the asset (including the Porteous Cairn) and its wider setting, would be dominated by the turbines along the ridgeline of Glengonnor Hill. This remains a significant impact. The removal of Turbine 11 has to a small degree benefitted the setting of the Castle, but this has not entirely alleviated my concerns.

Crucially, the relocation of Turbine 11 to the lower slope of Peat Hill has served to increase the impacts to the setting of asset HA5 when viewed from the platform settlement itself (illustrated in viewpoint 9.11). Both the applicant and myself are largely in agreement on the setting of the asset. What we disagree on is the cultural significance of the asset, its national importance, and elements of the topographical constraints (namely Peat and Gengonnor Hills) that contribute to the asset's setting. The movement of Turbine 11 onto the lower shoulder of Peat Hill, and just above the 'banks of the Fingland Burn' represents a significant intrusion into the setting of HA5 (illustrated in viewpoint (9.11b)). While the other turbines affecting the setting of the asset are confined to the tops and ridgelines of the hills, the new location of Turbine 11 is within the valley setting and significantly distracts and diminishes an appreciate of a key setting view from the settlement: namely the confluence of the Fingland and Cleugh Head valleys. I do not feel that the proposed location of Turbine 11 maintains an appropriate setting for HA5. I therefore maintain my recommendations in previous responses, and suggest that the relocation of Turbine 11 is more objectionable than other significant impacts as previously highlighted.

11.3 Ecology Officer:

In terms of ecology and ornithology, the relocated turbine 11 is within recognised disturbance distances for black grouse leks (300-500m) and this would be in addition to potential disturbance and displacement with other turbines identified in my earlier response (29th April 2015). I have included the relevant sections of my response below.

"The most significant ecological issue is with regard to the presence of a complex of black grouse leks on site. It is disappointing that more hasn't been done to design out potential impacts on at least one lek site. The Council has additional records of black grouse leks from 2010 and 2011 which are within disturbance/displacement distance of turbines and infrastructure. Nonetheless, a significant package of additional habitat enhancement measures could offset potential impacts.

Forestry compensation proposals should be additional to any habitat creation and enhancement required to offset habitat and species impacts."

"Three black grouse lek sites have been recorded within the development site. One the leks (lek2, identified as a "satellite lek" 1-2 males) is within disturbance and displacement distance of turbines. It is disappointing that impacts on this lek are not avoided adopting best practice

measures, ensure that turbines and infrastructure are at least 500m from the lek. There will be an exchange of birds between the complex of lek sites on site, with birds moving across the site. Lek 3 (1-6 males) is within 500m of a proposed access track. The Council has records (from Southern Uplands Partnership) of leks from 2010 (adjacent to turbine 11) and 2011 adjacent to turbine 2. I note these records were not included in the confidential annex. On a precautionary basis, these site should be considered in the EIA.”

“There are opportunities to offset any loss of habitat or direct loss of birds by creating and enhancing habitat within the site and in adjacent areas through moorland management (grazing management), ditch blocking and low density broad-leaf woodland creation . Woodland creation measures to enhance habitat for black grouse included, must be additional to any requirements for woodland creation to compensate for loss of forestry..”

In my opinion given the location of a complex of leks within the site, some of which are within disturbance and displacement distance for black grouse, it is reasonable to require a package of compensation measures specifically to address impacts on black grouse, over and above any requirement to replaced loss of woodland in relation to the Scottish Government’s Control of Woodland Removal Policy. This requirement could be achieved through a Planning Condition or legal agreement as appropriate.

In terms of the compensatory forestry planting, I am satisfied that a scheme can be agreed under a Planning Condition or other appropriate mechanism such as a Legal Agreement. The Planting scheme would need to be agreed prior to commencement of development. I am aware that Forestry Commission Scotland (FCS) is content for the matter to be dealt with by Planning Condition (correspondence FCS to ECDU 6th June 2016).

As an alternative approach, a parallel felling licence under the Forestry Act could control the compensatory requirement regulated by Forestry Commission Scotland. Either approach (under Planning or by Felling licence) would be consistent with emerging best practice.

I am aware that there has been ongoing dialogue between FCS and the developers and that a revised scheme may be being developed with greater emphasis on native woodland and scots pine components.

Any approved plan would need to be consistent with the Scottish Borders Woodland Strategy, as informed by the Technical Advice Note (2012). The priorities for new woodlands in the Central Southern Uplands landscape area includes:

- Potential for new native woodland expansion to contribute to integrated habitat networks linking existing woodland along river valleys and tributaries and in those areas identified as beneficial in Solway-Tweed River Basin Management Plan and Flood Risk Management plans. There is also potential for new native woodlands as part of larger ecological restoration schemes in some areas.
- Potential for new coniferous forest subject to retaining a reasonable balance of open ground habitats and forest and avoiding significant fragmentation of existing open habitats. Such woodlands should be focused towards: improving the landscape fit of existing adjacent plantations; improving connectivity of woodland habitats; creating more effective linkages between existing productive woodlands to facilitate more effective timber transport routes.

With regard to the submitted Compensatory Planting Plan, from a landscape perspective there are issues with the proposals including the very limited extent of Scots Pine in an area where roundels of Scots Pine are not uncommon, the almost continuous band of native broadleaves located along the south side of the A701 has potential to restrict views of the changing

landscape progressing up the Upper Tweed valley and the abrupt and angular termination of the woodland at the southern end.

From an archaeology perspective, any approved scheme would need to ensure that there is no significant adverse impact on the setting of archaeological receptors including prehistoric settlements in the Fingland burn valley, other unscheduled monuments and Scheduled Ancient Monuments and would require unplanted ground and buffer areas around sites informed by a pre-forestation archaeological survey. There is an opportunity to enhance the setting of the Bronze Age settlements that will share visibility of the new planting. By choosing native woodland species that reflect the ancient environment that was actively exploited by the residents of the platform settlements, there would be an effective reconstruction of the settlements' original setting. This choice should be based on a sound understanding of the paleo-environment through a desk-based assessment of relevant archaeological research. The reconstruction of the ancient environment could be actively promoted through, for example, additional interpretation on and off site.

From an Access perspective, any existing or new tracks should be available for all types of non-motorised recreational users (pedestrians, equestrians and cyclists) after planting is complete. Suitable gates should be installed in any deer fencing to allow public access to and from the site and due consideration should be given as to where gates may be required such as on Big Dod to allow access on to the open hill.

From an Ecology perspective adopting an ecosystems approach, an approved planting plan should seek to provide biodiversity enhancements through native woodland creation consistent with the Scottish Borders Woodland Strategy and provide additional benefits e.g. natural flood management for downstream flood mitigation and improvements to water quality benefitting the River Tweed SAC/SSSI. Opportunity areas for natural flood management and water quality improvements can be identified using the Council's pilot Land Use Framework mapping tool : <https://www.scotborders.gov.uk/info/20013/environment/723/biodiversity/5>.

- 11.4 **Roads Planning Manager:** The relocation of turbine 11 will result in no additional movements on the public road network. The new position for the turbine will result in a reduction of on-site tracks by around 140 metres, along with a reduction in cabling and earthwork cuttings. The vehicle movements associated with these works are all internal movements and will not have any effect on vehicle movements on the public road from those previously approved.

With regard to the addition of the battery storage units, this will increase HGV movements by around 35. When considered against the overall movements for this site, approx. 3700 HGV movements over the same time period, this increase is considered to be slight.

Given the above, I will not object to this application.

- 11.5 **Access Officer:** Reiterates previous comments that no claimed rights of way or core paths within the site although there is a right of way 1.5km south and east of the nearest turbine. The Land Reform Act does seek a right of responsible access through the site, thus, the tracks, once the development is completed, should be available for the public.

- 11.6 **Environmental Health Officer:** On the previous submission, concluded that a suitably worded condition would be possible and that further conditions should control construction noise and dust issues. No objections to the FEI revisions which would not increase noise to any significant extent at the nearest receptors.

- 11.7 **Plans & Research:**

It should be noted that since the first consultation was undertaken in relation to this application, the Scottish Borders Local Development Plan was adopted on the 12 May 2016. Consequently the proposal should be considered against the new Local Development Plan Policies, particularly ED9 Renewable Energy Development.

Policy ED9 states that:

“... Renewable energy developments, including wind energy proposals, will be approved provided that there are no relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated. If there are judged to be relevant significant adverse impacts or effects that 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. ...”

In comparison to policy D4 – Renewable Energy Development within the superseded consolidated Local Plan 2011, policy ED9 is a generic style policy. Under the section “Consideration of Wind Energy proposals” policy ED9 lists a number of considerations which remain relevant to this Inquiry and are identified with SPP. Policy ED9 confirms that the Council will produce Supplementary Guidance which will enable further guidance on these identified considerations. Policy ED9 confirms that the Ironside Farrar study on “Landscape Capacity and Cumulative Impact” is now a material consideration. Other than the weight now given to the Ironside Farrar study, it is not considered that policy ED9 fundamentally changes how the Whitelaw Brae application should be tested and determined.

In determining planning applications Policy ED9 states that with regards to the assessment of wind energy proposals, consideration should include:

“... landscape and visual impacts, to include effects on wild land, taking into account the report on Landscape Capacity and Cumulative Impact (July 2013) as an initial reference point, the landscape and visual impact assessment for a proposal (which should demonstrate that it can be satisfactorily accommodated in the landscape, and should properly address the issues raised in the 2013 report), and other relevant landscape, visual and cumulative impact guidance, for example that produced by Scottish Natural Heritage; ...”

These matters should be considered regarding the repositioning of turbine no.11. This should include consideration of any perceived unacceptable significant adverse impacts from identified viewpoints, public routes and residences.

It is noted that in relation to the resiting of turbine no.11 the applicant has stated that the effects particularly on Hawkshaw Castle have been “ameliorated”. The Council’s Archaeologist raised previous concerns with regards to impacts of turbines nos 4, 5 and 6 on Hawkshaw Castle. It is assumed this will remain the case. It is also noted that turbine no.11 may impact on the setting of the unscheduled platform settlement. Policy EP8: Archaeology of the adopted LDP 2016 states that:

“... Development proposals which will adversely affect an archaeological asset of regional or local significance will only be permitted if it can be demonstrated that the benefits of the proposal will clearly outweigh the heritage value of the asset. ...”

The Council’s Archaeology Officer has been consulted on this FEI and will provide further detail in respect to these matters.

Following the examination of the proposed Local Development Plan, Policy ED9 confirms that the Ironside Farrar study on Landscape Capacity and Cumulative Impact 2013 is a material

consideration to the application. The site falls within landscape character type “Southern Uplands with scattered forest” (i) Broadlaw Group which can be viewed on page 38 of the study. The text states that:

“Capacity for large and very large turbines only exists in the western area of the LCA where these would visually be seen as an extension to the existing very large windfarm development cluster within South Lanarkshire. The existing landscape designations (SLA & NSA); core areas of wild land; Southern Upland Way as well as the large undeveloped area (a gap between clusters) with no windfarms or turbines reduces the capacity of this landscape for windfarm development. This area should remain as an undeveloped gap between existing and potential clusters of turbine development.”

The conclusions of the text on page 38 were fed into output maps for the Scottish Borders and of relevance to this proposal is Figure 6.1b and 6.1c which suggest that no turbines over 50m in height were appropriate within the application site. As can be seen within the aforesaid figures the opportunity for large (50 – 100m) and very large (over 100m) scale turbines referred to on page 38 of the study relates to an area of land in the extreme western part of the LCA. It does not relate to the application site. The consideration of the Ironside Farrar study should be given not just to the whole application proposal but also the repositioning of turbine no.11.

The updated Ironside Farrar study is a strategic level study providing a context for consideration of capacity for, and the cumulative effects of, existing and potential future wind farm developments. Whilst it is acknowledged that no site specific conclusions should be drawn from it in relation to currently proposed or potential future wind turbines and wind farms, if turbines are proposed which exceed the turbine heights identified within the IF study the onus is on the applicant to demonstrate how the impacts of the proposal on the key constraints and any significant adverse effects can be mitigated in an effort to show a proposal can be supported. The 135m high turbines are quite clearly considerably at odds with the findings of the study and consideration must be given as to whether the repositioning of turbine no 11 in any way changes opinion on the reason for refusal.

Policy ED9 makes reference to consideration to be given to the “*impacts on communities and individual dwellings (including visual impact, residential amenity, noise and shadow flicker)*”. It is noted that the applicants suggest the impacts of the proposals will not have significant impact on residences. Impacts on residential amenity were a reason for refusal and consideration should be given to any information submitted which may alter this stance. Consideration must be given as to whether this is agreed to be the case, although it is understood and must be noted that within the FEI it is stated the applicant did not have access to all grounds of seven key affected properties or access to each of them internally and in full.

12.0 CONSULTATION RESPONSES (SUBMITTED TO SCOTTISH GOVERNMENT):

- 12.1 As members are aware, the Council is a consultee in the Section 36 application process and does not undertake any outside consultation itself. Reconsultation will have been carried out by the ECDU in relation to the FEI submission and there has been another public representation period. As a result of this, it is known that there have been a further 34 public objections to the FEI, making 83 in total on the scheme with no support letters.

13.0 KEY PLANNING ISSUES:

- 13.1 The FEI has made relatively modest changes to the scheme which were largely, but not wholly, aimed at resolving the cultural heritage objections of Historic Scotland. The Council are being invited to consider whether the changes would result in any amendment to the objections previously intimated to the ECDU. This principally involves an assessment of the changes against landscape/visual impacts (including wild land, residential amenity and cumulative

impacts), cultural heritage, noise and forestry. The revised scheme should also be assessed against the new Policies in the Local Development Plan, especially ED9 “Renewable Energy”.

14.0 ASSESSMENT OF APPLICATION:

Planning Policy:

- 14.1 The response to the FEI from Plans & Research sets out the Policy change that has occurred in terms of the Development Plan context since the original S36 was considered at Committee in August 2015. The FEI must now be considered against the Policies in the Scottish Borders Local Development Plan. In terms of the FEI, these Policies are most notably Policy ED9 – Renewable Energy Development and EP8 – Archaeology. The consultees have taken account of the new Policies in their assessment of the FEI and the conclusions, as listed above, are that the relevant new Policies are contravened and that the Council should still object to the revised scheme.
- 14.2 In comparison to Policy D4 – Renewable Energy Development within the superseded consolidated Local Plan 2011, Policy ED9 lists a number of considerations which remain relevant to this Inquiry and are identified within SPP. Policy ED9 confirms that the Council will produce Supplementary Guidance which will enable further guidance on these identified considerations. Policy ED9 also confirms that the Ironside Farrar study on “Landscape Capacity and Cumulative Impact” is now a material consideration. Other than the weight now given to the Ironside Farrar study, it is not considered that policy ED9 fundamentally changes how the Whitelaw Brae application should be tested and determined.

Landscape Character:

- 14.3 Members will recollect that in assessing the original scheme in terms of Landscape Character Type and the qualifying reasons for the Designation of the Tweedsmuir Uplands Special Landscape Area, it was not considered that 14 turbines at 133.5m height to tip would be compliant with the relevant criterion in previous Local Plan Policy D4 nor reflect the advice outlined in the “Landscape Capacity and Cumulative Impact Study” which considered that there was no capacity for structures above 50m. It should be recalled that the findings suggested the capacity was only to extend the large wind farm cluster largely contained within the South Lanarkshire area and not spread eastwards across the A701 into core wild land areas and the undeveloped area.
- 14.4 The Plans & Research response now makes it clear that the findings of the Landscape Capacity Study are a material consideration in assessment under the new Local Development Plan Policy ED9. The consideration of the Ironside Farrar study should be given not just to the whole application proposal but also the repositioning of turbine no.11. Whilst it is acknowledged that no site specific conclusions should be drawn from it in relation to currently proposed or potential future wind turbines and wind farms, if turbines are proposed which exceed the turbine heights identified within the IF study the onus is on the applicant to demonstrate how the impacts of the proposal on the key constraints and any significant adverse effects can be mitigated in an effort to show a proposal can be supported. The 135m high turbines are quite clearly considerably at odds with the findings of the study and the repositioning of turbine no 11 does not change our opinion, previously expressed, that the 14 turbine scheme is significantly in conflict with the landscape capacity and Landscape Character Type. The conclusion of the Landscape Section is that the applicant has not demonstrated how the impacts of and any significant adverse effects can be mitigated.
- 14.5 Members will recall in the previous report that it was not considered that the Whitelaw Brae wind farm would be a natural and integrated extension of the wind farm landscape which is emerging further west. It is on noticeably different land character on the fringes of a Wild Land Area and

would appear as an unfortunate fragmented “jump” eastwards across the A701, noticeable amongst many of the Viewpoints. The relocation of Turbine 11 and amended Wild Land Analysis (Appendix 6.4) do not resolve the significant detrimental impacts previously identified on the Wild Land Area (WLA). Appendix 6.4 seeks to confirm the original findings of the Wild Land Analysis whilst including updated photomontages and tables, including the Clyde and Glenkerie Extension turbines. It summarises that the areas of highest wildness within the WLA would have little or no visibility of Whitelaw Brae turbines as amended and for those other parts of the WLA with visibility to the wind farm, there would already be visibility to other wind farms further west. There is also clarity in Appendix 6.1 that all photomontages in the FEI now conform with the SNH Guidance “Visual Representation of Wind Farms”.

- 14.6 At least 32% of the Wild Land Area will still have visibility of the proposed windfarm at distances no greater than 7.5km, potentially making it a prominent feature in the panoramic views to the northwest. Views from elevated points to the southwest, west and north west looking towards the Area would equally be dominated by the proposed windfarm in the foreground. Any perception of remoteness will be extinguished by the proximity to this proposed windfarm. The Landscape Architect remains of the opinion that this is not a good location for a windfarm due to the visual intrusion. She notes that a significant Moderate effect is anticipated in the revised Wild Land Assessment affecting two of the attributes of the Wild Land Area to around 5km from the development.
- 14.7 Viewpoints 9, 10 and 11 were particularly highlighted in the previous report to show how the proposed development brought a windfarm into the foreground of views from the Wild Land Area. Viewpoint 9 from Hartfell Rig showed the significant impacts of proximity and height within an open landscape compared to the more distant Clyde and Glenkerie clusters. Firthhope Rig (VP10) was higher and slightly further away, revealing more visibility of Clyde in particular, yet still accentuating the foreground impacts of the proposal. Broad Law (VP11) was higher still but still showed the distinction caused by proximity, height and relative lack of intervening topographical or afforested screening. These Viewpoints have been revisited with the addition of the Clyde and Glenkerie Extensions. Whilst they highlight the increased impacts of these wind farms and their extensions, they continue to display the detachment and proximity impacts of Whitelaw Brae to the WLA, the turbines being much closer, much larger to view and discernibly detached from the other wind farm clusters across the Tweed Valley. The movement of Turbine 11 also led the Landscape Architect to comment that the appearance was slightly more visually unsatisfactory as the rotors of Turbine 11 sit uncomfortably below the adjacent turbines.
- 14.8 The revised Wild Land Analysis does not include new photomontages to Viewpoints 14, 15 and 22 which were previously identified as important to the perception of the Wild Land Area from outwith. However, the new wirelines that are provided still show how views into the Wild Land Area will be compromised by a windfarm in the foreground on hills that are an intrinsic part of this upland landmass, especially Viewpoint 22 which has, by virtue of proximity and scale, a significant detrimental impact on the Wild Land Area.
- 14.9 Members will also recollect that SNH identified the importance of the fringes of Wild Land Areas which contribute to, and enhance, the wildness qualities of the central parts of the Areas. They considered that the Viewpoints showed that the proposed wind farm was a more noticeable and nearer outlier than other wind farms in existence or proposed. They identified Viewpoint 21 to highlight this point as an important comparison of the effects of the Whitelaw Brae wind farm on the Wild Land Area compared to other consented or existing wind farms. This Viewpoint shows the proximity and dramatic effect on the north-western section of the Wild Land Area compared to the more distant and disparate effects of the Clyde and Glenkerie turbines. The revised photomontage simply reinforces this concern, despite the addition of Clyde and Glenkerie Extensions. Again, the lower position of relocated Turbine 11 does not present a coherent design to view.

- 14.10 For the aforementioned reasons and in line with the recommendation of the Council on the Earlsbaugh scheme, it is not considered that the Whitelaw Brae wind farm is a natural and integrated extension of the wind farm landscape which is emerging further west. It is on noticeably different land character on the fringes of a Wild Land Area and will appear as an unfortunate fragmented “jump” eastwards across the A701, noticeable amongst many of the Viewpoints. For this and the aforementioned reasons, it is not considered that the proposal complies with the relevant criteria of Local Development Plan Policy ED9 on landscape character and designated areas
- 14.11 Impacts on the more intimate landscape character which lies within the Fruid, Talla and Megget Valleys and reservoirs were identified with the original scheme. The repositioning of Turbine 11 has not worsened the impacts identified in Viewpoints 4 and 5, reducing the width of spread slightly. However, even allowing for the addition of the Clyde Extension turbines on the new photomontages, the character of the area would remain dominated by the turbines, either towering above the modest rolling hills of this part of the landscape or breaking the skyline with moving blades.
- 14.12 The FEI does not change the Department’s opinion that significant impacts would remain on the perception, setting and qualities of identified wild land (Area 2 Talla Hart Fell) to the south and east of the site, and that there would be significant impacts on the designated Tweedsmuir Uplands Special Landscape Area, contrary to the management recommendations seeking to maintain wildness and limit impacts of tall developments, both in relation to the higher summits/wild land to the south and to the more localised intimate landscapes to the east and north-east.

Visual Impacts - Roads and paths

- 14.13 It was concluded with the previous S36 scheme that the visual impacts caused by the development on public roads, footpaths and other walking routes in the area were significantly adverse and were contrary to the relevant criterion of Policy D4 in the preceding Local Plan.
- 14.14 The Zone of Theoretical Visibility (ZTV) has been amended in this FEI at Figure 6.6 but the impacts are ostensibly the same. Members will recall that it showed that within the 5km range, there was in excess of 65% potential visibility, with only a limited amount of the area screened from views of the windfarm by the intervening landform. Given that windfarms are considered most prominent at ranges up to 5 -7.5km (depending on height) this lack of containment led to major significant visual effects identified to high sensitivity receptors such as the A701.
- 14.15 FEI Appendix 6.7 contains an additional analysis of the visibility of the wind farm, based upon the revised scheme and the addition of the Clyde and Glenkerie extensions, backed up with route maps and photographs. The aforementioned Youtube moving image A701 run-through is also available, albeit only in a northbound direction. It concludes that Whitelaw Brae would not have a dominant or overbearing effect on road users, impacts being reduced by the topography, winding nature of the road, varying outlook position of the Clyde Extension turbines and intervening commercial forestry.
- 14.16 Taking into account all of this additional material, there remain major visual impact concerns in terms of the A701. Viewpoints 1-3, 6 and 12 were previously identified as being of particular concern, as follows:

Viewpoint 1 – Tweedsmuir – where two hubs and seven tips will be seen over the skyline at a distance of only 4.4km, channelled into the centre of the view between the hills, increasing the impact. This is exacerbated by mostly only blade overtipping being visible. The easternmost turbine tips may be partially screened although not to the extent suggested by the Viewpoint 1E photomontage. Turbine 11 relocation is insignificant.

Viewpoint 2 – Glenbreck – where eight hubs and eleven tips are visible at only 1.4km, creating a massive and unexpected impact, again channelled into the centre of the view between the hills. Turbine 11 is visible now and will be a very visible feature looking up the Fingland Burn valley from the road, more centrally located at the front of the array in the vista formed by the V-shaped valley sides. This will increase the visual effects of the scheme which, for Viewpoint 2, has already in the ES been deemed Moderate (Significant), to Moderate – Substantial (Significant) (ES Vol 1 - 6.244:Table 6.8 and 6.250 – 6.251)

Viewpoint 3 – Tweedhope – where two hubs and five tips are visible at only 1.8km, providing considerable impact above the saddle of the hill to northbound traffic. Forestry screening is ineffective here. This would create the impression of being an inappropriate extension of the wind turbines encountered to northbound traffic on the western side of the road. Turbine 11 tip now visible.

Viewpoint 6 – Source of the Tweed – where one hub and seven tips are visible over the saddle of the hill at 4.5km and which create the same adverse effects as aforementioned. The blade overtopping above the forestry would be particularly noticeable to northbound drivers. Turbine 11 not visible.

Viewpoint 12 – Crook Inn – where two hubs and eight tips are visible at 6.8km. Again channelled into the dip between the hills which has the effect of concentrating them into the centre of the view yet over the skyline of the saddle of land on which they are situated. Turbine 11 not visible.

- 14.17 Despite the additional analysis contained within the FEI, it is concluded that the visual impacts caused by the development on the A701, especially within the 5km range, to be significantly and unacceptably adverse, contrary to Policy ED9 of the Local Development Plan. The Landscape Architect is of this opinion, noting that the sensitivity of users of the A701 has been raised to High from Low/Medium in the FEI and that, whilst the effects will be most significant within relatively close range of the site, this includes a substantial proportion of the A701 that was analysed. The A701 Flythrough demonstrates that there will be a number of sections of the route where the Whitelaw Brae turbines would be clearly visible from the A701 where the existing arrays to the east are not visible. The Flythrough simply emphasises the adverse impacts and high visibility, envisaged to be even more pronounced to southbound traffic (given the only run-through is northbound).
- 14.18 There were also dominant and significant impacts identified from the public road serving the Fruid Reservoir as shown in Viewpoints 4 and 5. The removal of turbine 11 affects a small change in the visual impact of the turbines arrayed across the landscape. Turbine 11 was, at 1.1km nearest to receptors at Fruid Dam but with its removal the nearest turbine is now 1.4km. Nonetheless visual effect of turbines across the hillside is only slightly reduced, remaining Substantial (Significant) as already noted in the ES (Vol 1 -6.244:Table 6.8 and 6.252-6.253). Despite the relocation of Turbine 11, the reservoir and modest rolling skyline will still be completely dominated by the turbines in full view of the minor road.
- 14.19 The Southern Uplands are, by virtue of their perceived remoteness, popular with walkers and from the summits there are commanding panoramic views. Despite the relocation of Turbine 11 and the addition of Clyde and Glenkerie Extension turbines to the photomontages, it is still considered that from Viewpoints 9, 10, 11, 21 and 22, the proposed windfarm continues to be excessively dominant in views. The distribution of turbines when seen from Viewpoint 22 will be improved with the overlap and clustering of 6, 1 and 11 resolved by turbine 11's relocation. Nonetheless the visual effects still remain Moderate (Significant) as noted in ES (Vol 1 - 6.244:Table 6.8 and 6.264 – 6.265). Viewpoints 4, 5 and 21 continue to indicate the impacts which are significant and dominant from both the Fruid public road and the Right of Way BT100. The latter indicates the large difference in impact between the proposed turbines and the

backdrop of existing turbines west of the A701 and at more distance, despite the addition of the Clyde Extension.

- 14.20 It is concluded that the visual impacts caused by the development on the public roads, footpaths and other walking routes in the area are significantly adverse and contrary to the relevant criterion of Policy ED9 of the Local Development Plan.

Visual Impacts – Residential Receptors

- 14.21 Members will recall that whilst identifying that properties such as Badlieu, Hawkshaw and five properties within the Fruid Valley would experience significant impacts, there were no wirelines or montages that demonstrated how such assessment could then conclude that the impacts would not be overbearing. It was noted that the relevant and nearest Viewpoints from the minor public road at Fruid and, to a lesser extent from the A701 indicated significant impacts would occur on residential outlook and amenity which would have an overbearing impact on day to day living and enjoyment of landscape, outlook and tranquillity. Badlieu was only 1.4km from the nearest turbine with 4-7 visible and Hawkshaw 1.67km away with 8-10 visible in direct view. The five properties at Fruid were between 1.3km and 2.2km away with visibility of between 4 and 10 turbines.
- 14.22 Whilst the EIA commented on direction of main windows and presence of intervening screening, if any, the findings did not seem to justify the conclusion that none of the significant impacts identified for seven properties could be considered to be overbearing. The properties in the Fruid Valley, in particular, occupy an intimate and secluded location where the magnitude of change will be more dramatic than perhaps Badlieu or Hawkshaw which occupy more open valley settings close to the A701 and where the influence of other wind farms would impinge.. It was, therefore, concluded that the previous submission had failed to demonstrate that there would not be overbearing impacts on many of the seven residential receptors identified as experiencing significant effects. Members made a specific point of this failure to demonstrate in the objections sent to the ECDU.
- 14.23 The FEI has now provided a fuller Residential Visual Amenity Study at Appendix 6.8 which includes written and visual assessments from the seven aforementioned properties, including photographs, wirelines and some photomontages where access was possible. The Study uses the “Lavender Test” and professional judgement in whether the identified effects, which are judged significant, would be overbearing and make the properties unattractive places to live.
- 14.24 Whilst the additional information is welcomed and helpful, there are a number of matters which lead to the Department concluding that impacts on residential amenity remain unacceptable, even against the “Lavender Test”. These are as follows:
- Access and information presented from each property is inconsistent as full inside access was only possible to two out of the seven properties. Consequently, the information cannot be equally compared and is insufficient to enable an opinion to be formed that the turbines would not be overbearing. Some property assessment is detailed and others are less so. Even when inside access was possible, the worst case scenario photomontage from Hawkshaw was not taken from the upper floor windows but from the ground floor windows, allowing intervening topography to mask a proportion of the turbine towers.
 - The Study firstly states that the assessment should only be considered from properties and their curtilages, not from public road or approach tracks to them – residents using the latter would be considered only as general recreational users. However, in each individual assessment, there is a weighting of significance attributed to access tracks. Nevertheless, in the final professional judgement exercised, any weighting given to access tracks seems to have been underplayed.

- The final assessments of each of the seven properties identifies varying levels of significance and major impacts, yet concludes that such impacts would not be overbearing or make the properties unattractive places to live. The jump from the methodology and findings to the conclusion is one of professional judgement but, in the Department's opinion, is unjustified in the case of several of the properties likely to be affected.
- 14.25 Taking into account the above and the relocation of Turbine 11, the Department still remain of the opinion that impacts on residential amenity are significantly adverse and overbearing, contrary to Policy ED9 of the Local Development Plan. The impacts from the individual properties are inconsistently portrayed and, in the case of Blacklaw and Craiglaw, interpreted to have lesser impacts than the presented information would suggest. Similarly, the day to day approach to the properties has been grouped in with impacts expected to be experienced by general recreational users and not given the weighting of impact and significance that the approaches by residents on a repeated basis to these secluded and isolated properties deserves. It is strongly contended that, especially with regard to the five properties affected in the Fruid Valley, the day to day movement to and from the properties is an integral and very important part of residential amenity, the seclusion and visual simplicity experienced upon these approaches being a vital part of the attraction of the place as a place to live.

Cumulative Landscape and Visual Impacts:

- 14.26 It was considered that the addition of Whitelaw Brae wind farm to the area would result in adverse coincident and sequential cumulative impacts, spreading the emerging wind farm landscape eastwards into new, undeveloped and inappropriate landscapes for such expansion, jumping across a strong visual divide formed by the A701, River Tweed and valley. The comparison with, and addition of, the Whitelaw Brae wind farm to the existing and proposed wind farms in the area would introduce a much closer and greater scale of intervention with the landscape character type and wild land on the eastern side of the A701. It was concluded that the relevant criterion of the previous Policy D4 was not complied with.
- 14.27 There has been no additional cumulative impacts assessment provided apart from an update on the position with regard to the identified wind farms to be considered as part of the assessment, in Table 6.2 and Figure 6.12. The position constantly changes, of course, with regard to wind farm submissions and the FEI does not include a new 27 turbine S36 proposal at Harryburn which is at scoping stage. This wind farm is west of the M74 and the current Clyde Wind Farm. The movement of Turbine 11 and the updated cumulative position make no difference to the Department's previous stance on cumulative impacts, however, which are considered to remain significantly adverse. The A701 Flythrough also highlights the introduction of turbines into a new area to the east of A701 and emphasises the significant sequential cumulative landscape and visual impacts by virtue of affecting an area previously free of wind turbines.

Cultural Heritage Impacts:

- 14.28 Members will recollect that in terms of previous Local Plan Policy D4, any renewable energy development should not have unacceptable adverse impacts on archaeological heritage unless there can be satisfactory mitigation proposed. The Whitelaw Brae application caused two particular areas of concern.
- 14.29 Firstly, there was concern at the setting impacts on an unscheduled prehistoric platform settlement consisting of nine platforms on the eastern shank of Big Dod. There was disappointment that no Viewpoint was provided in the final EIA despite recommendation and the Archaeology Officer had to consider setting impacts based upon a site visit. Following his visit, he considered the asset to be of national significance and stated:

“Major impacts to the appreciation of the site’s setting stemming from dominance, kinetic movement and incongruity with the current setting from the wind farm infrastructure on Glengonnor Hill, Peat Hill and the Fingland Burn valley in key views from the site are objectionable. “

- 14.30 Secondly, the Council also backed up Historic Scotland’s objection to the setting impacts of the proposed wind farm on the Scheduled Hawkshaw Castle, albeit it was considered that not only Turbine 11 had a detrimental impact and needed to be removed but that Turbines 5, 6 and the associated access track would also dominate the view of the Castle’s setting as approached by most visitors.
- 14.31 The Council opposed the application on the basis of turbines 1-6 and 11 together with associated infrastructure. It was felt that they should ideally be omitted or moved to the south of the application site. Should the ECDU consider approval of the scheme as it stands, then conditions, a legal agreement and off-set mitigation would be necessary to improve setting understanding and cover the issues of unknown archaeology.
- 14.32 The FEI has been reviewed in light of the applicant’s Rebuttal Statements to both the Council and HS dated 3 July 2015. The FEI has corrected a key omission from the ES and Rebuttal Statements by providing visualisations (FEI Heritage Viewpoint 9.11 a and b) from the Fingland Burn Platform Settlement (the ES asset labelled HA5). The new visualisations illustrate the key setting relationships of HA5 with the valleys of the Fingland Burn and Cleugh Head Burn, and the hills that constrain these. The principle change to the scheme, the movement of Turbine 11 from the setting of Hawkshaw Castle, has sought to address Historic Environment Scotland’s key concern. It is known that they have now withdrawn their objections to the wind farm on the basis of the FEI and relocation of Turbine 11.
- 14.33 In terms of whether this revision and additional information and commentary have met the Council’s concerns, the Council’s Archaeology Officer has considered the FEI and responds as follows:

“Overall, while the removal of Turbine 11 from a key view from Hawkshaw Castle has eliminated one element of setting impact, views into the site are still significantly impacted by Turbines 4-6 and this is not in keeping with national and local policy or guidance. Likewise, the continued presence of turbines on Peat and Glengonnor Hill, and the new intrusion of Turbine 11, in the setting of asset HA5, an asset judged to be of national significance, is not in keeping with policy or guidance. I therefore maintain my recommendations for objecting to the scheme as currently proposed.

The removal of Turbine 11 from one aspect of Hawkshaw Castle’s setting has addressed a concern raised by both Historic Environment Scotland and the Council. This is a positive step, but does not address the remaining setting impacts as outlined in both my initial consultation response and my subsequent response to the applicant’s Rebuttal Statement. In addressing (and by virtue acknowledging) Historic Environment Scotland’s concerns, they have not addressed the equally relevant views of the Local Authority on matters of setting. Turbines 5, 6, and to a lesser degree 4, will still pose a significant impact to the setting of Hawkshaw Castle by introducing a new and incongruous element into the current setting, dominating the valley setting and, by virtue of scale, diminishing the appearance of the Castle’s location when viewed from the track on Benner Dod. As illustrated in the applicant’s viewpoint 9.10, the experience of Hawkshaw Castle when viewed from Benner Dodd, the first and best place to appreciate the asset (including the Porteous Cairn) and its wider setting, would be dominated by the turbines along the ridgeline of Glengonnor Hill. This remains a significant impact. The removal of Turbine 11 has to a small degree benefitted the setting of the Castle, but this has not entirely alleviated my concerns.

Crucially, the relocation of Turbine 11 to the lower slope of Peat Hill has served to increase the impacts to the setting of asset HA5 when viewed from the platform settlement itself (illustrated in viewpoint 9.11). Both the applicant and myself are largely in agreement on the setting of the asset. What we disagree on is the cultural significance of the asset, its national importance, and elements of the topographical constraints (namely Peat and Glengonnor Hills) that contribute to the asset's setting. The movement of Turbine 11 onto the lower shoulder of Peat Hill, and just above the 'banks of the Fingland Burn' represents a significant intrusion into the setting of HA5 (illustrated in viewpoint (9.11b). While the other turbines affecting the setting of the asset are confined to the tops and ridgelines of the hills, the new location of Turbine 11 is within the valley setting and significantly distracts and diminishes an appreciate of a key setting view from the settlement: namely the confluence of the Fingland and Cleugh Head valleys. I do not feel that the proposed location of Turbine 11 maintains an appropriate setting for HA5. I therefore maintain my recommendations in previous responses, and suggest that the relocation of Turbine 11 is more objectionable than other significant impacts as previously highlighted."

- 14.34 For these reasons, it is not considered that the revised development complies with Local Development Plan Policies ED9 and EP8 in relation to the impact of the wind farm on cultural heritage assets.

Residential Amenity (Noise):

- 14.35 Members will recall that the Environmental Health Officer did not object to the previous scheme, believing that a suitably worded condition would be possible and further conditions could control construction noise and dust issues. These were considered to be matters for the ECDU and for the Reporter determining the appropriate cumulative noise limits for Earlshaugh, should that scheme be approved. That view is maintained and there are no objections to the FEI revisions and additional noise assessments which would not increase noise to any significant extent at the nearest receptors.

Ecology and Habitat impacts:

- 14.36 Members will recall that the Ecology Officer had concerns about potential impacts on black grouse and necessary mitigation. He also required the Habitat Management Plan to include further enhancement and compensation measures to ensure no net loss of biodiversity. Taking into account the FEI revisions and relocation of Turbine 11, it is within recognised disturbance distances for black grouse leks (300-500m) and this would be in addition to potential disturbance and displacement with other turbines identified previously. Given the location of a complex of leks within the site, it is reasonable to require a package of compensation measures specifically to address impacts on black grouse, over and above any requirement to replaced loss of woodland in relation to the Scottish Government's Control of Woodland Removal Policy. This requirement could be achieved through a Planning Condition or legal agreement as appropriate.
- 14.37 Taking into account the FEI submissions, the Ecology Officer still considers that with best practice measures, it is unlikely that the scheme will create any significant adverse impacts on the River Tweed SAC.
- 14.38 Compensatory Planting Proposals were previously identified as lacking and these have now been submitted as part of the FEI, in Appendix 17.1. The Ecology Officer is aware of ongoing dialogue between the Forestry Commission and the developers and that a revised scheme may be developed with greater emphasis on native woodland and Scots Pine. He is satisfied that a scheme can be agreed under a Planning Condition or Legal Agreement and that the Forestry Commission would be content with this. Alternatively, a parallel felling licence under the Forestry Act could control the compensatory requirement regulated by Forestry Commission Scotland.

14.39 Any approved plan would need to be consistent with the Scottish Borders Woodland Strategy, as informed by the Technical Advice Note (2012). The priorities for new woodlands in the Central Southern Uplands landscape area include:

- Potential for new native woodland expansion to contribute to integrated habitat networks linking existing woodland along river valleys, tributaries and areas identified in Flood Risk Management plans.
- Potential for new coniferous forest subject to retaining a reasonable balance of open ground habitats and forest and avoiding significant fragmentation of existing open habitats.

14.40 The submitted Compensatory Planting Plan also requires other considerations:

- In terms of landscape, there may be issues with the lack of Scots Pine and the almost continuous band of native broadleaves along the south side of the A701 has potential to restrict views of the changing landscape progressing up the Upper Tweed valley and the abrupt and angular termination of the woodland at the southern end. It is known that Scottish Natural Heritage are also concerned with this element.
- In terms of archaeology, the scheme should respect the setting of archaeological receptors including prehistoric settlements in the Fingland burn valley, other unscheduled monuments and Scheduled Ancient Monuments and would require unplanted ground and buffer areas around sites informed by a pre-afforestation archaeological survey. This may allow for reconstruction of the ancient environment enhancing the archaeological sites.
- In terms of access, any existing or new tracks should be available for all types recreational users after planting is complete, including gates where necessary.
- In terms of ecology, the scheme should seek to provide biodiversity enhancements through native woodland creation consistent with the Scottish Borders Woodland Strategy and provide additional benefits e.g. natural flood management for downstream flood mitigation and improvements to water quality benefitting the River Tweed SAC/SSSI.

14.41 These are matters for the ECDU and Reporter to consider in conditions should there be any intention to support the application. There are certainly no ecological reasons, following consideration of the FEI, why the development would otherwise be considered not to be in compliance with the relevant criterion of Local Development Plan Policy ED9.

Access and Roads

14.42 Roads Planning had previously not objected to the proposal, recognising that most of the heavy vehicles during construction will access from outwith the area. Conditions would be sought for a Construction Traffic Management Plan, detailed junction design and further details of the Tweed crossing. In terms of the Turbine 11 relocation and other information in the FEI, there remains no objection to the revised scheme. There will be no additional movements on the public road as a result of the turbine relocation and there will be a reduction of on-site tracks by around 140 metres, along with a reduction in cabling and earthwork cuttings. With regard to the addition of the battery storage units, this will increase HGV movements by around 35 but, when considered against the overall movements for this site of approximately 3700 HGV movements over the same time period, this increase is considered to be slight.

14.43 In terms of footpaths affected by the development, the Access Officer maintains no objection, reiterating that the Land Reform Act does seek a right of responsible access through the site, thus, the tracks, once the development is completed, should be available for the public.

15.0 CONCLUSION:

15.1 Scottish Borders Council remains positive towards the principle of wind energy development, as is reflected in its revised Local Development Plan and guidance, which include the Strategic SESplan policies. As required by all policy considerations, the balance between the advantages of energy production, and the disadvantages of environmental impact must be weighed carefully against one another. It was identified with the previous scheme that whilst 50.4MW of electricity would make a sizeable contribution to delivery of sustainable renewable energy development, the benefit was outweighed by the environmental impacts as outlined in the previous Committee Report. The revision to the scheme and the Further Environmental Information submitted have not satisfactorily addressed the significantly adverse environmental impacts as described in this Report and as summarised below:

- Limited containment within the 5km range and consequent significant visual impacts from sensitive receptors including public roads (such as the main tourist route of the A701 and the Fruid minor road), a right of way, hill summits and dwellinghouses.
- Significant impacts on the perception and setting of designated wild land (Area 2 Talla Hart Fell) to the south and east of the site in an area with high fragility to change.
- Significant impacts on the designated Tweedsmuir Uplands Special Landscape Area and management recommendations seeking to maintain wildness and limit impacts of tall developments.
- Significant cumulative and scale impacts on sensitive receptors and on a unique landscape character type and capacity to the east of the A701 corridor, inappropriately extending the existing Clyde/Clyde Extension/Glenkerie cluster into previously undeveloped land, bridging a strong visual boundary between landscape character types and setting precedent for further inappropriate incursion.
- Significant detrimental impacts to two archaeological sites of national significance, Asset HA5 and the Scheduled Hawkshaw Castle.

15.2 For these reasons, Members are advised to continue to object to the Section 36 Application.

16.0 RECOMMENDATION BY CHIEF PLANNING OFFICER:

16.1 That the Council indicate to Scottish Government that it **maintains objections** to the application for a 14-turbine wind farm on the Whitelaw Brae site. The reasons for the objections are as follows:

16.2 Reason for Objection 1: Impact on Landscape Character:

The proposed development would be contrary to Policies PMD2, ED9 and EP5 of the Scottish Borders Local Development Plan 2016 and Policy 10 of the South-East Scotland Strategic Development Plan (SESplan) 2013 in that, taking into consideration the following factors, it would unacceptably harm the Borders landscape:

- Significant impacts on the perception, setting and qualities of identified wild land (Area 2 Talla Hart Fell) to the south and east of the site in an area with high fragility to change.
- Significant impacts on the designated Tweedsmuir Uplands Special Landscape Area and contrary to the management recommendations seeking to maintain wildness and limit impacts of tall developments, both in relation to the higher summits/wild land to the south and to the more localised intimate landscapes centred around the reservoirs to the east and north-east

16.3 Reason for Objection 2: Adverse Visual and Amenity Impacts:

The proposed development would be contrary to Policies PMD2, ED9, EP8 and HD3 of the Scottish Borders Local Development Plan 2016 and Policy 10 of the South-East Scotland Strategic Development Plan (SESplan) 2013 in that, taking into consideration the following factors, the development would give rise to unacceptable visual and amenity effects:

- Low containment within the 5km range and consequent significant visual impacts from sensitive receptors including public roads (such as the main tourist route of the A701 and the Fruid minor road), a right of way, hill summits and dwellinghouses. In respect of the identified residential receptors, the developer has failed to demonstrate that the impacts would not be overbearing and significantly adverse.
- Significant cumulative and scale impacts on sensitive receptors and on a unique landscape character type and capacity to the east of the A701 corridor, inappropriately extending the existing Clyde/Clyde Extension/Glenkerie cluster into previously undeveloped land, bridging a strong visual boundary between landscape character types and setting precedent for further inappropriate incursion.
- Significant detrimental impacts to two archaeological sites of national significance, Asset HA5 and the Scheduled Hawkshaw Castle.

16.4 Advisory Note:

Should the development be considered for approval, then conditions and the need for a Legal Agreement have been identified covering a number of different aspects including noise limits, roads matters, ecology and archaeology.

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

Author(s)

Name	Designation
Craig Miller	Lead Planning Officer



15/00020/S36
 (Whitelaw Brae Wind Farm)
 Land South East Of Glenbreck House
 Tweedsmuir
 Scottish Borders

