

**Erection of a SCOTTISH BORDERS COUNCIL**  
**PLANNING AND BUILDING STANDARDS COMMITTEE**

**02 OCTOBER 2017**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/00226/FUL
<b>OFFICER:</b>	Stuart Herkes
<b>WARD:</b>	Galashiels And District
<b>PROPOSAL:</b>	Erection of a windfarm comprising of 7 wind turbines 126.5m high to tip, associated infrastructure, ancillary buildings and temporary borrow pits
<b>SITE:</b>	Land North West Of Gilston Farm, Heriot
<b>APPLICANT:</b>	Gilston Hill Windfarm Ltd
<b>AGENT:</b>	2020 Renewables Limited

**SITE DESCRIPTION**

The site lies on the northern edge of the Southern Upland land mass, above the Lothian Plains; more specifically, within the northeastern section of the Moorfoots, where these rise above Fala Moor. The expansive rolling farmland of Midlothian and East Lothian lie to the north again. The Lammermuirs lie to the east.

There are two parts to the site: the largest of which is the site of the proposed wind farm itself, including access tracks, temporary compound and a borrow pit; the smaller site lies to the south of the first, and would accommodate another borrow pit.

The site of the proposed wind farm lies around 0.5km to the west of Gilston Farm and the B6368; 2.25km to the south of the A68; and 3.5km to the east of the A7. It lies immediately inside of this Council's local authority area, at a point where this borders Midlothian, to the immediate north. East Lothian lies within only around 4km to the east.

Notwithstanding some shelter belts within the lower, eastern section, just above Gilston Farm, the wind farm site is otherwise an open, undulating upland rough grazing land. It extends to some 170 hectares. At its southern extremity, Brotherstone Hill rises to a height of 418m AOD; the highest point within the site. For the most part, the land within the site is the northern slopes of the aforementioned summit, and it faces towards the more open vistas of the Lothian Plains.

The site of the detached borrow pit lies downslope of the main site, 0.8km to the south. This is the larger part of an enclosed, steeply sloping but open field. It extends to an area of 4.6ha, and is bounded to the south by the B6368. It already includes an existing agricultural borrow pit.

Neither of the two areas of the site is directly subject to any statutory designations. However, the western boundary of the main wind farm site lies adjacent to the Fala Flow

Site of Special Scientific Interest (SSSI) and the Fala Flow AGLV (proposed as the Fala Moor Special Landscape Area in the Proposed Midlothian Local Development Plan). There is also likely to be runoff from slopes within both areas of the site, to the River Tweed Special Area of Conservation (SAC) and the River Tweed Site of Special Scientific Interest (SSSI).

A small area along the eastern boundary of the wind farm site also overlaps with part of the northwestern extremity of the Makimrich Ancient Woodland Inventory Site.

Scheduled Ancient Monuments at Soutra Aisle and Dere Street lie within the near vicinity of the wind farm site.

There is a Right of Way which runs through nearby Brothershiels, and then onto, and across, Fala Moor. This is used as a recreational walking/riding route.

The nearest dwellinghouses to the site within SBC's local authority area are located at Gilston and Upper Brotherstone (within less than 750m, in both cases) and Brothershiels (within around 1km). Soutra Farm, within Midlothian, lies around 2km distant. Although the site is not located within close proximity to any settlements or large building groups, there are numerous farms and smaller building groups within the wider area, within both the Scottish Borders and the Lothians.

## **PROPOSED DEVELOPMENT**

The application seeks consent to install 7 turbines on the northern slopes of Brotherstone Hill, each of which would have a maximum height to blade tip of 126.5m and a generating capacity of approximately 3 Megawatts (MW). The overall generating capacity of the scheme is accordingly 21 Megawatts (MW).

In addition to foundations, and ancillary areas of hard standing for purposes of construction and operation, the proposal would also include 3.9km of new permanent access tracks; a substation compound incorporating a control building and telecommunications; a temporary construction compound; and up to two borrow pits, with associated temporary tracks. The detailed drawings of these proposed developments, and indeed of the turbines themselves, are all described as "indicative" or "typical".

The "indicative wind turbine" has a rotor diameter of 90m and a hub height of 82m. It incorporates a tapered tubular tower and three blades. Somewhat confusingly however, it is advised within the Environmental Statement that the Landscape and Visual Impact Assessment is based upon the visual impacts associated with the siting and operation of turbines with a maximum tip height of 126.5m, but with a rotor diameter of 93m and a hub height of 80m. The Applicant has confirmed that it is the latter, which is to be taken as the detailed dimensions of the proposed model of turbine.

Figure 3 ("proposed layout") and Figure 3.1 ("indicative site layout"), describe an array of turbines set out in three roughly linear rows running across the northern slopes of Brotherstone Hill. The upper row would consist of three turbines sited at around 340m to 350m AOD. The lower two rows of two, would occur downslope of these, at roughly 320 to 330m AOD; and then again, below this, at around 300 to 310m AOD.

Access to the site will be from the B6368 north of Makimrich wood by way of a purpose built junction. Construction traffic would be routed from the A68 to the B6368; with only traffic requiring to travel between the main wind farm site and the larger borrow-pit site, needing to take access along the intervening section of the B6368 to the east.

The grid connection for the proposal would be at the existing Dun Law substation, which would in turn be connected to the site via underground cable.

Planning permission is sought for an operational life of 25 years after which time the facility will be decommissioned and the site restored to the satisfaction of the Council.

During operation, the local economy would benefit from the contribution of £5,000 per megawatt (MW) by the windfarm to a community fund. It is advised that consultation is ongoing with the local community councils regarding shared ownership of the project, which would lead to further contributions to the local economy.

## **PLANNING HISTORY**

A previous planning application for the site, 11/01680/FUL, proposed the erection of seven wind turbines comprised of six turbines with a height to tip of 115m, and one with a height to tip of 100m. This was to have been part of a wider scheme including nine more turbines of equivalent design which were to have been sited on adjacent land in Midlothian, and which were the subject of a related planning application (11/00847/DPP) to that authority. The latter application was refused by Midlothian and then also dismissed at a subsequent appeal to the Scottish Government.

Planning Application 11/01680/FUL was also refused by SBC's Planning Committee in 2012. The subsequent appeal to the Scottish Government in 2013 was also dismissed on the grounds that: "*the proposal would give rise to an unacceptable number of significant adverse landscape and visual amenity impacts, including cumulative impacts*" (Paragraph 98), impacts which the Reporter in his Appeal Decision Notice considers were not outweighed by any economic and sustainability benefits of siting and operating the proposed wind farm.

In his consideration of the landscape and visual impacts, the Appeal Reporter is clear that his assessment and conclusions relate both to the subject proposal in isolation, and to its contribution to cumulative impacts that would result were it to be realised in association with the other nine turbines that were then proposed to have been sited on the adjacent site in Midlothian, as well as with respect to cumulative impacts in association with existing and consented windfarms within the wider area.

While the majority of the appeal report is concerned with landscape and visual impacts, including cumulative impacts, the Reporter also considers residential amenity, natural heritage and cultural heritage concerns. Notwithstanding some overlap with the landscape and visual impact concerns, it is concluded that all other concerns in these respects could be addressed by planning conditions, or are not otherwise objectionable.

## **SCHEMES RELEVANT TO CONSIDERATION OF CURRENT PROPOSAL**

Although the site lies within Scottish Borders, it also lies in immediate proximity to Midlothian, and in close proximity (4km distant) to East Lothian, and has potential to be

viewed in association or sequence with a number of wind farm developments within the surrounding area.

## **Scottish Borders**

### **Dunlaw**

96/01130/FUL - Wind farm comprising of 31 turbines (Tower height not to exceed 42m), control building, substation, 2 monitoring masts & access roads approved July 1997

05/00847/FUL - Extension to wind farm comprising 35 wind turbines (up to 75m to blade tip), turbine transformers, substation and control building, access roads and temporary borrow pits and construction compounds approved January 2006

14/00200/FUL – approval of Erection of wind turbine 75m high to tip.

### **Toddleburn**

04/01744/FUL - Construction of wind farm comprising twelve turbines and sub-station connected by access tracks and accessed via an existing track from the A7 approved August 2005 (hub heights 65m and 80m, blade tip heights 110m and 125m). Initially refused by committee for following reason:

The proposed development would be contrary to Policy I20 of the Approved Structure Plan in that its proximity to the Dun Law Wind Farm will result in unacceptable cumulative impacts.

Appeal against this refusal sustained in January 2007

### **Rowantree**

Section 36 application for 23 wind turbines and ancillary works (hub height 80m tip height 125m) considered by committee in July 2010. Committee objected to application. Public Hearing held in 2012 and Reporter's report expected to be with Scottish Ministers before the end of 2012.

### **Falahill**

04/02420/FUL - Erection of three wind turbines with associated access tracks, a climate monitoring mast, switchgear building and temporary construction compound refused in May 2006 (60m to hub, 101m to blade tip). Reason for Refusal:

The proposed development would be contrary to Policy I20 of the Structure Plan, Policy 84 of the Ettrick and Lauderdale Local Plan and Policy D4 of the Finalised Local Plan in that it would have a detrimental effect on landscape character and countryside amenity and Policy I20 of the Structure Plan in that it would result in unacceptable cumulative impacts to the detriment of landscape character and countryside amenity.

## **Carcant**

05/01884/FUL – Approval of erection of three wind turbines (107m to tip) and 1 No wind monitoring mast with control building, access track, temporary construction compound and other ancillary development.

## **Outwith Scottish Borders**

### **Gilston (Midlothian)**

An application (11/00847/DPP) for 9 turbines on the adjacent site was considered by Midlothian Planning Committee on 20 November 2012 and the decision was taken to refuse it on the basis of its landscape and visual impacts, cumulative impacts, and impacts upon the wildlife interests of the adjacent Special Protection Area, with particular regards to ornithological interests, and also to the peat land habitats of the development site itself. A subsequent appeal was dismissed by the Scottish Government.

### **Dere Street (Midlothian)**

Application for two wind turbines 29.9m to tip (12/00206/DPP) currently under consideration. The proposed location is to the north west of the B6368 between the proposed entrance to Gilston wind farm and the block of woodland close to Soutra Aisle.

### **Pogbie (East Lothian)**

Pogbie Wind Farm (PWF) is a 6 turbine wind farm with a capacity of 5MW located in East Lothian which was granted planning consent in 2009 by East Lothian Council (East Lothian Council ref 08/00823/FUL).

09/00029/Ful Land East of Huntershall, Soutra Hill - formation of access track- approved but consent not issued as legal agreement not completed.

11/01193/FUL - Land North East of Dun Law Wind Farm, Formation of access track and upgrading of existing wind farm access track to connect Pogbie wind farm to the public road network approved December 2011.

### **Keith Hill (East Lothian)**

Initial application (09/00010/FUL) for 10 wind turbines (110m in height) and associated infrastructure was refused by East Lothian Council and the subsequent appeal was dismissed. The reason given for the dismissal was that the proposed development would have an adverse effect on the character and appearance of the Lammermuir Hills AGLV.

A revised application (10/00985/FUL) for the erection of 5 wind turbines, 76m to tip height, and associated works on the same site was approved on 1 April 2011.

Access to both Pogbie and Keith Hill will be via the eastern extension of Dun Law wind farm.

14/00787/FUL - formation of wind farm access track approved by Scottish Borders Council.

Other smaller turbine applications

There are also a number of approvals for smaller scale turbines in the proximity of the proposed windfarm at Fallahill, Upper Brotherstone and Cowbraehill.

## **REPRESENTATION SUMMARY**

In total, 35 representations have been received; each of which is available in full on *Public Access*. These include 21 representations in support; 12 representations in objection; and 2 general comments advising of concerns with respect to the proposal.

The main grounds of support are as follows:

- Locally-produced renewable energy seen as a clean, sustainable, reliable and forward-looking energy source; delivering economic and energy security while helping to counteract climate and environmental change;
- Environmental impacts, including landscape and visual impacts are acceptable; appearance may even be an attraction or features of interest; views from surrounding road network (A68 and A7) and settlements (Fala and Heriot) would be minimal;
- Site considered to be secluded and/or in character with an established 'wind-scape', particularly in its relationship to the existing Dun Law Wind Farm, which already has a significant impact upon the landscape, allowing the visual impact of the current proposal to be minimised;
- Impacts upon amenity, including that of general rural landscape character, are acceptable; and would not harm general public's enjoyment of the area;
- Economic and employment benefits to the local area;
- Supports farm diversification and wider rural economy;
- Community benefit from a generous community benefit fund (estimated at £105,000 a year);
- Area proven to have good wind resource potential; benefit from proximity to established grid connections;
- Current proposal addresses the landscape and visual impacts that were the basis of the refusal of the previous application, primarily by reducing the overall number of turbines in the scheme and through more sensitive positioning; and
- Proposals are in line with Policy ED9 Renewable Energy Development of the Adopted Scottish Borders Local Development Plan.

The main grounds of objection are as follows:

- The proposal is contrary to Policy ED9 of the statutory development plan in that the proposal has a range of significant adverse effects having regard to environmental, community and cumulative impact considerations. These significant adverse impacts are relevant and cannot be satisfactorily mitigated. The very limited wider economic, environmental and other benefits of the proposal (to the extent that these are real and verifiable) do not outweigh the potential damage arising from it. The proposal therefore fails to find support from the first part of Policy ED9;
- In terms of minimising the operational impact of the wind turbine proposals, including ancillary developments such as tracks, the Applicant, has not

demonstrated the selection of options to minimise these effects, as is required under Policy ED9;

- The Council's Planning and Building Standards Committee refused an application for a similar proposal; which was refused at appeal; the current proposal is not materially or substantially different from this previous proposal, proposes higher turbines (126.5m as opposed to 115m), and has not addressed the landscape and visual impacts which were identified as objectionable by both the Planning Officer and Appeals Reporter; although the Applicant presents the proposal favourably in comparison to the previously proposed 16-turbine scheme, the 7-turbines within the latter that were to have been accommodated on the site were the subject of an application that was determined, appealed and dismissed in its own right; the provisions of Policy D4 within the previous statutory development plan against which the previous scheme was assessed, are substantially the same as those of Policy ED9 of the current statutory development plan (Adopted Scottish Borders Council Local Development Plan 2016);
- Contrary to the Applicant's assertions, the determining issues at the time of the previous application and subsequent appeal, were not related to design, but were related to significant adverse landscape and visual impacts, which were diminished or dismissed by the Applicants/Appellants;
- Unacceptably detrimental landscape and visual impacts upon current proposal more detrimental in terms of its landscape and visual impacts than previous and refused proposal; there is insufficient capacity within the local landscape for further wind farm development; the site is open and would be visible over many miles to the north from Midlothian; the scheme specific and cumulative Landscape and Visual Impact effects exceed the capacity of the landscape, and are overwhelmingly adverse;
- Site conflicts with SBC spatial strategy for wind farm development;
- The Landscape Character Type is not suitable for wind energy development;
- The cumulative impacts are such that they limit the capacity for further development in the area;
- Insufficient account has been taken of environment and amenity of the houses in closest proximity to the scheme, including those at Brothershiels; these properties would experience an unacceptable overbearing effect;
- Unacceptable impacts upon birds (including Black Grouse and Pink Footed Goose) and local wildlife; insufficiently detailed information has been provided with respect to the identification of birds, and the impacts upon them;
- Over provision of facility in area; there would be unacceptable cumulative landscape and visual impacts in association with neighbouring wind farms and turbines at Dun Law (and extension), Toddleburn and Carcant. In culmination with these other schemes would effectively extend the wind-scape over 2km;
- Impacts upon environment and amenity of the site and surrounding area would not be outweighed by the economic, energy, employment and community benefits of the scheme and/or contributions to national renewable energy targets, which the area already contributes towards through the existing and consented schemes;
- Visitor and tourist economy liable to be negatively impacted
- Unacceptable impacts upon the amenity of the surrounding area, including Rights of Way; including the Fala Moor Road Core Path,

- Unacceptable noise nuisance impacts liable to be experienced at nearest non-financially involved dwellings including those at Brothershiels; insufficient data (including untypical monitoring conditions) has been gathered to demonstrate that the noise impacts liable to be experienced at neighbouring dwellings would not be unacceptable; noise modelling is considered to be inadequate or unreliable;
- Poor design in terms of siting results in turbine grouping which is not sensitively accommodated within landscape and visual impacts;
- Development will negatively affect health of residents in close proximity to the proposals;
- National climate change and energy policy does not outweigh all other considerations; including the need to consider the impacts of the specific proposal;
- Need for the scheme is not justified by Scottish Government's national targets for renewable energy output; Scotland's energy sector is now effectively 'decarbonised'; the national targets can be met in other ways, by other schemes; existing and consented schemes are sufficient to meet Scottish Government targets; (it is advised not only that the target has been reduced in recent years, but that the target is being incorrectly calculated); the UK Government level position outweighs the position of Scottish Government, and is shifting towards the encouragement of off-shore wind energy development; the electricity target for the UK under the EU RE Directive of 2009 is in principle already met by installed and consented capacity, and there is no budget for an overshoot; Renewable energy targets have already been met and the development cannot verifiably prove any direct effect on greenhouse gas emissions;
- In recent consultative drafts on energy, the Scottish Government is not proposing immediate changes to the planning system that would affect this case, and do not indicate that developments which are currently not acceptable on account of their adverse impacts should somehow be approved in future;
- Costs incurred to the Council (and tax payer) of processing the application and any subsequent appeal, are liable to outweigh the application fee paid by the Applicant;
- In the Borders, grid and geographical constraints frequently require existing capacity to be shut down under conditions of moderately high winds;
- The clear outcome of the 2013 appeal means that this new application is simply putting parties to unreasonable and unnecessary expense as there is no reasonable prospect for a successful outcome;
- There are no associated energy storage proposals that would offset the constraints payments;
- There is no submitted demonstration of any net positive economic impact; no balanced overall net economic impact assessment has been presented;
- Adverse effects on the water environment;
- Adverse effects on carbon rich soils;
- Adverse effects on the operation of a local estate, principally through adverse impacts on experience of customers participating in shooting events;
- The site decommissioning and restoration cannot be guaranteed unless through a legally-binding obligation on current and future title holders;
- Not a sustainable land use given recognised significant adverse effects; and
- Designated Conservation Area (sic).



Two general comments have also been received in response to the planning application. The first was concerned to establish whether or not the proposal included, or would be anticipated to include, provision for anemometers. The second seeks the reinstatement within the current scheme, of a proposal included as part of the previous but refused planning application. This proposal was specifically that a specific area of woodland within a third party ownership (understood to be that of the party making the general comment) should be retained and maintained for the lifetime of the windfarm site (and not harvested or cut). This is identified as being for landscape and visual purposes.

## **APPLICANTS' SUPPORTING INFORMATION**

Prior to the submission of the current planning application, the proposal was made the subject, firstly, of a Screening and Scoping Opinion Request (16/00922/SCO), which advised that an Environmental Impact Assessment was required in support of the planning application; and secondly, a Pre Application Notification (16/01074/PAN), which advised that the public consultation arrangements described within the revised PAN were acceptable. The Applicant's supporting information includes both an Environmental Statement and a Report of the Applicant's Community Engagement.

The supporting documents include:

Planning Statement  
Design and Access Statement  
Volume 1 – Non Technical Summary  
Volume 2 – Main Report  
Volume 3 – Figures  
Volume 4 – Technical Appendices  
Visualisations  
Comparative Zones of Theoretical Visibility

The Environmental Statement and Non-Technical Summary advise as to how the current version of the proposal has been revised to address the landscape and visual objectives raised at the time of the determination of the previous planning application, or otherwise respond, to those same concerns. The key points of this response are as follows:

- The site would prevail within a large-scale landscape context, already inhabited by operational wind farms at Dun Law and Toddleburn;
- There would be minimal or reduced visual effects in views from the A7 and A68;
- Turbines have been removed from Midlothian's AGLV;
- Reduced number of turbines has resulted in a simpler, more contained layout;
- Compact turbine layout has minimised the horizontal spread of the proposed development along the skyline and within the landscape;
- Cumulative views of the proposed development have been improved as the turbines have been located in the part of the site closest to Dun Law Windfarm and Extension, creating a more coherent fit with the existing turbines;
- Significant visual effects have been identified as occurring out to a range of 4.2km;
- Scheme would now be barely visible from properties in South Fala Village, Fala Kirk, and improved in views from North Middleton and Edgehead; and

- Views from Soutra Aisle to the site are screened by a conifer plantation, but even allowing for the plantation's removal over the lifetime of the wind farm, there would be no unacceptably adverse impacts upon the landscape setting and context of the monument.

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Access Officer:** advises that there are no Rights of Way on this area of land. However, there are a number of paths out with the site from which the turbines would be visible. It is noted that the developers wish to enhance the existing path network in the area. In order to maintain and improve public access, and should the Planning Authority seek to approve this application, the Countryside Access Team makes the following recommendations: (i) consideration should be given to creating a circular access route around the site utilising existing tracks, new access roads and where necessary creating a new link path between Turbines T4 and T7 suitable for use by walkers, cyclists and horse riders; (ii) developers should work with Scottish Borders Council Access Team to create a new connection between Fala Moor Road and Dere Street through the site; and (iii) reasonable developer contributions should be agreed to the satisfaction of the Countryside Access Team for the promotion, maintenance and management of the wider path network in the local area; specifically, the operator should enter into an appropriate Legal Agreement to secure the provision of resources over the operational period of the Wind Farm for these works to be funded annually to the sum of £3,000, index-linked.

**Archaeology Officer:** does not object to the proposal, and considers it to be better conceived than the previous application in terms of its impacts on the historic environment. However, there would be direct impacts to known heritage assets, and potential for impacts to unknown, buried, assets. These impacts can be dealt with by condition. There will also be impacts to the setting of Soutra Aisle. While these are not objectionable it is recommended that a condition that would enhance the understanding and appreciation of Soutra Aisle thereby partly off-setting the impact be added to any grant of consent.

In terms of direct impacts, this can best be mitigated through a scheme of archaeological work that may include targeted excavation, a mapping exercise of existing rig and furrow cultivation and a watching brief.

**Ecology Officer:** seeks the imposition of conditions to require the submission and prior approval of a Species Protection Plan; a Habitat Management Plan; a Construction Environment Management Plan (CEMP); an ecological monitoring programme; and a Decommissioning Restoration and Aftercare Strategy. The detailed requirements of what each of these should address is set out within the Ecology Officer's consultation response. Additionally, the appointment and operation of an Ecological Clerk of Works (ECoW) for the site, is sought to oversee the preparation and monitoring of the aforementioned plans and programmes from the pre-construction to operational phases of the development. Lastly, and within a period of no later than 3 years prior to the decommissioning of the Development a detailed decommissioning, restoration and aftercare plan, should be submitted to the Planning Authority for prior approval in consultation with SNH and SEPA.

**Environmental Health:** has advised as follows:

#### Private Water Supply

An assessment of the impact of the Development on Private Water Supplies was undertaken as part of the original Application and is detailed in Chapter 10 of the Environmental Statement. The Private Water Supply serving properties at Gilston was identified as being at risk from the formation of a borrow pit. If this borrow pit is used as a scheme of mitigation as detailed at Chapter 10 paragraph 10.169 will be required as a Condition of any Planning Consent. A condition is proposed for this purpose.

#### Construction Noise

An assessment of the impacts arising from Construction of the Development was undertaken as part of the original Application and is detailed in Chapter 13 of the Environmental Statement. The assessment encompassed the effect of additional road traffic as well as noise arising from construction activities. Equipment noise predictions have been modelled and the Assessment concludes that there is a potential for unacceptable noise impact at two properties under a worst case scenario. This can be mitigated by a Condition requiring a Construction Method Statement in the event of approval. A condition is proposed for this purpose.

#### Operational Noise

Environmental Health initially sought clarification with respect to the nature of properties around the site identified as having a financial interest, pointing out that the higher noise limits would only be applicable where the resident (and not the owner) of the property has the interest. Further to the production and submission of a revised noise assessment which is based on the operation of an alternative wind turbine (108m diameter rotor), Environmental Health is content to accept the assessment and conclusions of that noise report, specifically that the proposal would have no unacceptable noise impacts, but identifies the need for planning conditions to achieve the following:

- Firstly, with respect to the six properties at which the Applicant seeks the application of a higher noise limit, documentary evidence requires to be submitted to substantiate the Applicant's advice that the occupiers of the six properties concerned would have a financial interest in the scheme;
- Secondly, a condition is proposed to regulate 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. This makes explicit reference to the values for the relevant integer wind speed set out in, or derived from tables, which Environmental Health would require to be attached to this condition. The tables identify specific properties; and
- Thirdly, specific noise monitoring measures are specified, along with the protocol to be followed in the event of a noise nuisance complaint.

Given that the above assessment is based upon advice with respect to a turbine with a rotor diameter of 108m, it was necessary to confirm with Environmental Health whether

or not it would take any different view with respect to the operation of a turbine with a rotor diameter of 90m. Environmental Health has responded to advise that no new assessment would be sought based on the Applicant's explicit advice that the final choice of turbine would, however, have to meet the noise limits determined and contained within any condition imposed.

**Flood Prevention:** Due to minimal flood risk at the site, there would be no major objection to this proposal in terms of flood risk, although adherence to the following is sought: (i) the formation of any new hard surfaces, such as access roads, to be attenuated to at least existing Greenfield runoff rates so that there is no increased effect on downstream receptors. Likewise, any discharges from SUDS and other drainage should be kept to existing Greenfield runoff rates; (ii) if there are to be any culverts, watercourse crossings or alterations to crossings, these must not reduce the flow conveyance of the watercourse; and (iii) details of the silt traps and other functions that the Applicant proposes to minimise the amount of sediment entering the water course should be submitted. It is anticipated that SEPA would want there to be a buffer zone between the watercourse and any turbines.

**Forward Planning:** notes that an earlier application for seven turbines of a lower height to the turbines that are now proposed, and sited in slightly different locations to those that are now proposed, was refused and then dismissed at appeal. It is advised that consideration must be given to whether this amended application materially changes the Reporter's reasons for refusal.

It is noted that Scottish Planning Policy (SPP) supports all forms of sustainable development, which includes the promotion of renewable energy and the protection of the environment. Whilst supporting renewable energy this however should not be at any cost; it should be the right development in the right place. Secondly, in respect to the approved SESplan Strategic Development Plan, it is noted that concern has been expressed in relation to cumulative impacts of wind farms in the Scottish Borders.

Within the Council's adopted Local Development Plan 2016 there are a number of relevant planning policies but the most relevant is Policy ED9: Renewable Energy Development. This lists a number of material considerations including the report on Landscape Capacity and Cumulative Impact (July 2013) as an initial reference point, as well as other relevant landscape, visual and cumulative impact guidance, for example, that produced by Scottish Natural Heritage.

The Ironside Farrar Landscape Capacity and Cumulative Impact Study (July 2013) is a major consideration within the Development Management process. Considerable time has been put into the background study by consultants and SBC officers and it is considered that the conclusions and landscape capacities are credible. With respect to an assessment of the application site conducted in relation to this Study, it is noted that the site falls within the landscape character type "Plateau Grassland" Lauder Common, which is described as follows:

*"The landscape could accommodate additional turbine development to that already consented, however if the majority of the turbine and windfarm applications were granted this landscape could potentially exceed capacity and risk developing into a wind turbine landscape. Consequently there are concerns the landscape is reaching saturation point and overall cumulative impact is a major consideration.*

*Wind turbine development within this LCA [Landscape Character Area] needs to be restricted to well separated clusters and not be located on the much more visually prominent outer slopes, development should take advantage of the topographical containment created by the wider sections of this elevated plateau. There are no landscape designations or long distance paths within this area."*

The conclusions suggest that no turbines over 50m in height were appropriate within the application site. There is no identified opportunity for large (50 – 100m) and very large (over 100m) scale turbines.

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. While 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, nonetheless if turbines are proposed which exceed the turbine heights identified within the Ironside Farrar study, then 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.

The proposed 126.5m high turbines are quite clearly considerably at odds with the findings of the study and it is a major issue to be addressed.

It should be noted that an updated Ironside Farrar Landscape Capacity and Cumulative Impact study 2016 has been produced as part of the Council's new draft Renewable Energy Supplementary Guidance. This updated study does not alter the position regarding the proposals and re-enforces the conclusions of the 2013 Landscape study. However, it is acknowledged that the Supplementary Guidance is currently out for public consultation and therefore little weight can currently be given to it.

It is noted that the application states that there are seven properties within 2km of the site which are identified as being significantly affected. However, it is acknowledged that in relation to the previous application, the Reporter did not consider any perceived adverse impacts on the residents to justify reasons for refusal. Nevertheless, care should be taken to address these issues again, given the re-siting and height of the turbines proposed.

While Scottish Borders Council continues to support wind turbine proposals within what are considered to be appropriate locations, the proposal raises considerable policy issues to be addressed particularly in terms of its prominence within the landscape and in terms of cumulative impact.

**Landscape Architect:** has carried out an assessment of the landscape and visual impacts of the proposal in accordance with the requirements of Policy ED9 taking into account the report on Landscape Capacity and Cumulative Impact (July 2013) and other relevant landscape, visual and cumulative impact guidance, including Scottish Natural Heritage. Her observations and conclusions have been grouped below, under three headings, which relate firstly to the relationship between the proposal and the landscape context of the site and surrounding area; secondly, to the cumulative impacts that would result were the proposal to feature in the same views as surrounding wind turbines; and thirdly, to the extent to which the current proposal has addressed the specific landscape

and visual impact concerns that were raised at the time of Planning Application 11/01680/FUL, and the subsequent appeal.

#### Landscape and Visual Impacts:

The proposal does not comply with the guidance of the Landscape Capacity and Cumulative Impact Report 2013, which seeks that larger-scale wind energy development should be located away from sensitive locations; nor SNH's guidance in that it would overwhelm the underlying landform. More particularly, the site has a "medium scale upland fringe landscape" character, occupying the visually prominent outer slopes of the Southern Upland land mass, where the land drops down off the upland plateau to the farmed landscape to the north, presenting open views to, and from, the north. Accordingly, the Landscape Architect considers that the site has a particular visual sensitivity even within the already sensitive context of the Lauder Common LCA, which she advises has a low capacity for further wind farm development of very large turbines (that is, wind turbines over 120m) but not in the northern part of this LCA, where the land drops down to the north. Sited as proposed, in this sensitive landscape setting, it would affect a high magnitude of change to receptors in the local area, including road users on the A68; receptors on the footpath across Fala Moor; and would have a generally disproportionate visual impact on receptors in the wider area. It is considered that a windfarm of a recognisably large scale coming down off the upland plateau would be liable to diminish the scale of the Upland plateau to its detriment as a landscape feature; and diminish the remote qualities of Fala Moor.

#### Cumulative Impacts

The proposal does not comply with the guidance of the Landscape Capacity and Cumulative Impact Report 2013, which seeks that larger-scale wind energy development should be well-separated from other clusters. Further, the proposal does not adequately address the siting and design guidance of SNH's Siting and Designing Windfarms in the Landscape 2014, in that it uses a demonstrably different turbine typology from surrounding wind energy schemes.

From several locations, the development would in superimposition with the Dun Law scheme, be liable to present a confused image by distorting viewers' perception of scale, contrary to agreed principles for the relationship between turbine typology and landscape scale. This would be all the more so, due to the potential for the perception that wind farms were no longer only occupying the large scale upland landscape of the Soutra plateau, but also descending from there into the upland fringe and lowlands to the north. This particular impact would be all the more visually confusing given the proposal to introduce 126.5m high turbines into an area where there are already a large number of turbines of less than 80m in height. Also, by increasing the scale of turbine (vis a vis Dun Law) on a site with a smaller landscape scale, a sense of confusion would be introduced, which does not assist assimilation.

An additional disharmony could potentially result from the differing length of blades of the proposed turbines and those at Dun Law and Pogbie as well as different rotation speeds adding to the complexity of the visual picture. With respect to landform, it is noted that the guidance recommends that turbines should be grouped together on the most level areas of the site. However, since this site is anything but level, there is a risk that its appearance would be confused, especially as it is often the blades that are

visible behind localised landform, and often in the context of smaller turbines on the plateau top.

With respect to perspective, it is considered that there is potential for confusion in views from the surrounding area, between the proposal and the extensive windfarm on the plateau immediately to the south.

With respect to land use and visual pattern, it is not considered that the proposal would relate particularly well to the Upland Fringe nature of the landscape in that in certain views, the turbines would be seen in the context of an enclosed farm landscape with a clear relationship to other elements such as woodland, pylons and the escarpment to the south.

### Comparison with 2011 Proposal

The proposed scheme would be more compact than that which was proposed by Planning Application 11/01680/FUL, and would not see turbines sited as high in the landscape as was the case within the previous proposal. However, the potential visual benefits of these measures would be significantly reduced, if not entirely negated, by the use of taller turbines than the previous scheme, which would be liable to result in visual effects of equivalent significance to those that would have been generated by the previous proposal.

It was the principle concern of the Landscape Architect at the time of the determination of Planning Application 11/01680/FUL, that the introduction of that scheme into the lower lying rolling landscape to the north of the Southern Upland landmass would be detrimental to the perceived scale and character of the area and the panoramic views to and from the north and that the additional cumulative visual impacts of the proposal with the existing Dun Law Windfarm, and other consented windfarms in the area would be unacceptable when viewed from the north.

The current proposal sees the constituent turbines moved slightly downslope from the levels at which these were proposed to be sited at the time of the previous proposal. However, any benefit that this might otherwise have had, is either negated or greatly reduced by the proposed increase in the height of the turbines by up to 11.5m, thereby cancelling out or reducing any relative visual benefits that might otherwise have resulted.

It is recognised that the current proposal would not be accompanied by any similar proposal in Midlothian, unlike its predecessor, and that there would be a reduction in the overall number of turbines that were previously proposed. The Landscape Architect also considers that the proposed increase in height of the turbines would see the Vertical Angle ZTV increased, making the turbines more visible in close proximity to the proposed development and more prominent for greater distances than turbines of a smaller size as were originally proposed on the plateau to the south. Accordingly, and notwithstanding the reduction in overall number from the time of the original proposals, the Landscape Architect does not consider that a more compact scheme has overcome the concerns expressed at the time of the previous applications with respect to the scale of development in that it would when viewed from the surrounding area to the north, still appear as a prominent feature, often seen on the skyline. This, she considers, is borne out by the Applicant's photomontages which describe the wind farm as being prominent within views ranging from 4km to in excess of 20km distance from the site.

## Conclusion

It is the Landscape Architect's conclusion that: *"the different and larger turbine typology that is proposed at this site is contrary to the accepted premise that larger turbines are more acceptable in a large scale landscape and turbine typology reduces as the scale of the landscape reduces. There is a potential for significant cumulative impact to arise by virtue of the contrasting scale of the proposed windfarm at Gilston Hill with existing and consented developments on the plateau proper when seen from the northwest, north and northeast"*.

**Roads Planning Service:** has no objections in principle provided conditions are imposed to require the prior approval of: (i) engineering drawings describing the construction and layout of the access off the B6368 to the wind farm site and the access of the same road to the borrow pit; (ii) detailed proposals of necessary public road improvements to the short length of the B6368 between the site entrance and the B6368's junction with the A68; (iii) a traffic management plan for the construction period, including timescales and addressing the management of both abnormal loads and as well as other HGV traffic; (iv) details of the measures to be implemented at the entrance of the site to prevent dust and mud entering the public road; and (v) a programme of monitoring damage to the public roads serving the site during the construction phase.

With respect to the latter, it is advised that a Section 96 Agreement would additionally be sought to require that any remedial work or payment of extraordinary maintenance costs incurred by Scottish Borders Council, should be agreed within three months of the completion of the construction of the wind farm.

While Roads would prefer to see the stone used in the construction sourced on-site, it advises that it would be content for stone to be sourced from nearby Soutra Quarry but also acknowledges that there are currently technical restraints and regulatory mechanisms in place under the quarry operators' current minerals planning consent, which prevent this.

## **Statutory Consultees**

**Butterfly Conservation Scotland:** notes the presence of a UK Biodiversity Action Plan Priority Species in close proximity to the site, but approves of the revisions to the locations of two of the proposed turbines which it had previously raised concerns about at the time of the Scoping Opinion Request. However, it is still concerned that access and maintenance tracks should avoid the blanket bog. It further recommends that contractors should be supplied with maps showing areas to be avoided, and that an assessment should be made of potential impacts upon drainage in the blanket bog and wet heath areas.

**East Lothian Council:** objects to the proposal due to its landscape and visual impact. An assessment is made with respect to the plans and policies of East Lothian's statutory and emerging development plans, as well as SNH's Guidance Siting and Designing Wind Farms in the Landscape (May 2014). In particular, it advises that the main landscape and visual issues arising from East Lothian Council's perspective are:

- potential cumulative visual impacts of the Gilston turbines when considered in conjunction with other existing and committed wind turbines along the Lammermuir



- Hills, particularly at Dun Law;
- the overly large scale of the proposed turbines in relation to the other turbines the wind farm would be read with; and
- the apparent spreading of development off the plateau tops and over the front edge of the hills.

It is considered that these would have unacceptable impacts upon the landscape character of the North Lammermuir Platform Landscape Character Area, and in particular notes the greater scale (height and rotor diameter) of the proposed turbines relative to those at Dun Law and Pogbie (which are around 43m to 52m). This is contrary to SNH guidance which notes that where cumulative impacts are likely to occur, there should be a 'similarity of design and wind farm image within an area that limits visual confusion. The concern is that the proposed turbines would look incongruous in comparison to the wind farms at Dun Law and Pogbie, with the difference in scale being noticeable both in closer views and from further afield, with potential to confuse perceptions of the spatial relationship between the proposed and existing schemes.

Notwithstanding deficits in the information East Lothian hoped to review, it is advised that what has been provided is sufficient to demonstrate that there would be adverse landscape and visual effects arising from the scale and visual prominence of the proposal when seen from the wider landscape context of East Lothian as experienced from a wide variety of receptors including the settlement of Humbie, hill walkers, recreational users and road users. Specific comments are given with respect to Viewpoints 18, 17, 10, 13, 20 and 25.

Reference is made to Ironside Farrar's Wind Energy Consultancy – Landscape Capacity and Cumulative Impact Study, prepared on behalf of Scottish Borders Council, and in particular, its advice that wind turbine development should not be located on the much more visually prominent outer slopes of the Lauder Common Landscape Character Area, but instead take advantage of the topographical containment created by the wider sections of this elevated plateau. Taking account of the views of the Reporter at the time of the appeal on application 11/01680/FUL (specifically the Reporter's view that the site occupies a transitional landscape between the lower lying agricultural land and upland plateau with the hills of Brotherstone, Hangingshaw and Crookston Mains), it is considered that the site is located on the more prominent outer slopes where wind turbine development should not be located.

Potential for impacts upon pink footed geese (a qualifying interest of the Firth of Forth Special Protection Area) are noted. However, provided that regard is had to SNH's advice and there is no significant impact identified upon pink footed geese through the Habitat Regulations Appraisal process, East Lothian would not object to the proposal on the grounds of its effect on pink footed geese.

In response to additional information presented by the Applicant with respect to the landscape and visual impacts liable to be viewed from East Lothian, East Lothian Council has responded on a second occasion to advise that while it has considered the additional information presented to it, it is not persuaded to amend its original views. Accordingly, it states that it upholds its objection to the proposal due to the same points it identified within its first consultation response (which are bullet-pointed above).

**Edinburgh Airport:** objects to the proposal on the grounds that turbines of the proposed

height and in the proposed location would be visible to the radar at Edinburgh Airport, and would appear to Air Traffic Controllers as clutter on the radar screen, resulting in a detrimental effect on the operations of Air Traffic Control. There is also a significant risk of mis-identification with real aircraft radar returns. It is advised that in the event that the Planning Authority would propose to grant planning permission against this advice, Edinburgh Airport, the Civil Aviation Authority and Scottish Ministers would all require to be notified as specified in the Safeguarding of Aerodromes Direction 2003.

**Heriot Community Council and Stow & Fountainhall Community Council:** have issued a joint response to the public consultation and in objection to the proposals. This includes a report on the application, which is itself supplemented by supporting documents.

The Community Councils report that no one who attended their public meeting on 22 March, spoke in favour of the proposals, and the concerns that were raised by those who attended have informed their objection to the proposal.

The basis of the Community Councils' objection primarily relate to: (i) landscape and visual impacts; (ii) impacts upon residential amenity; and (iii) socio-economic effects, but it also notes objections and concerns with respect to ecological impacts and road safety. More recently, the Community Councils have provided an additional assessment of noise impacts.

#### Landscape and Visual Impacts

With respect to landscape and visual impacts, it is a tenet of the Community Councils' response that the Applicant has failed to provide any reasoning in the current application, which would substantiate any different view now being taken with respect to that which was taken at the time of the determination of the previous planning application, both by the Council and then at the subsequent appeal, by the Scottish Government Reporter. Particular concerns are the potential for cumulative landscape and visual impacts in association with three other schemes within the area; namely, Dun Law, Toddleburn and Carcant. Regard is also had to Pogbie and Keith Hill turbines in East Lothian, which are under construction. It also expresses a more general concern is the potential for the northern Lammermuirs to be consolidated into a 'Wind Turbine Landscape' through development such as the proposed, infilling spaces between existing schemes, and for such development to promote further development more widely, with a degradation of the wider landscape of the region.

The Community Councils provide a commentary on the Applicant's supporting case with respect to landscape and visual impacts, including its advice on how the current proposal would address the substance of the Appeal Reporter's refusal of the previous planning application. As a general point it is opined within this commentary that the Applicant's assessment is an exercise in semantic rebuttal, which strays into finding fault with the Reporter's assessment. The Community Councils consider the Reporter's assessment to be a thorough examination which carries complete conviction.

#### Residential Amenity

The Community Councils have provided a commentary on the investigation and assessment of noise and shadow flicker impacts liable to affect neighbouring dwellings.

Concerns are raised that proposals for six new houses at Gilston Farm currently the subject of planning applications before the Planning Authority for determination, have not been factored into these assessments.

In a follow up report of 06 July specifically on noise impacts, the Community Councils express their disappointment that the Applicant has not released the raw data upon which their noise assessment is based. The Community Councils' report raises concerns with respect to how the noise assessment has been conducted and calculated.

In response to a follow-up report, the Community Councils note that the new noise data relates to the operation of a 108m diameter rotor as opposed to a 90m diameter rotor, and considers that the Landscape and Visual Impact Assessment now requires to be updated to reflect this new design of turbine. Concerns are also expressed with respect to the disclaimers applied by the noise consultants and it is again reiterated that the raw data informing the noise assessment should be released.

### Socio-Economic Impacts

It is advised that under current UK policies, there is simply no requirement for further consented capacity, including the Gilston Hill scheme.

Concerns are raised that wind farm operators in Scotland are currently liable to derive more income from constraint payments than from income received for the electricity that they actually generate. It is advised that neighbouring operational schemes are receiving excessively large constraint payments, and opined that this is because the electricity generated is regularly exceeding the capacity of the national grid connector from the Borders to the rest of the UK. It is considered that this situation raises concerns with respect to the justification for new wind farms at the planning application stage.

It is estimated that at least 50% of Scottish wind generation in 2016, had a zero or negative economic value, and that this proportion would be liable to increase significantly up to 2020.

It is advised that the Scottish Government target of delivering the equivalent of 100% of gross electricity consumption from renewables by 2020, will be exceeded by a large margin by 2020, given currently operational wind farms, and those further ones with consent to be constructed. It is advised that the target cannot in itself be considered a good reason to consent the current proposal.

The potential for economic benefits at the construction phase are noted, but are not considered to be significant, while the level of benefit would be negligible. It is concluded that there is nothing of significance from the socio-economic effects to weigh against the harmful impacts of the proposal.

Issue is taken with the amounts that the Applicant states would be received by local communities, and advised that the actual amount would be closer to £20,000 per year once the fund had been divided between four community council areas, which it is considered would be a welcome but not terribly significant contribution.

Although shared ownership of the scheme with local communities is identified by the Applicant as a possibility, the Community Councils advise that they have not been party

to any substantive discussions on this subject.

### Other Concerns

The Community Councils consider that the proposals would impact unacceptably upon the SSSI and Special Protection Area at Fala Flow to the immediate north, and that insufficient mitigation has been incorporated into the scheme to allow it to be sited without having unacceptable impacts upon these designations.

It is considered that the turbines are too tightly clustered, and advised that a minimum distance between turbines of under 400m is too low. It is further advised that at least one turbine (T3) falls within 50m of the nearest watercourse. Taking account of these constraints, it is advised that the site is only suitable for three or four turbines of the design proposed.

It is considered that the operation of the proposed borrow-pit to the south of the main site, would not be acceptably accommodated on the local road network; at least without the B6368 being subject to a major upgrade to accommodate the passage and movements of larger vehicles.

**Historic Environment Scotland:** taking account of its role defined under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, advises that it does not wish to object to the above proposed development in that the proposals do not raise historic environment issues of national significance. In an annex to its response, it clarifies that its interest has been impacts upon the scheduled ancient monument at Soutra Aisle. It clarifies that it has in this assessment, taken account of the potential for the forestry at Soutra Wood to be removed during the lifetime of the development. Notwithstanding this, it does note that the development would impact upon the setting and experience of the monument, in contributing – in culmination with other developments within the surrounding area – to an erosion of the remoteness which can be experienced at the monument. However, it is content to accept that there would be no unacceptable impacts upon the site's relationship to key historic features within the surrounding landscape, such as Dere Street and views towards Edinburgh and the Lothians. Technical concerns with respect to the methodology and presentation of the Environmental Statement are noted.

**Midlothian Council:** does not wish to object formally, but, firstly, highlights the Scottish Government Reporter's findings in the case of PPA-290-2022, and secondly, notes that the proposals are of concern to it for the following reasons:

### Landscape and Visual Impacts

Based on the information provided within the Environmental Statement and subsequent site visits, Midlothian Council has the following concerns with regard to the landscape and visual impacts of the proposals:

- The proposals are likely to give rise to adverse landscape impacts on the landscape character of the Midlothian Plateau Grassland Landscape Character Area, and in particular, the setting of the Fala Moor AGLV (and Fala Moor Candidate SLA). Further, concerns are also expressed with respect to the possibility of adverse

landscape effects for parts of the Tyne Water AGLV (and Tyne Valley Candidate Special Landscape Area) which face south, towards the application site;

- The proposals are likely to give rise to cumulative impacts as a consequence of the site's location in close proximity to, but not immediately adjacent to, existing wind farm developments at Dunlaw and Toddleburn, in relation to which - taking account of differences in scale and layout, as well as intervening plantation woodland - it would be liable to be seen as a distinct entity; in close proximity to, but not any extension of, these neighbouring schemes. These aforementioned variations in scale and layout pattern have potential for visual confusion; principally, visual complexity and confusion of scale. The Council notes that the proposal site lies closer proximity to the Tyne Water AGLV (and Tyne Valley Candidate Special Landscape Area) and would comprise of higher turbines than the existing developments such as Dun Law which are seen behind forestry plantations; and
- The proposals are liable to have detrimental visual impacts upon visitors' and local residents' experience and enjoyment of the Fala Moor AGLV, and upon that of users of the Fala Moor ROW and the Tyne Esk Trail at Camp Wood (high point on the Mayfield Tranent Ridge). With respect to the latter, it is noted that trail users experience expansive views south towards the proposal site which are predominantly unscreened by planting. Within these views, there would be potential visual confusion owing to the difference in scale between the existing and proposed turbines, with the latter being liable to appear much closer and more evident than the existing turbines. The proposal would also be liable to appear in views from the Trail which currently do not contain turbines.

#### Haul Route

The proposed haul route is noted, being along trunk roads in Midlothian and the B6368 in Scottish Borders. It would appear that no trees or hedgerows in Midlothian will be affected.

#### Ornithology and Ecology

The proposal has potential to have impacts upon migratory species passing through, and in close proximity to, the site between Midlothian and Scottish Borders, as well as having potential to impact the wider environment and other species.

#### Grid Connection

While connection to the grid would be subject to a separate application process, if Scottish Borders Council is minded to support this planning application, Midlothian Council would wish to be kept fully informed and consulted on the proposals for grid connections.

**Ministry of Defence:** has no objection to the proposal. In the interests of aviation safety, the development should be fitted with aviation warning lighting. The MOD requires to be notified about the precise details of any development that is ultimately progressed.

**Moorfoot Community Council:** objects to the proposal on the following grounds: (i) does not consider that the revised proposal, which uses higher turbines, would address the grounds of refusal identified by the Reporter at the time of the appeal; (ii) the proposal would dominate Fala Moor, having an adverse impact upon the amenity of the Midlothian countryside and its tourism value; (iii) proposal would have a significant

impact upon the setting of Soutra Aisle; (iv) the tree belt which currently screens the site in some views, may not always be there, to act as some sort of screen; (v) a new ornithological assessment is required in relation to these taller turbines; (vi) if approved, effective management of construction access is necessary to minimise the impacts upon Midlothian residents, its roads and road users.

**NATS Safeguarding:** objects to the proposal on the grounds that it conflicts with its safeguarding criteria, and reminds the Local Authority about its legal obligation to consult both the NATS and CAA (Civil Aviation Authority) before granting planning consent for a wind farm. This obligation arises because the proposal would affect a technical site operated by, or on behalf of, NATS, and the CAA requires to consider whether further scrutiny would be required ahead of the granting of any planning consent. The objection refers to a Technical and Operational Assessment note issued by the NATS with specific regard to this planning application. This concludes that a technical impact is anticipated, which has been deemed to be unacceptable from both an en-route and airport perspective. This occurs specifically with respect to the operation of the Kincardine Radar, and potential to generate false primary plots, as well as reduce the radar's probability of detection, for real aircraft. Users of the affected radar were consulted to establish if the anticipated impacts would be acceptable to their operations or not, and it is advised that one of the three consulted, Prestwick Centre ATC, has responded to advise that it considered that the impacts would be unacceptable to it.

**RSPB Scotland:** does not object, and offers comment and advice with respect to mitigating impacts upon Pink-footed Geese and Black Grouse. It observes that since such developments are expected to deliver a net biodiversity gain, then a Habitat Management Plan should be drawn up and submitted for approval.

**Scottish Badgers:** advises that there is at least one badger sett within 3m of one of the proposed borrow-pits, while another/others may also lie within the woodland plantation (B10) that was insufficiently investigated for badgers by the Applicant. Since there should be a 30m exclusion zone operating around any sett in the case of development (and a 100m exclusion zone in the case of any proposed blasting) appropriate set back from the(se) sett(s) cannot practically be achieved here. Accordingly, either the borrow-pit cannot be used, or the sett(s) itself(themselves) would require to be moved. A full survey of the woodland in question, it is advised, might provide reassurance with respect to the assessment of the impacts in that particular regard.

**Scottish Wildlife Trust:** approves of the Applicant's concern to remove two turbines from an area of blanket bog, which has been identified as habitat for a butterfly colony. However, it still recommends that should construction go ahead, every care should be taken to avoid any damage to blanket bog habitat at the northern edge of the site.

**ScotWays:** advises that there are no known Rights of Way within the site boundary, but objects to the application on the grounds of there being unacceptable impacts upon the amenity of the Rights of Way (LM29/BE4) promoted as the 'Fala Moor Road'.

**SEPA:** originally objected to the application on the grounds of a lack of information relating to impacts upon private water supplies, the water environment and peatlands. However, in light of updated advice from the Applicant, SEPA advises that it is now able to remove its objection in each case, based on its understanding of how these matters would be addressed by the Applicant.

With respect to private water supplies, it accepts that the private water supply in closest proximity to borrow-pit 2 is surface water fed (and not ground water fed) and takes positive account of confirmation that the owners of the same supply would be agreeable to an alternative supply being provided for them, if the existing one were impacted. However, it looks to the Planning Authority to reassure itself that appropriate contingency plans are in place to ensure security of supply to the affected owners.

With respect to impacts on peatlands, having reviewed the additional information, SEPA is satisfied that no peat would be disturbed as a result of the proposed development. It is further satisfied that no peat management plan/peat slide risk assessment is required in this instance; and has positive regard to the Applicant's advice that the borrow pits would not be restored using peat and that a site waste management plan would be prepared prior to construction of the borrow pits. It is advised that the Construction Environmental Management Plan (CEMP) and associated site waste management plan would need to outline the good practice to be implemented to minimise waste and include, but not be limited to, borrow pit restoration.

With respect to impacts on the water environment, SEPA had originally sought additional information be provided to ensure that discharges from the construction site would not result in pollution of the water environment and hence meet the requirements of the General Binding Rules (GBR) of The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR). Further to its review of the additional information provided, SEPA is now satisfied that the proposal is capable of being compliant with the CAR Regulations. It does however require that the Applicant should be advised that the Construction Environmental Management Plan (CEMP) should be robust and comprehensive to identify practical measures that would be implemented to protect the water environment.

SEPA further acknowledges its satisfaction further to its review of the updated information, that the watercourse crossing is justified. Again the need for compliance with CAR regulations is noted.

SEPA maintains its previously expressed concern to establish whether or not (a) Turbine 6 and (b) the access track to be located between Turbine 2 and Turbine 6, would be located more than 50m away from a watercourse (a tributary of the Brothershiels Burn) which SEPA is concerned would require to be crossed by the proposed access track. It advises that it would be able to provide the Applicant with a map to show the location and course of this watercourse, and recommends that the Applicant should take account of this watercourse, principally by ensuring that there would be a 50m buffer applied between this proposed infrastructure and the watercourse.

SEPA further maintains its concern that a planning condition should be imposed in the event of approval, to require the provision and approval of a full site specific construction environmental management plan (CEMP). It would object if such a condition were not imposed, and any such approval that were not subject to such a condition would require referral to the Scottish Government. Specific mitigation for inclusion within the CEMP relates to measures identified within Section 6 of SEPA's original consultation response, which are required to protect groundwater dependent terrestrial ecosystems.

In its original response, SEPA advised that it concurred with the Council's Flood Risk

Officer's assessment, and also sought that Greenfield Runoff rates should remain at pre-development rates and no water crossings should reduce the flow conveyance of the watercourse concerned. Excepting its concern to establish the precise position with respect to the watercourse the Applicant has failed to account for (a point noted above), SEPA is otherwise content that the requisite minimum 50m buffer zone required from any watercourse would be adhered to. Subject to best practice and SEPA's recommendations being followed, SEPA considers that the development could be carried out such that there would be no increase in flood risk to surrounding properties.

Detailed advice for the Applicant is given by SEPA within its original response with respect to impacts upon the water environment and watercourse crossings; environmental management and pollution prevention; and flood risk advice.

**Scottish Natural Heritage (SNH):** has responded on two occasions to the public consultation, although in the second instance (10 July), only to advise that it has reviewed additional details presented by the Applicant, but does not wish to provide any further comment, only to maintain the advice it gave at the time of its first consultation response (21 April). The latter advised that the proposal was not considered liable to have a significant effect upon the qualifying interests of the River Tweed Special Area of Conservation (SAC) or the Fala Flow Special Protection Area (SPA)/SSSI and therefore an appropriate assessment was therefore not required in either respect.

While SNH considers that the current scheme had brought improvements over the previous one (which it explicitly identifies as including the 9 turbines proposed in Midlothian), it nonetheless considers that key landscape, visual and cumulative effects would remain, specifically with respect to: (a) the prominence of the proposal on key skylines, and (b) the cumulative effects of the proposal in relation to its conflicting design and locational setting, relative to other neighbouring wind farm developments. An Appendix is provided which details these particular concerns. This notes some additional effects over and above the previous version of the scheme, specifically localised landscape and visual effects and more widely the cumulative effects, as well as the visibility of the proposal on a key enclosing skyline in views from the northeast. Favourable regard is had to the overall effect on views from the A7 and A68 (chiefly through the removal of turbines from Midlothian), but there are advised to be remaining effects which tend to be at greater distances, or from more sparsely settled rural areas.

It is advised that a Habitat Management Plan (HMP) is required to improve the condition of the blanket bog and wet heath habitats present within the site and benefit the species they support, particularly the large heath butterfly.

Peat is advised to be present on the site but there is little or no consideration given to this in the Environmental Statement. However, SNH considers that peat slide risk should be addressed within the Applicant's Construction Environment Management Plan (CEMP).

**Transport Scotland:** advises that conditions should be attached to any consent issued, specifically to require the submission to, and agreement of, the trunk roads authority of details describing: (i) the proposed route for the movement of abnormal loads along the road network, including any works, or other measures, required to accommodate the movement and management of such loads; and (ii) any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being



delivered. The latter should be designed by a recognised Quality Assured traffic management consultant. Additionally advisory notes are sought, advising as to additional and related considerations with respect to the design and implementation of works within, and impacting, the Trunk roads network.

## **DEVELOPMENT PLAN POLICIES:**

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

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

### **Adopted Scottish Borders Local Development Plan 2016**

Policy PMD1: Sustainability  
Policy PMD2: Quality Standards  
Policy ED9: Renewable Energy Development  
Policy ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils  
Policy HD3: 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 EP13: Trees, Woodlands and Hedgerows  
Policy EP15: Development Affecting the Water Environment  
Policy IS 2: Developer Contributions  
Policy IS4: Transport Development and Infrastructure  
Policy IS5: Protection of Access Routes  
Policy IS7: Parking Provision and Standards  
Policy IS8: Flooding

## **OTHER PLANNING CONSIDERATIONS:**

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

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

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

- Scottish Planning Policy (SPP) (June 2014)
- National Planning Framework for Scotland (3) (June 2014)
- Scottish Government On-line Renewables Advice
  
- Circular 3/2011 Environmental Impact Assessment (S) Regulations 2011
- PAN 60 Planning for Natural Heritage 2008
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 1/2011 Planning and Noise
- PAN 2/2011 Planning and Archaeology
- PAN 1/2013 Environmental Impact Assessment
- PAN 75 Planning for Transport
- PAN 3/2010 Community Engagement

### **Historic Scotland Publications:**

- Scottish Historic Environment Policy Statement (2016)

### **SNH Publications:**

- Spatial Planning for Onshore Wind Turbines – natural heritage considerations (2015)
- Siting and designing windfarms in the landscape (2014)
- Visual Representation of Wind Farms (2014)
- Assessing the cumulative impact of onshore wind energy developments (2012)

### **Other Publications:**

Appeal Decision Notice PPA-140-2043  
ETSU-R-97 - The Assessment and Rating of Noise from Wind Farms

### **KEY PLANNING ISSUES:**

The main planning issues relevant to the determination of this application are whether or not the proposals comply with national and local planning policies governing the location of wind turbine developments, particularly in relation to landscape and visual impacts, cumulative impacts, renewable energy provision, economic and socio-economic impacts, noise, residential amenity, traffic, tourism, recreation natural and cultural heritage, and community benefits.

With respect to the landscape and visual impacts, it needs to be considered whether or not the proposal has substantially addressed the objections of the Reporter as set out within the Appeal Decision Notice relating to Planning Application 11/01680/FUL.

## **ASSESSMENT OF APPLICATION:**

### **Planning Policy Principle and Context**

National and strategic planning policy and guidance on renewable energy developments, including Scottish Planning Policy (2014) (SPP) and the SESPlan (2013), have directly informed the policies and proposals of the Council's adopted Local Development Plan (2016). Within the latter, the key policy with respect to the assessment of wind energy developments is Policy ED9: Renewable Energy Developments.

Policy ED9 is supportive in principle of renewable energy developments, including wind turbines, provided there are *"no relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated"* unless these impacts or effects are considered to be outweighed by the wider economic, environmental and other benefits of the proposal. The application of these qualifications to the assessment of the principle of any wind energy development, requires the detail of the specific proposal to be fully considered to establish: (i) whether or not any significant adverse impacts would be liable to arise in the first place; (ii) whether or not any such impacts would be unacceptable in terms of their effects upon the environment and/or amenity of the surrounding area; and (iii) whether or not any such impacts would be capable of being satisfactorily mitigated in some way, or would otherwise be offset by the delivery of some greater economic, environmental or other benefit to the area.

The potential for any or all of these matters to affect the assessment of whether or not a specific wind energy development proposal might be considered to comply in principle with Policy ED9, establishes very directly, the need for the specific proposal to be assessed in relation to a robust set of criteria that would allow all relevant aspects of the proposal to be fully considered. To this end, Policy ED9 features a list of eleven considerations, which it requires to be taken into account within the assessment of wind energy proposals. It further requires prospective wind energy developers to demonstrate that they have considered options for minimising the operational impact of their wind energy proposals, including any ancillary development such as access tracks.

In addition to assessment under Policy ED9, and indeed assessment in relation to the wider planning policies and proposals of the Local Development Plan, consideration also needs to be given in this particular case, also to the reasons for refusal of the previous planning application for a wind farm on the site, which were upheld by the Reporter at the appeal to the Scottish Government in 2013.

Notwithstanding that the assessment of the previous application was based on the plans and policies of a previous version of the statutory development plan, it is material to the assessment of the current application that the current proposal and the previous proposal are nonetheless of a very similar character to one another in that they propose the siting of seven large-scale wind turbines on the same site. Furthermore, the appeal decision is itself still relatively recent, and is informed by an assessment that is based on policies and guidance that are not substantially different to those of the current statutory development plan. Accordingly, while there are certain differences between the two proposals within the design and siting of the turbines, it needs to be considered whether or not those matters that were found to be objectionable by the Scottish Government Reporter with respect to the previous proposal, have now been satisfactorily addressed within the current, and essentially revised, version of the proposal; or are otherwise met,

or offset, by any changes within the planning policy context since the time of the determination of Planning Application 11/01680/FUL.

### **Site Suitability including Onshore Spatial Framework**

Policy ED9 promotes the need for assessments of wind energy proposals to be made against the principles set out in SPP, and in particular the Spatial Framework set out in Table 1. The latter differentiates between three situations which it identifies as: 'Group 1: Areas where wind farms will not be acceptable'; 'Group 2: Areas of significant protection'; and 'Group 3: Areas with potential for wind farm development'.

Since the proposed development is not located within a National Park or National Scenic Area, the development does not fall within Group 1 of Table 1.

Group 2 of Table 1 lists various natural and cultural heritage designations and interests where there would likely be a need for significant protection from wind farms. Although the site borders the Fala Flow SPA and SSSI to the north, neither of these designations overlaps with the site itself. There are no other international or national natural or cultural heritage designations present within the site boundary; and no settlement boundaries within 2km. Accordingly the proposed development does not fall within Group 2 of Table 1.

The site therefore falls within Group 3 in being a site that is not subject to any designations or circumstances that would otherwise have required it to be assigned to one or other of the other two groups. As such, it is a site on which wind farm development is liable to be acceptable, subject to the detailed consideration of the specific proposal against identified policy criteria. In the case of Scottish Borders Council's Local Development Plan, this is met within Policy ED9, and specifically the eleven considerations that this same policy requires should be taken into account within the assessment of wind energy proposals.

In summary, having tested the proposal against national, strategic and local spatial framework considerations for wind farm developments, the site is not located within an area which would automatically preclude the development of a wind farm. The precise impacts of the proposal must however be assessed against relevant LDP policy criteria to establish if the development of a wind farm at this site is suitable. This assessment will be carried out within the remainder of this report.

### **Landscape and Visual Impacts**

Policy ED9 requires that consideration should be given within the assessment of wind energy developments to landscape and visual impacts, including effects on wild land. This should take into account the Ironside Farrar report on Landscape Capacity and Cumulative Impact as an initial reference point. It is further advised within the same policy that the landscape and visual impact assessment of the proposal should seek to demonstrate that the proposal can be satisfactorily accommodated in the landscape, and should properly address the issues raised in the report, along with other relevant landscape, visual and cumulative impact guidance, for example that produced by Scottish Natural Heritage.

An assessment has been carried out by the Council's Landscape Architect, who takes cognisance of a comparison of the landscape and visual impacts associated with the current proposal and those associated with the proposal that was the subject of the earlier application. Her observations and conclusions are summarised above within the 'Consultation Responses' section. These highlight three main areas for consideration: firstly, the relationship between the proposal and the landscape context of the site and surrounding area; secondly, the cumulative impacts that would result were the proposal to feature in the same views as surrounding wind turbines; and thirdly, the extent to which the current proposal has addressed the specific landscape and visual impact concerns that were raised at the time of the consideration of the proposal that was the subject of application 11/01680/FUL, and the subsequent appeal.

### *Landscape Context*

Given that the proposed turbines are of the larger turbine typology, and given that the site prevails within a "*medium scale upland fringe landscape*", the proposal is contrary to the accepted premise that larger turbines are more acceptable in a large scale landscape. In this specific case, it is material that the particular site occupies the visually prominent outer slopes of the Southern Upland land mass, which are highly visible from the north, including from the A68 and the public footpath over Fala Moor. Accordingly, the visual discordance between the height of the proposed turbines and their landscape setting would be readily observable from the public domain and would constitute an unacceptable landscape and visual impact.

The Landscape Architect notes a number of different characteristics of the proposed scheme, which she considers contribute negatively to its overall landscape and visual impact. These include the extent to which the proposal would impinge upon the sense of remoteness of the footpath over Fala Flow; the sense that the turbines would appear to be out-of-place with an enclosed farmland context; and that the accommodation of turbines at different levels within the site, would be liable to result in visual confusion where individual turbines, or their blades, might be glimpsed in isolation behind local landform in views from the surrounding area. Notwithstanding the validity of these specific concerns, they appear to be largely subsumed within the overall concern noted above that the scheme is simply out-of-scale with its landscape setting, and this would be readily apparent within views from the surrounding area. It is considered that the proposal should be refused on this basis.

### *Cumulative Landscape and Visual Impacts*

The discordance between the large scale of the proposed turbines and the medium scale landscape setting of the site would also be exaggerated by some very unsympathetic cumulative landscape and visual impacts.

These primarily relate to the proposed use of a larger turbine typology than is already present within surrounding wind farm schemes but with which the turbines of the proposal would be viewed alongside (including in superimposition) and/or encountered sequentially. In particular, the turbines at Dun Law and Pogbie Hill occur within the large scale landscape of the Soutra Plateau, but are less than 80m in height, with notably smaller blades compared to those of the proposed turbines. An additional disharmony could potentially result from the different rotation speeds between the existing and proposed turbines, adding to the complexity of any cumulative visual picture.

A wider discordant appearance would be liable to result in wider views as a consequence of the introduction of larger turbines into a medium scale upland fringe landscape below smaller scale turbines occupying the higher, large scale upland plateau landscape. Where these two different situations were visible alongside or in superimposition with one another the proposal would be liable to appear out-of-perspective relative to the existing schemes. This would be visually confusing; distorting viewers' perception of scale contrary to established principles for the relationship between turbine typology and landscape scale. Views from the north would be particularly unsympathetic due to the potential perception that large scale wind farms were no longer confined to the large scale upland landscape of the Soutra plateau, but were descending into the upland fringe to the lowlands in the foreground. This is one of the specific points that East Lothian Council highlights in its objection to the scheme.

In these ways, it is considered that the proposed development would contribute to a very unsympathetic and unacceptable cumulative landscape and visual impact, and should therefore also be refused on this basis.

#### *Comparison with Previous Wind Farm Proposal for the Site*

As noted above, the appeal decision reached with respect to Planning Application 11/01680/FUL is a significant material consideration within the determination of this planning application. Given that the application was refused, and the subsequent appeal dismissed, both on the grounds of landscape and visual impacts, some concern is reasonably had to whether or not the current proposal has addressed the substance of the previous objections.

The Applicant considers that positive regard might be had within the determination of the current proposal to the 'reduction' in the size of the overall scheme that was the subject of the two previous planning applications, and the removal of turbines from the lower lying land and statutory designations in Midlothian. It is the case that the current scheme can be considered favourably relative to the previous larger, more extensive scheme that would have directly impacted statutory designations. However, the Appeal Reporter did explicitly assess the scheme proposed by the previous application in isolation, as well as in terms of its impacts in culmination with the other turbines being proposed in Midlothian.

As far as the Appeal Reporter was concerned, the landscape and visual impact of the scheme proposed by Planning Application 11/01680/FUL were unacceptable in their own right, as well as in culmination with the nine equivalently sized turbines proposed on adjacent land in Midlothian. Contrary to the Applicant's view, it is not considered that the 'deletion' of the Midlothian component of the previous proposal has in itself addressed the substance of the Appeal Reporter's objection.

The proposed scheme does compare favourably to the previous scheme for the site in so much as it would be more compact than that which was proposed by Planning Application 11/01680/FUL. Further, it would not see turbines sited as high up in the landscape as would have been the case within the previous proposal. However, the potential visual benefits of these measures would themselves be significantly reduced, if not entirely negated, by the proposed use of taller turbines than the previous scheme (by 11.5m). These would be liable to result in visual effects of equivalent significance to those that would have been generated by the previous proposal. Accordingly, a more

compact scheme has not overcome the concerns expressed at the time of the previous applications with respect to the scale of development, in that it would still appear as a prominent feature, often seen on the skyline. This, as the Landscape Architect notes, is borne out by the Applicant's photomontages which describe the wind farm as being prominent within views ranging from 4km to in excess of 20km distance from the site.

Taking account of the above, the current proposal has not reasonably addressed the reason for the dismissal of the appeal, which was that: "*the proposal would give rise to an unacceptable number of significant adverse landscape and visual amenity impacts, including cumulative impacts*". Notwithstanding a more compact array which would be sited lower in the landscape than the previous scheme, the landscape and visual impacts are liable to be equivalent, or not significantly better than, those pertaining to the previous scheme.

### *Conclusion*

The different and larger turbine typology that is proposed at the site is contrary to the accepted premise that larger turbines are more acceptable in a large scale landscape, and turbine typology should be reduced as the scale of the landscape reduces. As noted above, the particularly open outlook of the site on the outer northern slopes of the Southern Uplands, and its high visibility from the surrounding area, particularly to the north, means that it is highly sensitive in this respect. The proposed introduction of large scale turbines to a site within this specific medium scale landscape would then, be liable to have unacceptable landscape and visual impacts in itself.

Beyond this there is potential for significant adverse cumulative landscape and visual impacts to arise as a consequence of the contrasting scales of the turbines of the proposed windfarm at Gilston Hill upland plateau to the south, particularly when these are viewed from the northwest, north and northeast. It is considered that the visual impacts of this mis-match in scales between the proposed and existing wind farms would be extremely harmful to the visual amenities of the area, and as such the proposal would contribute to a highly unsympathetic and unacceptable cumulative landscape and visual impact, were it to be realised as proposed.

While it is appreciable that the Applicant has sought to address some of the concerns raised at the time of the determination of the previous planning application and subsequent appeal it is ultimately not considered that these measures have had any significant impact. This is because these measures have either proven insubstantial in themselves, or have been counteracted by other aspects of the proposals. Ultimately, it is not considered that the Applicant has addressed the substance of the reasons given by the Reporter for his dismissal of the previous scheme and the reasons for refusal remain valid to the assessment of the current application.

Taking account of the above considerations, and for the above noted reasons, the proposal is considered to be contrary to Policy ED9 of the Local Development Plan on the grounds that it would have unacceptable landscape and visual impacts both in isolation, and in its contribution to cumulative landscape and visual impacts in association with surrounding wind farms.

## **Additional Design and Layout Considerations**

The Applicant's drawing of the proposed turbine model describes a rotor diameter of 90m. A point of note is that this drawing is identified in its description as being 'indicative'; as indeed are all the other drawings describing the structures which are advised to be included within the development. Notwithstanding any references to 'indicative', 'typical' or 'candidate' details within the supporting information or annotated on the supporting drawings, this is not an appropriate basis for this or any other Planning Authority to assess the impacts of a planning application for full permission to site and operate large-scale wind turbines. In the event of approval, it would be necessary to require by condition that the development should accord with all specific details approved by the Planning Authority regardless of any qualifying descriptions of 'indicative' or 'typical' details or 'candidate' turbines.

A further complication in this respect is that the Applicant's LVIA is based upon a model of turbine with a 93m rotor diameter and a slightly lower hub height than the indicative turbine. Had the application otherwise been considered acceptable, it would have been appropriate to have asked the Applicant to provide consistent details, such that any design of turbine approved, would have been in alignment with the description of the LVIA.

More recently the Applicant has advised that the specific model of turbine with the 90m rotor diameter described within the supporting details, has now been withdrawn from the market by its manufacturer. This advice is given in the context of an explanation as to why a different model of turbine has been used as the basis for an updated noise assessment report. The latter refers to a different design of turbine, specifically a SWT-34-108, which the report explicitly advises would have a rotor diameter of 108m; albeit that the turbine would still have a tip height of 126.5m. Even allowing that a new design of turbine might be no higher than the original proposal, the difference in size of rotor diameter itself, would raise new concerns that have not been accounted for within the supporting details, and therefore which have not been appropriately considered by the public and statutory consultees. Given this discrepancy, the Applicant was asked to confirm whether or not they wished the current proposal to be withdrawn to allow for a new proposal based on the new design of turbine to be progressed. The Applicant has however confirmed that it does not now wish to progress a revised design of turbine, and is maintaining the original design. It has however confirmed that this is for the 126.5m high turbine, with an 80m hub height and 93m rotor diameter.

The finished appearance of the sub-station and ancillary structures could be appropriately regulated by planning conditions in the event of approval. Again, in the interests of regulation and ensuring an acceptable finished appearance, it would need to be required by condition that such structures should be realised in accordance with the approved details, rather than the finished appearances being left to the Applicant's discretion.

## **Economic and Socio-Economic Benefits**

The renewable energy industry is important nationally, leads to employment and investment during construction and during the lifespan of the development.



The level of employment activity during implementation would be notable. This would have the potential to promote use of local facilities and services including accommodation, shopping and recreation. Following implementation of development, it would be likely that a relatively low level of employment would occur on a day-to-day basis; whereas at decommissioning stage there would again be a high level of activity.

The Moorfoots and Lammermuirs are recognised as being a popular tourist area, with visitors attracted by the area's beauty, wilderness and recreational opportunities. Whether the implementation of wind farms is harming, or has harmed Borders' tourism economy is not quantified. Supporters and objectors to wind farm proposals often advise of their personal reactions and considerations with respect to wind farm development. From this, it might be concluded that while wind farms may elicit strong reactions from individuals, they also tend to divide opinion. Ultimately, at the present time, no published information describing potential tourism effects is material to the consideration of an application of this type.

It is apparent that Heriot and Fountainhall and Stow Community Councils, and a number of the objectors, would wish to see the planning decision address their general concerns with respect to the viability of larger scale wind energy proposals being brought forward.

It may be concluded that in terms of economic benefits, there may be some gain to the local economy from the siting and operation of this proposed development. There may not be any socio-economic benefits, as suggested by third party representations. The potential impacts of the development upon these considerations are noted; however neither is viewed to be significant enough to be a major determining factor against the policy provision against which this application requires to be assessed.

### **Road Safety, Access and Parking**

Transport Scotland is supportive of the proposal, subject to further details with respect to proposed traffic management and signage along the trunk road, being referred to it for its consideration and prior approval. These matters could be regulated along the lines Transport Scotland anticipates, within appropriately worded planning conditions.

The Council's Roads Planning Section is also supportive of the application but subject to conditions being imposed on any consent issued to require the prior approval of: specific identified road improvements; a traffic management plan for the construction period; measures to prevent dust and mud migration onto the public road; and measures to ensure the monitoring of damage to public roads during the construction period. In the latter case, this is along with a legal agreement to secure any remedial work or payment of extraordinary maintenance costs incurred by Scottish Borders Council. While the monitoring and remediation of damage to the local roads is a difficult area to regulate, most of Roads' concerns are capable of being regulated by planning condition, and if Members consider it appropriate, also by legal agreement too.

Roads' suggestion that the development could be served by Soutra Quarry is logical but problematic. The operation of Soutra Quarry is regulated under other planning consents which specifically require by condition that quarry traffic should not be routed in the direction of Gilston. Accordingly Roads' advice that material could be sourced from the quarry would be liable to require a new planning application to remove or vary a condition applicable to the Mineral Consents under which the quarry is currently

operating. Again, had the current proposal been supported, the Applicant might have been encouraged to consider Roads' advice in this respect.

### **Residential Amenity**

Notwithstanding that objectors, and Heriot and Stow Community Councils, maintain concerns with respect to the noise assessment that has been carried out, Environmental Health is ultimately able to support the application subject to its identified planning conditions. These are specifically to regulate the scheme's operation and monitoring, and to require confirmation with respect to the financially involved status of those properties at which higher noise limits are sought.

While regulation under planning conditions along the lines sought by Environmental Health is possible, a difficulty is that the data reviewed by Environmental Health relates to a different design of turbine to that which is the subject of the planning application.

Environmental Health has been advised of the discrepancy, and has confirmed that it would nonetheless maintain its support for the application subject to its identified conditions being applied, regardless of whether or not the turbine had the 90m rotor diameter or the one with 108m rotor diameter. Given the terms of its response, it is reasonably supposed that it would not have any issue with a 93m rotor diameter either.

Construction noise could be regulated along the lines indicated by the Environmental Health Section.

Shadow flicker effects are shown by Figure 5.1 not to impact any surrounding residential properties.

### **Cultural Heritage and Archaeology**

While cultural heritage impacts are noted, these are ultimately considered to be capable of mitigation subject to the conditions identified by the Archaeology Officer being adhered to.

### **Access**

The Council's Outdoor Access Section identifies a number of provisions that it would be keen to see implemented to mitigate or enhance outdoor access at and within the vicinity of the site. In the event of approval, it would have been reasonable to have investigated these possibilities with the Applicant.

### **Natural Heritage**

As consultees advise, it would be possible in the event of approval to apply conditions to any consent issued to require the submission and prior approval of a Species Protection Plan; a Habitat Management Plan a Construction Environment Management Plan (CEMP); an ecological monitoring programme; and a Decommissioning Restoration and Aftercare Strategy; as well as to require the appointment, operation and retention of an Ecological Clerk of Works (ECoW) for the site. The particular requirements in each case would also be reasonably informed by the concerns of the Ecology Section, SNH and SEPA, amongst others, including Butterfly Conservation Scotland, RSPB Scotland, Scottish Badgers and the Scottish Wildlife Trust.

Insufficient reassurance has been provided though with respect to potential impacts upon one or more badger setts as a consequence of the operation of one of the borrow-pits. No objections have been expressed directly by any consultees with respect to this specific concern, but without further survey work to establish whether or not there are in fact liable to be any unacceptable impacts upon badgers, it is not in fact clear whether or not the application would have any unacceptable impacts. As it stands the potential for adverse impacts upon badgers is therefore necessarily included amongst the reasons for refusal.

Another point that would have been usefully clarified with the Applicant in the event of the application being supported, is the potential or otherwise for all development to be located out with a minimum 50m 'buffer area' around any watercourse in the interests of minimising adverse impacts upon the water environment. This point has been picked up by some of the statutory consultees. While it is possible that such revisions might have been capable of being addressed within the limitations that might reasonably have been allowed by micro-siting this has not been clarified with the Applicant who might usefully have provided evidence to demonstrate that the scheme could comply with this, or what would be required in order for compliance to be achieved.

### **Infrastructure**

In line with the advice of the Flood Prevention Section and SEPA, it would be reasonably required that the formation of any new hard surfaces, such as access roads, should be attenuated to at least existing Greenfield runoff rates so that there is no increased effect on downstream receptors. Likewise, any discharges from SUDS and other drainage should be kept to existing Greenfield runoff rates. Further the design of any culverts, watercourse crossings or alterations to crossings, would reasonably be required for prior approval, specifically to ensure that these would not reduce the flow conveyance of any watercourse. Notwithstanding the need for this to be demonstrated these matters would be appropriately regulated by planning condition, had the application otherwise been supported.

Both SEPA and Environmental Health have identified concerns with respect to potential impacts of the operation of one of the proposed borrow-pits upon a private water supply. While both have indicated that they consider that the matter might be appropriately regulated by planning condition in the event of approval, it would have been necessary to have asked the Applicant to have established precisely what the impact would have been, and how it would be mitigated. It is noted that SEPA is content with the Applicant's advice that the third party owners of the private water supply would be agreeable to an alternative water supply being developed for them, in the event of their water supply being impacted by the operation of the borrow-pit. However, minimally, some confirmation in writing as to the agreement of the owners concerned to this approach, would have been reasonably and necessarily secured in the event of the application being recommended for approval. As it stands though, it is not in fact apparent that there would not be an unacceptable impact upon a private water supply, and this is only reasonably included amongst the reasons for refusal.

## **Aviation**

Two consultees, Edinburgh Airport and the NATS Safeguarding, object to the proposals on the basis that they would present obstacles to air traffic and hazards to the monitoring and management of air traffic, with potential consequences for air safety. It is advised in both cases that any decision to approve the application would need to be referred to the Scottish Government for its review.

The Applicant is aware of both objections and has advised, without providing any evidence, that it has signed a mitigation agreement with NATS, whereby the latter is prepared to remove its objection subject to suspensive conditions being imposed to require mitigation measures, including a payment. However, the Applicant has not presented any proposals intended to address the concerns of the NATS to the Planning Authority, and the NATS for its part, has not contacted the Planning Authority with any updated advice with respect to its position vis-à-vis this proposal. Accordingly it is only reasonably supposed that the NATS maintains its objection. The Applicant advises that it has also been in contact with Edinburgh Airport, and while it considers that the Airport's objection could be addressed and removed, to date it has had no positive response from the Airport authority to its communication. Again, the Airport's concern to remove its objection is simply not reasonably anticipated in the absence of a direct communication from it to this effect.

Regardless of whether or not the Applicant is able within the fullness of time to address the concerns of both aviation authorities, as it stands, both are only reasonably understood as maintaining objections to the proposal. If the application were to be supported in these circumstances, it would require referral to the Scottish Government, but otherwise the potential for disruption to the movement, management and monitoring of air traffic is only reasonably included among the reasons for refusal of the planning application.

## **Developer Contributions**

The Applicant has identified a willingness to contribute revenue to community councils however, this is not a requirement of planning approval, and is not reasonably required by planning condition or secured by legal agreement.

## **Phasing, Operation, Decommissioning and Restoration**

In the event of approval, conditions to limit the time period of the operation of any consent issued would be appropriately applied. The Applicant's concern to have consent for 25 years is relatively standard, and could be accommodated within an appropriately worded condition.

There would also need to be conditions imposed to regulate the appearance of the operational site for the duration of any consent, primarily to ensure that all temporary works would be removed or otherwise resolved into a form that would be appropriate in terms of its landscape and visual impacts, for their retention over the operational life of the development.

Beyond this, appropriate account would also need to be taken of the regulation of all works required at the time of the decommissioning and restoration of the site. In the

event of approval, such matters are capable of being addressed by standard planning conditions of the type that this authority has previously imposed to regulate such matters.

The operation and treatment of the borrow pits would also require to be regulated to ensure that these were only used in the service of the wind farm proposal. Similarly the use of the substation as a new detached building, potentially capable of conversion to another use unrelated to the wind farm, would also require to be appropriately regulated.

### **Other Concerns**

At the time of the consideration of the previous planning application for the site, there was a concern that a tree belt within a third party ownership, would be managed under a legal agreement, such as to retain this landscape feature as a screen for the lifetime of the wind farm. In the event of approval, it would have been reasonable to have investigated this possibility with the Applicant and the relevant land owner, who has independently advised of their willingness to enter into any legal agreement to achieve this aim.

A number of consultees explicitly identify their concern to be advised with respect to the progress of the planning application, including some who would wish to be consulted ahead of the issuing of any approval. The Civil Aviation Authority would also require to be notified in the event of approval.

### **CONCLUSION**

The Council recognises that there is strong support in Scottish Planning Policy and in the statutory development plan for the development of renewable energy. However it is not considered this outweighs the relevant unacceptable significant adverse impacts and effects that would arise as a consequence of this specific proposal, particularly with respect to the landscape and visual impacts and its impacts upon the movement, management and monitoring of air traffic. It is further considered that the Applicant has not demonstrated that there would not also be unacceptable significant adverse impacts and effects upon badgers and upon a private water supply, notwithstanding that further details may have addressed these concerns.

### **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

I recommend that the application is refused for the following reasons:

The proposal is contrary to Adopted Scottish Borders Council Local Development Plan Policy ED9 in that it would have relevant unacceptable significant adverse impacts or effects that cannot be satisfactorily mitigated, and which are not outweighed by the wider economic, environmental and other benefits that would otherwise be derived from its siting and operation at the site. In particular:

- the scale, form and location of the development proposed would represent a significant, detrimental change to the existing landscape character and visual amenity of the immediate locality and the wider area, and would also result in

- unacceptable cumulative landscape and visual impacts through its contribution to views within which it would be visible alongside surrounding wind farm schemes;
- It would present a hazard to aviation safety both as an obstacle to aircraft and in its potential to disrupt radar operations at Kincardine and Edinburgh Airport;
  - It has not been demonstrated that the proposals would not have unacceptable impacts upon a Protected Species, specifically badgers, whose setts are liable to be impacted by the operation of one of the borrow-pits; and
  - It has not been demonstrated that the proposals would not have any unacceptable impacts upon a private water supply.

**DRAWING NUMBERS**

<b>Plan Ref</b>	<b>Plan Type</b>
1.1	Location Plan
1.2	Location Plan
1.3	Location Plan
6.1B	Site Plan
3.2 TURBINES	Foundations
3.3 ACCESS TRACK	Other
3.4 COMPOUND	Other
3.5 TURBINES	Foundations
3.7 TURBINE DESIGN	Elevations
3.8 SUBSTATION	Elevations

**Approved by**

<b>Name</b>	<b>Designation</b>	<b>Signature</b>
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.

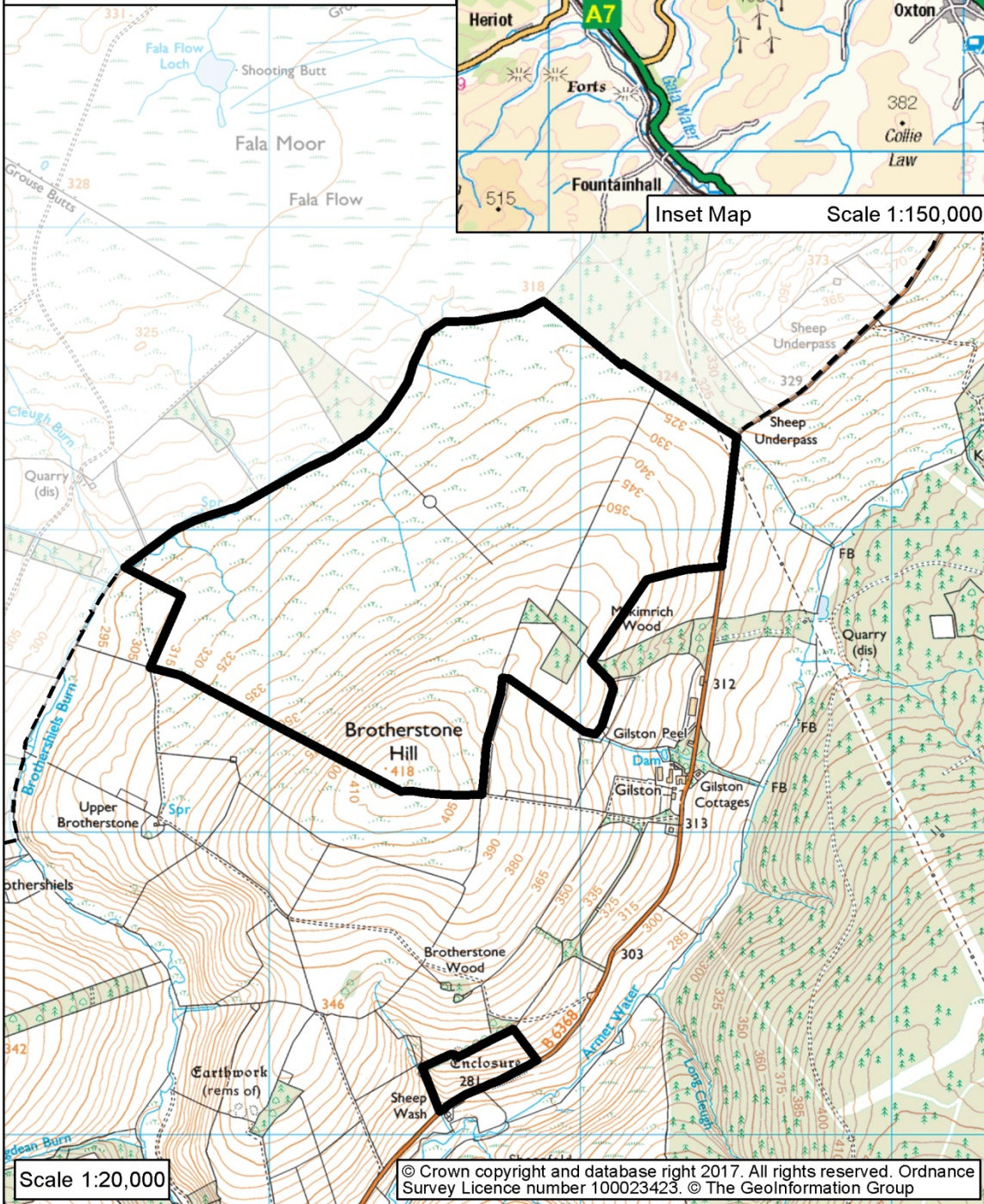
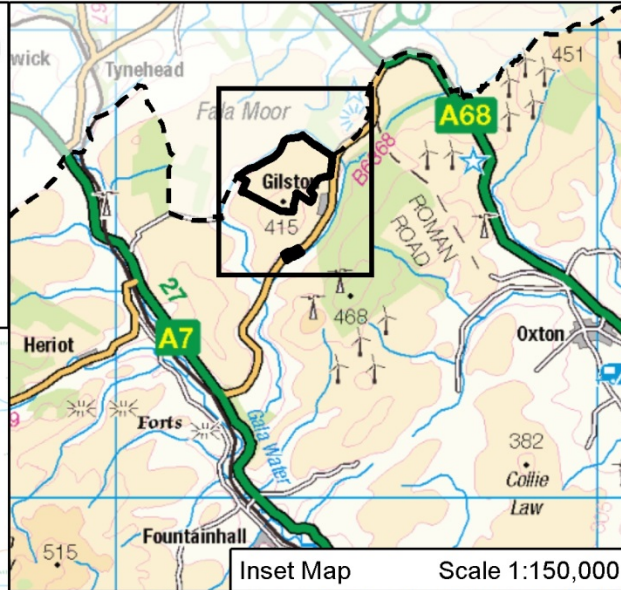
**Author(s)**

<b>Name</b>	<b>Designation</b>
Stuart Herkes	Planning Officer



17/00226/FUL

Land North West Of Gilston Farm Heriot



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